
Appeal Decision

Site visit made on 3 January 2017

by Rachel Walmsley BSc MSc MRTPI

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

Decision date: 21 February 2017

Appeal Ref: APP/Z5630/W/16/3159615

Land at 1-9 Evesham Terrace and 26A-26C Cottage Grove, Surbiton.

Formerly site of St Andrew's and St Mark's Primary School, St Andrew's Road, Surbiton, Kingston upon Thames KT6 4DS

- 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 Mrs Serena Riemann against the decision of the Council of the Royal Borough of Kingston-upon-Thames.
 - The application Ref 16/16046/FUL, dated 21 January 2016, was refused by notice dated 8 April 2016.
 - The application sought planning permission for erection of 12 two bedroom houses and garages (revised details) at Site of St. Andrew's and St. Mark's Primary School, St. Andrew's Road, Surbiton without complying with condition 4 attached to planning permission Ref 23913, dated 13 November 1980.
 - The condition in dispute is No 4 which states: *that notwithstanding the provisions of Article 3 and Class 1 of the first Schedule of the Town and Country Planning General Development Order 1977, or any subsequent amendment thereof, the enlargement of the dwelling hereby permitted (including the erection of additional garages or any other building or enclosure within the curtilage of the dwellings) shall be carried out without express permission in writing of the Local Planning Authority.*
 - The reason given for the condition is to: *avoid overdevelopment of the site.*
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mrs Serena Riemann against the Royal Borough of Kingston-upon-Thames. This application is the subject of a separate Decision.

Procedural matter

3. Whilst the address on the planning application form refers to Evesham Terrace, the description alongside it provides a more accurate description of the site address. I have therefore used this description and amended the site address accordingly.
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Background and Main Issue

4. Condition 4 was applied 'to avoid overdevelopment of the site.' In its appeal statement, the Council raised additional concerns, for the impact removing condition 4 would have on the character and appearance of the area and on the setting of the adjoining Conservation Area. On this basis the main issue is whether the condition is necessary, reasonable and enforceable having regard to matters of overdevelopment, character and appearance and impact on the setting of the Conservation Area.

Reasons

5. The appeal site concerns two rows of terraced residential properties, No's 1-9 Evesham Terrace and No's 26A-26C Cottage Grove. Houses in both rows are exposed to public view; the front and rear elevations of the houses can be clearly seen from the public highway. The properties also occupy a large proportion of their plots, leaving a limited area to the front and rear for garden space.
6. The houses on Evesham Terrace and Cottage Grove are outside the St Andrews Square Conservation Area (CA). Nevertheless, the houses on Evesham Terrace are part of the setting of the CA given that the houses adjoin the CA boundary and the visual appearance of the buildings impact on the setting of the CA.
7. The disputed condition 4 was applied at the time the Town and Country Planning General Development Order 1977 was effective. This development order has since been revoked by, most recently, the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO 2015). It is clear from the wording of condition 4 that it was intended for this condition to be enforced according to the Development Order of 1977 or any subsequent amendment. It is therefore appropriate for this appeal to be considered in the context of the GPDO 2015.

Necessity

8. Condition 4 was applied for reasons of overdevelopment. There is no definition of overdevelopment within the GPDO 2015 but the Planning Portal Glossary defines overdevelopment as an amount of development that is excessive in terms of impact on local amenity and character.
9. Under the GPDO 2015 it would be possible for the occupiers of each of the properties in Evesham Terrace and Cottage Grove to erect a ground floor extension up to 50% of the total area of the plot. A development of this scale would leave little space to the rear of the properties for garden. This in turn would limit the potential for outdoor activities such as drying washing, playing and sitting out. To remove condition 4, therefore, would result in an overdevelopment of the plot which in turn would be harmful to the living conditions of the occupiers of the properties.
10. The appellant suggests that the gardens would still exceed the London Plan Standards. I have no details of these standards to comment. Nevertheless, I have considered the appeal proposal on its own merits and have found that on this occasion, development under permitted development would result in unreasonably small gardens.

