
Appeal Decision

Site visit made on 19 September 2016

by Richard S Jones BA (Hons) BTP MRTPI

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

Decision date: 12th October 2016

Appeal Ref: APP/K3605/W/16/3147587

32 Angel Road, Thames Ditton, Surrey KT7 0AU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Andrew Meatyard against the decision of Elmbridge Borough Council.
 - The application Ref 2012/4292, dated 14 December 2012, was approved on 8 February 2013 and planning permission was granted subject to conditions.
 - The development permitted is a semi detached bungalow with additional rooms in the roof space and front and rear dormer windows.
 - The condition in dispute is No 7 which states that: Notwithstanding the provisions of the Town and Country Planning General Permitted Development Order 1995 (as amended - or any Order revoking or re-enacting that Order) no development falling within Part 1 Classes A and B of Schedule 2 to the said Order shall be carried out within the curtilage of the/any dwellinghouse, unless planning permission is first granted by the Borough Council.
 - The reason given for the condition is: To safeguard the character and amenities of the premises and adjoining properties and to comply with Saved Policies HSG16 and HSG20 of the Replacement Elmbridge Borough Local Plan 2000.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The condition makes reference to the Town and Country Planning (General Permitted Development) Order (as amended) 1995 (the 1995 GPDO). This Order has now been superseded by the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). Whilst the precise restrictions differ in part, Class A remains the enlargement, improvement or other alteration of a dwellinghouse and Class B remains the enlargement of a dwelling house consisting of an addition or alteration to its roof. In respect of the condition in dispute, the issues are not therefore materially different. As the condition also relates to any Order revoking or re-enacting the 1995 GPDO, I have dealt with the appeal on this basis.
 3. It is a matter of contention as to whether or not the existing dwelling has been built in accordance with approved plans. However, its lawfulness or otherwise is not a matter for me to determine in the context of an appeal made under Section 78 of the above Act. Nevertheless, in order to come to a view on the appeal proposal, it has been necessary to consider the existing dwelling as the original dwellinghouse and original roof space, as the starting position for the
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purposes of considering the effect of utilising the disputed permitted development rights. To do so does not confer any lawful status but it remains open to the appellant to apply for a determination under Sections 191/192 of the Act in relation to this matter. My decision on this appeal does not affect the issuing of a determination under Sections 191/192 of the Act.

Main Issue

4. The main issues are whether or not the condition is necessary and reasonable:
 - in the interests of the living conditions of the occupants of adjoining properties, particularly No 30 Angel Road, with reference to outlook, sunlight and privacy; and
 - in the interests of the character and appearance of the area.

Reasons

5. The Planning Practice Guidance¹ states that conditions restricting the future use of permitted development rights will rarely pass the test of necessity and should only be used in exceptional circumstances.
6. In this case, although the appeal relates to a semi-detached bungalow, the dwelling itself is substantially different in its size and design to the adjoining bungalow at No 30. This property is of simple design and modest proportions with a relatively small rear conservatory and a pitched roof with no roof extensions and a gable end which terminates at the side of the dwelling.
7. In contrast, the appeal dwelling essentially appears in an 'L' shape form at its frontage whilst the rear of the dwelling is larger than that of No 30. The roof shape is also different and does not tie-in with No 30 and includes a large rear dormer and a smaller front dormer.

Living conditions

8. The ground floor of the appeal dwelling extends significantly beyond the main rear wall of No 30 and beyond that of its conservatory. This projection also extends almost across the entire width of the appeal dwelling, save for a relatively small gap between it and the boundary to No 30.
9. The starting point for the utilisation of Class A permitted development rights is therefore already significantly greater than that of No 30. In my view, the addition of a further rearward extension beyond that of the existing has the potential to dominate the outlook from the conservatory of No 30, whether or not the existing projection is set 1.5m off the boundary between these two properties.
10. In respect of Class B, the rear roof form is dominated by an existing dormer style extension which runs across nearly the full width of the dwelling. The utilisation of permitted rights to this part of the roof would in my view have a very significant effect on the outlook from No 30 by reason of overbearing and domineering impact. Indeed such that it is necessary that these permitted rights are withheld, so necessitating the submission of a planning application to allow such effects to be properly assessed by the Council.

