
Appeal Decision

Site visit made on 17 January 2017

by **Andrew McCormack BSc (Hons) MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 9 February 2017

Appeal Ref: APP/X5210/D/16/3159839

21 Rosecroft Avenue, London NW3 7QA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Theo Duchon against the decision of the Council of the London Borough of Camden.
 - The application Ref 2016/3846/P, dated 8 July 2016, was refused by notice dated 1 September 2016.
 - The application sought planning permission for *'Minor Material Amendment, Variation of Condition to change rear first and second floor extensions from brickwork and white uPVC windows to minimal glazing, and change upper ground rear white uPVC window to minimal glass 'oriel' window'*, without complying with a condition attached to planning permission Ref 2016/0218/P, dated 22 March 2016.
 - The condition in dispute is No 3 which states that: *'The development hereby permitted shall be carried out in accordance with the following plans: J173/D00, J173/D01, J173/D02, J173/D03, J173/D04, J173/D05, J173/D06, J173/D07, J173/D08A, J173/D09, J173/D10, J173/D51, J173/D52, J173/D53, J173/D54, J173/D55, J173/D56, J173/D57, J173/D58, J173/D59, J173/D60, Design and access statement'*.
 - The reason given for the condition is: *'For the avoidance of doubt and in the interests of proper planning'*.
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Decision

1. The appeal is dismissed.

Procedural Matters and Background

2. The description on the application form was amended by agreement of both main parties to the following: *'Variation of Condition 2 (Development in accordance with approved plans) granted under reference 2016/0218/P, dated 22/03/16, for erection of rear extensions to lower ground, upper ground, first and second floors and alterations to fenestrations and to the ground front entrance area. Namely to alter the rear and side fenestrations and materials from brick to white upvc windows on the first and second floor, changes to windows to upper ground floor of the rear extension. Increase of roof overhang to extension and rear terrace at lower ground level'*.
 3. However, this description fails to clarify the specific condition which is sought to be varied. Condition 2 attached to approval Ref: 2016/0218/P relates to external materials. Condition 3 relates to the development being in accordance with approved plans. Whilst I note that Condition 2 has been reproduced in the description of development for the Appeal Form and in other submissions to
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this appeal, clarification sought from both the Council and the appellant has confirmed that Condition 3 of the approval ref: 2016/0218/P is the relevant condition that is the subject of this appeal. Accordingly, it is on that basis that I have determined the appeal.

4. The appeal follows the granting of planning permission Ref: 2016/0218/P, dated 22 March 2016 and relates to the subsequent application to vary Condition 3 relating to the approved plans regarding amendments to the design of the rear and side extensions and windows. The Council refused a subsequent application Ref: 2016/3846/P to vary the Condition on 1 September 2016 on the grounds that by granting permission to vary the condition would result in material harm to the character and appearance of the appeal property and the Redington and Frogna Conservation Area. Furthermore, it would have a detrimental effect on the living conditions of neighbouring occupiers with regard to privacy.
5. An appeal was lodged against that decision. This appeal therefore seeks the variation of Condition 3 which relates to the development being in accordance with the approved plans and to replace references to approved plans with references to relevant amended plans, as specified.

Main Issues

6. The main issues are the effect of the proposed variation of the Condition on:
 - the character and appearance of the host building and the Redington and Frogna Conservation Area (CA); and
 - the living conditions of neighbouring occupiers at 23 Rosecroft Avenue, with particular regard to privacy.

Reasons

Character and appearance

7. The appeal property is situated in a residential area which is characterised by large detached and semi-detached properties on good sized plots. The appeal property is located close to the top of a hill. As a result, the property is elevated above nearby properties to the north and west. Properties on Rosecroft Avenue to the south are slightly above the property. The topography places the appeal property considerably above properties at the rear, particularly those to the west. Most properties in the area are of a traditional style and are constructed of traditional materials such as brick.
8. The appellant seeks to amend the approved plans condition of approval Ref: 2016/0218/P in order to replace the existing upper ground floor rear window to the existing dining room with a box window with minimal glazing. The window would project from the rear elevation of the property and would appear frameless with glazing held in place by silicone joints and aluminium frames to create an 'oriel' window. This modern box shaped window would replace a window of a more traditional style and appearance and would create a stark contrast with the other traditionally styled and sized windows of nearby properties, particularly those of the adjacent semi-detached property at 19 Rosecroft Avenue. It would therefore appear out of keeping and incongruous with the prevailing character and appearance of surrounding properties and of the CA which adopt a more traditional architectural style and design.

