



Appeal Decision

Site visit made on 5 September 2018

by Andrew Dawe BSc(Hons) MSc MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 November 2018

Appeal Ref: APP/X5210/W/18/3201547 Flat 1, 39 Primrose Gardens, NW3 4UL

- 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 Matthew King against the decision of the Council of the London Borough of Camden.
- The application Ref 2017/5483/P, dated 29 October 2017, was refused by notice dated 1 December 2017.
- The application sought planning permission for conversion from 5 self-contained flats to 4 residential units (1x 3 bed maisonette and 3x 2 bed flats); erection of single-storey extension at rear lower ground floor level and rear bay window at upper ground floor level; replacement timber framed sash windows; new staircase access with balustrades from rear upper ground floor level to rear garden; new roof terraces at rear 1st floor level and main roof level with associated balustrades without complying with conditions attached to planning permission Ref 2016/3192/P, dated 6 September 2016.
- The conditions in dispute are Nos 3 and 4 which state that: (3) The development hereby permitted shall be carried out in accordance with the following approved plans- Site location plan- GA35 050; GA35 101; GA35 102; GA35 103; GA35 104; GA35 105; GA35 106; GA35 107; GA35_2 301; GA35_2 302; GA35_2 303; GA35_2 304; GA35_2 305; GA35_2 306; GA35_2 307; GA35_2 308; Planning Statement - FW053/FW, 08/06/2016 Revised; Design and Access Statement; (4) The flat roofs adjoining the proposed access walkway of the rear lower ground floor extension hereby approved shall not be used as an amenity roof terrace and shall be accessed for maintenance purposes only and for no other purpose.
- The reasons given for the conditions are: (3) For the avoidance of doubt and in the interest of proper planning; (4) In order to prevent unreasonable overlooking of neighbouring premises in accordance with the requirements of policy CS5 of the London Borough of Camden Local Development Framework Core Strategy; and policy DP26 of the London Borough of Camden Local Development Framework Development Policies.

Decision

1. The appeal is dismissed.

Procedural Matter

2. The appellant has submitted with the appeal a Unilateral Undertaking (UU) planning obligation relating to the retention of a screen currently provided in the form of hedges set in planting boxes (the planters) on either side of the roof area proposed to be used as a terrace. That UU includes a Landscaping Plan and relates to amended plans, also submitted with the appeal, showing those planters and a slight repositioning of the proposed external staircase.

Although the planters are currently in place and are not classed as development, the UU would have the effect of bringing them under planning control which, in the absence of any information to the contrary, is a change of circumstance that the neighbours have not been formally consulted about and given an opportunity to comment upon. Those neighbours would therefore be prejudiced were the amended plans taken into account. The Landscaping Mitigation measures set out in the UU also make no clear provision for controlling the number of hedge plants and resultant density of the intended screen. This is a factor that calls into question the enforceability of a particular level of ongoing screening.

3. For the above reasons, I have not taken account of the UU and associated amended plans in determining this appeal and have considered the proposals on the basis of the original plans upon which the council based its decision.

Main Issue

4. The main issue is the effect of the proposals on the living conditions of the occupiers of Nos 37 and 41 Primrose Gardens in respect of privacy.

Reasons

Main issue

5. The proposals concerned would relate to the use of the roof area of the existing single storey extension as a terrace, including railings around its edge and a repositioned external staircase for access to the garden.
6. Based on the original plans submitted for the application concerned, there would be no screening of clear sight at close range from the edges of the proposed terrace into the adjacent rooms, at the same level in particular, of Nos 37 and 41 via their large windows, albeit at an oblique angle. In extending the full width of the property and given the depth of the roof area concerned, the proposed terrace would also enable people to look straight down into the more private areas of the rear gardens of those properties closest to the respective dwellings. Such overlooking would also be closer and more direct than would currently be the case from rear windows of adjacent properties.
7. The repositioned external staircase, being very close to the boundary with No 37, would also allow similar extents of overlooking into that property and its garden to those referred to above. Such levels of overlooking would be noticeably closer and more direct than is currently the case in respect of the centrally positioned external staircase and walkway serving the flat concerned. The staircase would be further from No 41 than existing. However, any existing overlooking is already lessened by the positioning of the current staircase away from the boundary. It would therefore not be a substantial benefit in this respect.
8. Even with the planters referred to above in place, and at a density and height sufficient to provide adequate screening, that would not prevent overlooking at close range from the proposed terrace into those rear garden areas of Nos 37 and 41 that extend beyond the line of the rear elevation of No 39's single storey extension. It would also not prevent fairly close range overlooking into the nearest upper ground floor room of No 37 from the proposed external staircase, even if it was moved slightly further from the boundary to accommodate the planters, as shown on the submitted amended plans. These

factors alone would cause a harmful loss of privacy to the residents of those neighbouring properties.

9. No 41 already has a balcony, however it is much smaller in area and depth than the proposed terrace and does not extend to the side boundaries, thereby limiting the extent of overlooking from it. There are also other nearby properties with roof terraces, however these are at a high level such that any overlooking of neighbouring properties would be from a greater distance and not so direct. The circumstances are therefore different in those other existing cases, and in any case I have determined this appeal on its own merits.
10. For the above reasons, the proposals would cause unacceptable harm to the living conditions of the occupiers of Nos 37 and 41 Primrose Gardens in respect of privacy. As such, they would be contrary to policy A1 of the Camden Local Plan which, amongst other things, seeks to ensure that the amenity of neighbours is protected including in relation to privacy.

Other matters

11. I have had special regard to the statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the Belsize Conservation Area (the CA). The CA generally comprises a variety of designs and ages of properties. The site is part of a terrace of dwellings, the rear of which has been altered to varying degrees including some single storey extensions of varying designs. There are also existing railings at the next level up on the rear elevation of No 39. The staircase would also be a replacement feature, albeit of a different design and position to the existing one. In that context, the proposed railings to the existing flat roof, also of modest height in themselves, and the repositioned staircase would not represent dominant, obtrusive, or unexpected additions to the building. Furthermore, the single storey extension is currently not clearly visible from any public vantage points, as would remain the case. For these reasons I consider that the proposals would preserve the character and appearance of the CA.
12. However, in terms of considering any potential benefits of the proposals, the visual appearance of the existing extension would not be materially enhanced by the proposals, as it would still retain its fundamental flat roof design and an external staircase, albeit repositioned to one side. Again, the proposals would also not be clearly visible from public vantage points. They would therefore not materially enhance the character and appearance of the CA.
13. The existing planters referred to above provide a softer outlook from Nos 37 and 41 in terms of the degree to which they screen sight of the flat roof of No 39's extension. However, whether the planters are retained or not, the size of the extension and expanse of its roof area is not such as to represent a dominating feature as seen from those properties.
14. The appellant raises concern about existing poor levels of privacy to his property as a result of overlooking from No 41's terrace. However, the existing planters are likely to address those concerns regardless as to whether or not the proposed terrace is provided. Furthermore, in terms of adequate provision for outdoor amenity space, without the proposed terrace there would still remain a significant rear garden amenity area.

Conclusion

15. I have found that the proposals would preserve the character and appearance of the CA. However, this does not deflect from my findings that they would cause unacceptable harm to the living conditions of the occupiers of Nos 37 and 41 in respect of privacy. There would also not be any benefits that would outweigh that harm.
16. Therefore, for the above reasons, I conclude that the appeal should be dismissed.

Andrew Dawe

INSPECTOR