11. I recognise that the appeal site is within an area of high density housing where garden space could be reasonably expected to be smaller. However, whilst smaller gardens may be appropriate, I have found that development under permitted development would reduce the size of the gardens to an unacceptable degree. I also recognise that individual homeowners may choose to give up their garden but this does not lessen the importance of planning and its role in ensuring an adequate provision of outdoor space in the interests of occupier's living conditions and the quality of the built environment.
12. A ground floor extension up to 50% of the total area of the plot would be highly visible given the exposure of the rear elevations to the public highway. An extension that occupies much of the plot would appear excessive in scale and appear as an overdevelopment of the site. This in turn would be out of keeping with the prevailing pattern of development which affords larger rear gardens with more space to accommodate development.
13. Within the parameters of the GPDO 2015 it would be possible to extend the roof of the existing dwelling by no more than 40 cubic metres, provided that it did not exceed the highest part of the roof and was not forward of a principle elevation. In removing condition 4, the rear slope of the rooves of the houses concerned could be extended with a notable addition to the roof. Given the exposure of the rooves to public view, a roof extension of the scale permitted would dominate views of the street and would detract from the character and appearance of the area.
14. Development to the rear of No's 1-9 Evesham Terrace would be appreciated alongside the rear elevations of the townhouses either side, which are within the CA. However, the rear elevations of the existing townhouses face away from the CA and therefore contribute little to the character and appearance of the latter. Development to the rear of Evesham Terrace would therefore not unduly detract from the townhouses to have notable effect on the character and appearance of the CA overall. Development to the rear of No 26A-C Cottage Grove would have little bearing on the setting of the CA given the distance of the two from each other.
15. Notwithstanding this, I have found that to remove condition 4 would result in development under the GPDO 2015 that would result in overdevelopment with implications for local amenity and character, which in turn would be contrary to policy CS 8 and policy DM10 of the Core Strategy¹ which seek development that relates well and connects to its surroundings. Furthermore, to remove condition 4 would enable all properties to be extended at ground floor and roof level which in turn would exacerbate the harm found. Condition 4 does therefore serve a useful planning purpose and is necessary to ensure that development is acceptable in the context of character and appearance and amenity.

Enforceability

16. The parameters of Condition 4 are clear; that notwithstanding the provision of the Development Order 1977 or any subsequent amendment thereof, there shall be no enlargement of the dwelling or the construction of buildings within the curtilage of the dwelling, without the consent of the Local Planning Authority (LPA). It would be possible to detect a contravention and remedy

¹ Royal Borough of Kingston Upon Thames, Local Development Framework, Core Strategy, Adopted April 2012

any breach of the condition and therefore I find that the condition is enforceable.

17. The site address makes it clear that the condition is applicable to all dwellings covered by the permission. Implementation of the condition, however, is done so on an individual basis, in relation to each dwelling. This does not undermine the enforceability of the condition.
18. The Planning Practice Guidance (PPG) advocates that the specific rights within the GPDO should be referred to within planning conditions which remove permitted development rights. Whilst specific sections of the GPDO are not referred to in condition 4, the form of development that is not permitted without the LPA's consent is specified. The parameters within which the condition should operate are therefore clearly set out and as a result it would be possible to detect a contravention. In all, therefore, I find that condition 4 is enforceable.

Reasonableness

19. I have found that removing condition 4 would result in overdevelopment with implications for amenity and for the character and appearance of the area. To restrict development so that the LPA's permission is first obtained does not place an unjustifiable or disproportionate burden on the applicant. I therefore find condition 4 to be reasonable in this respect.

Other matters

20. In considering the appeal I have given consideration to the Appellant's suggestion that the condition could be revised to either restrict development by location or by classes of permitted development. However, I find little to distinguish one property from another for specific forms of development to be restricted above others. Furthermore, having found condition 4 to be necessary, enforceable and reasonable, I find little basis on which to consider a less restrictive condition effective.
21. My attention is drawn to planning permission PP14/16621/HOU for a single storey rear extension at No 9 Evesham Terrace. The Appellant suggests that this extension reduces the amount of garden space which the Council did not object to. I do not have any particular details related to the circumstances or decision-making in connection with this proposal from which to draw any particular conclusions on its appropriateness. I have therefore assessed the proposal on the basis of my own observations on site and the evidence placed before me.
22. The appellant refers to Class A.1e(ii) of the GPDO 2015, together with the Council's Technical Guidance on permitted development for Householders which regulates development fronting a highway. However, this Class regulates development which fronts a highway and forms a side elevation of the original dwellinghouse and therefore is not a consideration which carries any weight in considering development at the properties concerned.
23. The Appellant cites an appeal decision relating to Baladava Road which is similar in form and layout to the current proposal but where the permitted development rights were not restricted. Whilst I note that there is no condition to restrict permitted development rights, I cannot assume that this is because the Inspector found it inappropriate or irrelevant. Similarly I note that the

Inspector for appeal APP/C0630/A/03/1117956 concluded that there was nothing unique about the unit to warrant restricting permitted development rights. Without further details of this appeal I cannot compare matters of uniqueness to assess the relevance of such conclusions to the current appeal. Notwithstanding these matters, each case must be decided on its own merits and in this case I have found it appropriate to restrict permitted development for reasons of overdevelopment and character and appearance.

24. I am aware of recent changes made to permitted development rights to make permitted development less restrictive and to help reduce the number applications a planning authority has to process. The Planning Practice Guidance advocates restricting permitted development rights in exceptional circumstances. I have found on this occasion and for the reasons given that it is appropriate to restrict permitted development rights.

Conclusion

25. For the reasons given above, I conclude that the appeal is dismissed.

R Walmsley

INSPECTOR