

Appeal Decision

Site visit made on 23 August 2016

by Lynne Evans BA MA MRTPI MRICS

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

Decision date: 11 October 2016

Appeal Ref: APP/A3655/W/16/3151211

40 Batten Avenue, Woking Surrey GU21 8TP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Stuart Wade against Woking Borough Council.
 - The application Ref: PLAN/2016/0079 was dated 11 January 2016.
 - The development is retrospective application PLAN/2007/1043 for a first floor rear extension of 5.9sq m and alteration to rear and front elevation fenestration.
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Decision

1. The appeal is allowed and planning permission is granted for a first floor rear extension of 5.9sq m and alteration to rear and front elevation fenestration at 40 Batten Avenue, Woking Surrey GU21 8TP in accordance with the terms of the application, Ref: PLAN/2016/0079 dated 11 January 2016 and the plans referenced site location plan; SHEET: SITE/RETRO dated January 2016; SHEET/EXIST/PLANS/ROOF/retrospective dated January 2016; SHEET/EXIST/ELEs/retrospective dated January 2016.

Preliminary Matters

2. Planning permission was granted under Reference PLAN/2007/1043 in November 2007, subject to conditions, for a two storey rear and side extension. The first floor rear extension was permitted with a staggered rear building line, which stepped in towards No 41 Batten Avenue. The development, as completed, did not include the staggered rear building line and the whole of the first floor rear extension is built out to the same depth as the ground floor extension. There are also consequential amendments to the shape and the design of the roof. I have noted the Appellant's explanations for how and why this occurred but my decision is necessarily based on the planning merits of the scheme before me.
 3. There has been a complex planning history including an application submitted under Reference PLAN/2014/1403 to try and regularise the development constructed but that was refused permission. The Appellant contends that this application should not have been validated by the Council but that application and subsequent decision is not before me.
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4. There is a dispute between the Appellant and the Council as to when the development was undertaken but the application form indicated that the works had both commenced and been completed at the time of the application submission. The application is therefore seeking permission for works already carried out under Section 73A of The Town and Country Planning Act 1990, namely and following the description of development on the application forms, for a first floor rear extension of 5.9sq m and alteration to rear and front elevation fenestration.
5. The Appellant appealed on grounds of non-determination on 25 May 2016 and the appeal has been accepted on this basis. The application was also determined and refused at the Council's Committee meeting on 25 May 2016, and the decision notice issued the next day, 26 May 2016. The refusal notice sets out that the Council considers that the development harms the living conditions of the adjoining neighbours at No 41 Batten Avenue with particular regard to an overbearing impact, and particularly affecting the first floor window in the rear elevation which serves as a single aspect to a bedroom.
6. There are references in the appeal documentation to an enforcement notice being issued in relation to the works which have been undertaken which were not permitted under permission PLAN/2007/1043. However, this is a separate matter and is not before me.

Main Issue

7. The main issue in this appeal is the effect of the development on the living conditions of the adjoining neighbours at No 41 Batten Avenue, with particular regard to loss of outlook.

Reasons

8. The appeal property is a semi-detached dwelling on the north side of Batten Avenue within a predominantly residential area. The side boundary of the property adjoins the rear boundary of houses in Amis Road.
9. No 41 Batten Avenue is the adjoining half of the semi-detached pair and is situated to the west of the appeal property. The extension as built extends to the rear along the common boundary and given the depth of the extension, it does not comply with the detailed guidance in the Council's adopted Supplementary Planning Documents: Outlook, Amenity, Privacy & Daylight 2008 (SPD 2008) and Design 2015 (SPD 2015) on the depth of such extensions in order to ensure that they do not harm the living conditions of immediate neighbours, through loss of outlook or loss of light. In this case the Council's concern is specific to the effect from the development as built on the outlook, and in particular the overbearing impact, from the first floor bedroom window at No 41 closest to the common boundary. I agree that the outlook from this window, which is the only window serving the bedroom, is restricted in an easterly direction by the depth and height of the side wall of the extension; however there remains an unobstructed outlook directly ahead and towards the west.
10. I have noted that the neighbours at No 41 have written to advise that the extension as built does not harm their living conditions. I have taken this into

account although I also agree with the Council that consideration has also to be given to future occupiers.

11. The adjoining property at No 41 also has permission for a first floor side and rear extension with associated alterations to side and front fenestration under reference PLAN/2014/1404 granted in April 2015. That extension would provide for an extension along the common boundary with No 40 of some 3.2m in depth. The Appellant has contended that the Council only considered the application at No 41 on the basis of what had already been built at No 40 but it seems clear to me that the Council addressed the position on the basis of both the position as originally permitted as well as the position as built.
12. The neighbours at No 41 have written at the appeal stage to advise that first, it is their intention to construct their extension as permitted and secondly, that whilst constructing a conservatory at ground floor (permitted under Reference PLAN/2015/1325) works were at the same time specifically undertaken to enable the first floor extension to be built. Although I have noted the siting of the conservatory, there is no information before me to suggest that the building of the conservatory has rendered the first floor extension incapable of being undertaken which is a point raised by the Council at the appeal stage. The neighbours have further argued that given the works undertaken when building the conservatory, commencement of development of the first floor extension has therefore been undertaken. However, that is not a matter which is before me and I have insufficient information before me to reach a firm conclusion.
13. Although I recognise that intentions can change for any number of reasons, I have no reason to doubt the neighbours' stated intention to undertake their permitted extension, and even if not yet implemented, the permission is capable of being commenced up until April 2018.
14. In the particular circumstances of this case and taking into account all matters, including both the current position as well as the permission granted for a first floor rear extension at the neighbouring property and the neighbours' stated intention to undertake the extension, I conclude that the development does not materially harm the living conditions of the adjoining neighbours at No 41 Batten Avenue, with particular regard to loss of outlook. There is no conflict with Policy CS21 of the Woking Borough Core Strategy 2012, Policy HSG23 of the Woking Borough Local Plan 1999 as well as the National Planning Policy Framework all of which seek for development to respect the amenities of existing and future occupiers. I have found that the development does not comply with the relevant sections of the Council's adopted SPD 2008 and SPD 2015 but in the particular circumstances of this case I consider that there is sufficient justification for an exception to be made to the advice in these SPDs.
15. The Appellant has drawn my attention to a number of other two storey extensions which have been built in the vicinity of the appeal site, although the Council has advised that a number of these have been the subject of legal agreements to ensure that both 'halves' of the semi-detached pair undertake their extensions together. I have taken these other extensions into consideration but my decision is based on the particular circumstances of the situation before me.

16. A number of statements have been made by both the Appellant and the Council regarding the actions of the other party, but my consideration and decision is based solely on the planning merits of the development before me.
17. The Council seeks one condition to be attached relating to matching materials but as the development has been completed I see no planning basis to impose this condition. There are no other conditions that I consider require to be imposed. However, for the purposes of clarity I have set out the approved plans under my Decision.
18. For the reasons given above and having regard to all other matters raised, including in representations, I conclude that the appeal should be allowed.

L J Evans

INSPECTOR