¹ Paragraph: 017 Reference ID: 21a-017-20140306

11. Having regard to the orientation of the appeal dwelling to the south west of No 30, there is also potential for Class A and B permitted development rights to result in overshadowing and loss of sunlight to the rear of that dwelling and its garden.
12. The appellant has made reference to light issues arising from two large trees, one of which has been removed and the other heavily pruned. However, I note that the tree that remains in the rear garden of No 30 is set away from that dwelling and its effect on light is within the control of the occupants of that property.
13. Whilst concerns have been expressed in terms of potential loss of privacy, I consider that Condition A.3(b) of Class A and Condition B.2(c) of Class B, which require that any upper floor window in a side elevation to be obscure glazed with opening restrictions, would afford sufficient protection in this regard.
14. The south western boundary of the appeal site in part adjoins No 34 Angel Road, which is a two storey semi-detached dwelling. Having regard to the relative depth of that plot and the respective positions of the dwellings, I do not consider that the reinstatement of the permitted development rights would materially affect the living conditions of the occupiers of No 34. I reach the same conclusion for No 16 Quinton Road, which adjoins the rear part of the south western boundary of the appeal site, on the basis of the separation, intervening screening and orientation of that two-storey semi-detached dwelling in relation to the appeal dwelling.
15. Nevertheless, having regard to the above, I find that it is both necessary and reasonable to withhold Class A and B permitted development rights for the appeal dwelling so that the effect of such development on the living conditions of No 30 can properly be assessed by the Council. In the absence of such a condition, there is a clear likelihood that the permitted development would result in material harm to living conditions of the occupiers of No 30.
16. I accept that neighbouring properties may not be subject to any similar permitted development rights restrictions but in the case of No 30 in particular, the utilisation of such permitted development rights would not in my view result in any undue harm to the living conditions of the appeal property, because of the substantial difference in the size of the dwellings.
17. The appellant has sought to highlight that the Planning Inspector for appeal reference APP/K3605/A/14/2220529 did not place any restriction on permitted development rights. However, that appeal related solely to an increase in the roof pitch of the dwelling, rather than the original planning permission. It was not therefore necessary to impose such conditions as the conditions for the original planning permission would be unaffected.
18. Although the Council's reason for refusal does not reference any development plan policy, the Council's report nevertheless identifies those which it considers relevant. These development plan policies are not those referenced in the reason for the condition, which I have assumed to be no longer in force. As planning appeals must be determined on the basis of the development plan that exists at the time of the Inspector's decision, I have considered the acceptability of the appeal proposal having regard to those policies referred to in the Council's report and have found that the likely harm to the living conditions of No 30 would be contrary to Policies CS8 and CS17 of the

Elmbridge Core Strategy July 2011 (CS) and Policy DM2 of the Elmbridge Local Plan Development Management Plan April 2015 (DMP). These require, amongst other matters, that new development protects the amenities of those within the area.

Character and appearance

19. As explained above, the appeal dwelling is significantly different in terms of its size and design to that of the adjoining bungalow at No 30. The dwelling also sits within a street scene which displays a substantial variation in dwelling type, layout and individual design. In these circumstances, it is not necessary or reasonable to withhold permitted development rights to safeguard the character of the premises and adjoining properties. Accordingly, I find that the dwelling with the Class A and B permitted enlargement, improvement or other alteration, would comply with CS Policies CS8 and CS17 and DMP Policy DM2 insofar as these policies require new development to enhance the public realm and street scene and preserve or enhance the character of the area.
20. Although not falling within or contiguous with the boundary of the Giggs Hill Green Conservation Area, its boundary is located a short distance away to the west, north and east of the appeal site. For such matters, Paragraph 132 of the National Planning Policy Framework makes clear that great weight should be given to the conservation of designated heritage assets, and to their setting. However, given the clear separation and intervening screening, I am satisfied that the reinstatement of permitted rights would not affect the setting of the Conservation Area.
21. Consequently, I do not consider that the exceptional circumstances envisaged by the PPG are applicable in terms of the character and appearance of the area.

Other matters

22. I note the appellant's concern regarding the way in which this application and others previously submitted have been handled by the Council and also the assertion that the Council is issuing Article 4 Directions without clear justification. However, these are not matters for this appeal which I have determined afresh and on its planning merits.

Conclusion

23. I have found that the condition is not necessary and reasonable for reasons relating to character and appearance. Nevertheless, I have found that the likely harm to the living conditions of the occupiers of No 30, arising from utilisation of the permitted development rights, constitute the exceptional circumstances anticipated in the PPG to justify the permitted development being withheld, thus affirming that the retention of condition 7 is indeed both reasonable and necessary.
24. For this reason, I conclude that the appeal should be dismissed.

Richard S Jones

Inspector