9. The area is characterised by mostly large properties of traditional style and materials, predominantly brick within the CA. Having had regard to the approved scheme in the original application, Ref: 2016/0218/P, I note that the windows are sympathetically designed and proportioned and complement the character and appearance of the surrounding properties and area using brickwork as the prevalent external material. In contrast, the revised proposal relating to the variation of the Condition would consist of a fully glazed first and second floor which would be as an incongruous element of the rear and side elevations of the property. Furthermore, it would be at a height which, given the natural elevation of the host building above neighbouring properties, would be visually harmful to the character and appearance of the building and the CA.
10. Although the proposal seeks alterations to the rear of the property and would have a limited visual impact on public views, the significance of the CA as a heritage asset is based on the buildings and layout of the area as a whole, irrespective of how visible particular elements are to the public. Therefore, the significance of the CA is not solely reliant on those parts which can readily be seen.
11. In my view, the alterations sought by varying the Condition would have a detrimental effect on the character and appearance of the CA. Whilst it would result in less than substantial harm, the National Planning Policy Framework (the Framework) states that any harm to the significance of the CA requires clear and convincing justification and that such harm should be weighed against the public benefits of the proposal. From the evidence before me, I find that the appellant has not identified any public benefits which would outweigh the harm I have identified in that regard.
12. The proposal would be a prominent feature in the rear garden of the property and would be seen from several neighbouring properties. Furthermore, the first and second floor changes from external brickwork walls and traditionally sized windows to a fully glazed extension would constitute an over-dominant, visually intrusive structure which would be out of keeping with the modest and traditional character of the appeal property and those surrounding it. It would neither preserve nor enhance the character or appearance of the CA and therefore it would be materially detrimental to its character and appearance.
13. Consequently, I conclude that varying Condition 3 as proposed would result in material harm to the character and appearance of the appeal property and the CA. Therefore, it would be contrary to Policy CS14 of the London Borough of Camden Local Development Framework Core Strategy (Core Strategy) and Policies DP24 and DP25 of the London Borough of Camden Local Development Framework Development Policies (Development Policies). Amongst other matters, these policies seek to ensure that development is of high design quality and preserves or enhances the character or appearance of conservation areas.

Living conditions: privacy

14. The proposed first and second floor windows on the north facing elevation of the appeal property would be less than 10 metres from the windows and garden area of 23 Rosecroft Avenue (No 23). I note that the proposed windows would be opaque or obscure-glazed. Notwithstanding this, I find that the full height, size and position of them would create an increased sense of

overlooking which, given the proximity to No 23, would have a materially harmful effect on the neighbouring occupiers.

15. There are a number of trees and shrubs situated on the boundary between the appeal property and No 23. However, as I observed at the time of the site visit, there were gaps which leave very little screening cover between the two properties. In addition, many of the trees and shrubs were without leaf which increased the permeability of the screening and allowed for views between the two properties as I saw from the existing windows on the facing elevation of the appeal property. Furthermore, I note that there were no objections to the scheme from any neighbouring occupiers. However, this does not necessarily automatically result in the granting of planning permission.
16. As a result, I find that the proposed glazing to the exterior of the property at first and second floor level would result in an undue sense of being overlooked which would have a detrimental effect on the living conditions of the occupiers of No 23. The proposed variation to the approved condition would result in the property altering in such a way as to have a materially harmful effect on the neighbouring occupiers at No 23 with regard to a perceived loss of privacy and an undue sense of being overlooked.
17. Consequently, I conclude that the proposal would have a materially harmful effect on the living conditions of the occupiers of No 23 with regard to privacy. It would therefore be contrary to Policy CS5 of the Core Strategy and Policy DP26 of the Development Policies. These policies, amongst other matters, seek to protect the living conditions of residents and occupiers by ensuring that the impact of development is fully considered and managed.

Conclusion

18. From what I have seen and read, I find that there are no overall public benefits of the proposal identified which would outweigh the harm I have identified. Therefore, for the reasons stated above and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

Andrew McCormack

INSPECTOR