
Appeal Decision

Site visit made on 31 January 2017

by Beverley Doward BSc BTP MRTPI

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

Decision date: 14 February 2017

Appeal Ref: APP/Z5630/D/16/3162969
20 Reynolds Road, New Malden, KT3 5NG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mrs Rubina Chughtai against the decision of the Council of the Royal Borough of Kingston-upon-Thames.
 - The application Ref 16/14809/HOU, dated 5 August 2016, was refused by notice dated 3 October 2016.
 - The development proposed is described as 'change in height of permitted flat roof roof from 2.5m to 2.9m on an existing outbuilding in rear garden. The outbuilding is permitted (appeal ref no. APP/Z5630/X/13/2198781) with flat roof 2.5m high'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal property is a detached house in a cul-de-sac within a suburban residential area. A Lawful Development Certificate (LDC) was granted on appeal in October 2013 for the erection of a single storey outbuilding in the rear garden of the appeal property. The certificate was issued on the basis that the development would be permitted by Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) (GPDO). At the time of my site visit the outbuilding was partially constructed. The floor slab had been laid and the walls were substantially complete. The appeal proposal seeks permission to increase the height of the flat roof of the building from 2.5m to 2.9m.
3. My site visit included a visit to the neighbouring property at 22 Reynolds Road where I viewed the site from a first floor bedroom window and the rear garden.

Main Issue

4. The main issues in this case are the effect of the proposal on:
 - the living conditions of the occupiers of the neighbouring property at No 22 with regard to outlook; and
 - the character and appearance of the area.
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Reasons

Living conditions

5. The outbuilding is sited along the shared boundary with the neighbouring property at No 22 and extends along a significant proportion of the boundary. The rear garden of No 22 is relatively small and although it is somewhat enclosed by existing planting, particularly along the rear boundary to the south, there is a pleasant outlook to the west.
6. The appeal proposal to increase the height of the building to 2.9m would result in the building appearing oppressive and overbearing when viewed from both the rear garden and rear windows of No 22. This would increase the sense of enclosure experienced by the occupiers of No 22 within their rear garden to the detriment of their living conditions.
7. The appellant states that there were previously mature evergreen trees along the boundary with No 22 and contends that the sense of enclosure was always a feature of No 22. However, this does not justify the harm that would arise from a building of the height currently being proposed being sited immediately adjacent to the boundary.
8. I therefore conclude on this issue that the appeal proposal would cause material harm to the living conditions of the occupiers of No 22, with regard to outlook. This would be contrary to policy DM 10 of the Royal Borough of Kingston upon Thames Local Development Framework Core Strategy April 2012 (CS) which, amongst other things, seeks to ensure that development has regard to the amenities of neighbours including in terms of outlook and visual intrusion.

Character and appearance

9. The outbuilding as originally intended would be permitted development. Nevertheless, it would be of a significant scale and appear as a substantial structure. The proposal to increase the height of the building to 2.9m would further emphasise the scale of the outbuilding which, although sited so as not to be readily visible from the public realm, would be visible from the gardens and windows of neighbouring properties. From these vantage points the building at the height proposed would appear as visually intrusive and incongruous in this suburban context. Accordingly it would be detrimental to the character and appearance of the area contrary to policies CS 8 and DM 10 of the CS in so far as together they seek to protect the primarily suburban character of the borough, promote good design and ensure that new development relates well and connects to its surroundings .

Other Matters

10. The appellant contends that the increased height is necessary to provide sufficient headroom to use the building as intended as a swimming pool and gym and to create the roof slopes required to drain rainwater. However, there is no substantive evidence to indicate that the outbuilding could not be used for its stated purpose at the height of 2.5m as originally intended or that the roof could not be adequately drained at this height.
11. The appellant refers to other applications in the Royal Borough of Kingston upon Thames and elsewhere, where planning permission has been granted for

outbuildings of a greater height than that proposed in this case. However, from the information provided none appear directly comparable to the appeal proposal in terms of the scale of the built footprint of the outbuilding or the relationship with neighbouring properties. Each planning application and appeal needs to be considered on its own merits. I confirm that I have considered the proposal before me on its individual merits taking into account the specific context of the site and its surroundings and having regard to the relevant development plan policies and all material considerations.

12. The appellant contends that the Council's decision has interfered with her Article 8 Right under the Human Rights Act 1998 as her right to family and private life are being affected. I have had regard to the requirements of Article 8 of the European Convention on Human Rights, as incorporated by the Human Rights Act 1998. However, I am mindful that the appellant's individual rights must be weighed against other factors including the wider public interest and legitimate interests of other individuals. I have found above that the proposal would cause material harm to the living conditions of the occupiers of the neighbouring property at No 22 and would be detrimental to the character and appearance of the area, and I am satisfied that the legitimate aim of granting planning permission in accordance with the development plan and planning policies which require buildings not to be harmful to neighbouring living conditions and the character and appearance of the area can only be adequately safeguarded by the refusal of permission. I consider that the dismissal of the appeal would not have a disproportionate effect on the appellant or her family.
13. Interested parties raise concerns regarding the future use of the building. However, this matter was considered by the Inspector in granting the LDC and she determined that the building would be incidental to the enjoyment of the dwellinghouse. Planning permission would be required for a material change of use and the determination of any future application would be a matter for the Council.
14. The Council's Delegated Report refers to Policy Guidance 41 of its Residential Design SPD. It indicates that this states that outbuildings should, amongst other things, be positioned as far away as possible from any shared boundaries to stop overshadowing of neighbouring houses. Although the outbuilding would be positioned on the shared boundary with the neighbouring property at No 22 the Council raises no specific objection to the appeal proposal in relation to overshadowing of neighbouring houses. Nevertheless, the absence of harm in this regard weighs neither in favour, nor against the proposal.

Conclusion

15. For the reasons set out above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Beverley Doward

INSPECTOR