
Appeal Decision

Site visit made on 6 February 2017

by Grahame Gould BA MPhil MRTPI

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

Decision date: 03 March 2017

Appeal Ref: APP/K3605/W/16/3161129

11 Cross Road, Weybridge KT13 9NX

- 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 Mr C Hillier against the decision of Elmbridge Borough Council.
 - The application Ref 2016/1689, dated 23 May 2016, was approved on 11 October 2016 and planning permission was granted subject to conditions.
 - The development permitted is two-storey side extension to accommodate pub kitchen at ground floor with habitable accommodation above serving existing first floor flat, conversion of existing restaurant and kitchen with accommodation above to separate residential dwelling following demolition of existing store.
 - The conditions in dispute are Nos 4 and 7 which state that:
 - 4) The office room windows on the first floor northwest elevation of the development hereby permitted shall be glazed with obscure glass and fitted with non-opening principal lights, and subsequently maintained in this form. Such glass shall be sufficiently obscure to prevent loss of privacy. The affixing of an obscure film will not be sufficient.
 - 7) The development hereby approved shall not commence until a scheme outlining details of fencing or other means of enclosure between the publican's garden and the garden serving users of the licensed premises, and between the publican's garden and the garden for the new residential unit, have been submitted to and approved in writing by the local planning authority. The approved means of enclosure shall be implemented prior to the first occupation of the development hereby permitted and thereafter retained. The publican's garden hereby approved shall not be accessed or used at any time by customers of the licensed premises.
 - The reasons given for the conditions are:
 - 4) To preserve the reasonable privacy of neighbouring residents in accordance with Policy DM2 of the Elmbridge Development Management Plan 2015.
 - 7) To safeguard the amenities of adjoining residents.
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Decision

1. The appeal is allowed and the planning permission Ref 2016/1689 for a two-storey side extension to accommodate pub kitchen at ground floor with habitable accommodation above serving existing first floor flat, conversion of existing restaurant and kitchen with accommodation above to separate residential dwelling following demolition of existing store at 11 Cross Road, Weybridge KT13 9NX granted on 11 October 2016 by Elmbridge Borough Council, is varied by deleting conditions 4 and 7 and substituting them with the following conditions:
 - 4) Prior to the first use of the room to be served by the first floor window in the north western elevation of the extension hereby permitted that window shall be installed with obscured glazing and:
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- a) in the case of a casement window the opening light or lights shall open no more than 50mm from the frame of the window; or
- b) in the case of a sash window the glazing shall obscure views from the window to a height of not less than 1.7 metres, including at times when any part of the window is open, with the aforementioned height being measured from the floor level of the room served by the window.

Following the installation of the obscured glazing it shall be retained thereafter.

- 7) The development hereby approved shall not be occupied until a scheme outlining details of the fencing or other means of enclosure between the publican's garden and the garden serving the licensed premises and between the publican's garden and the garden for the new residential unit has been submitted to and approved in writing by the local planning authority. The approved fencing or other means of enclosure shall be installed prior to the first occupation of the development hereby permitted and retained thereafter. The publican's garden shall not be accessed or used at any time by customers of the licensed premises.

Background and Main Issues

- 2. Planning permission (the permission) has been granted for a two storey side extension for a new kitchen and residential accommodation above associated with the operation of the public house at 11 Cross Road (No 11). The development also includes the formation of an independent (new) dwelling in the part of the building that is immediately to the south of 8 Anderson Road.
- 3. The appeal seeks the variation of conditions 4 and 7 of the permission, which respectively relate to the arrangements for the obscure glazing of a new rearward facing (north western) first floor window and the enclosure of the gardens for the publican's flat, the public house and the new dwelling. The variation to condition 4 sought would either allow an obscure glazed casement type window to be installed with a limitation on its opening to no more than 50mm from its frame or a sash window to be installed and fitted with obscured glazing precluding outward views below a height of 1.7 metres. The variation to condition 7 sought would require the enclosure details for the garden areas to have been approved by the Council before the development is occupied rather than prior to its commencement.
- 4. The main issues are: whether condition 4 is necessary, precise and enforceable in the interests of safeguarding the privacy of the occupiers of the neighbouring properties; and whether condition 7 is reasonable and necessary, with regard to safeguarding the living conditions of the neighbouring residents and the residential occupiers of the development.

Reasons

Condition 4 – obscure glazing

- 5. The first floor rear window would be situated in quite close proximity to the boundary that No 11 shares with 8 Anderson Road (No 8) and while there is

currently quite high planting along that boundary that planting might not always be present. There is therefore a potential for unneighbourly overlooking of adjoining rear gardens to arise from the presence of the first floor window in the extension's rear elevation. To avoid the possibility of a loss of privacy arising I consider that there is a need for this window to be installed with obscured glazing and a condition requiring this is necessary.

6. However, the wording of the condition that has been imposed is subject to some imprecision in relation to what glazing might be opening or non-opening. That is because it is unclear as to what is meant by the phrase 'non-opening principal lights', given that a sash window could be installed with two moveable sashes.
7. The end of condition 4 also refers to any installed glazing needing to be '... sufficiently obscure to prevent loss of privacy. The affixing of an obscure film will not be sufficient'. I consider that the latter part of the imposed condition is unnecessary because for the glazing to fulfil its purpose it will need to be of a nature that would block clear outward views and any deficiency in this regard would be capable of being enforced against by the Council. Condition 4 also does not state when the obscured glazing required by it should be installed and this condition is therefore imprecise and potentially unenforceable.
8. The wording of condition 4 therefore needs to be varied for reasons of precision and enforceability. I have therefore sought the views of the appellant and the Council about alternative forms of varied wording for condition 4. I am mindful of the Council's preference for the newly worded condition to require details of the obscured glazing to be submitted for its approval. However, I consider that it would be inappropriate for me to impose a condition requiring the submission of details because the Planning Practice Guidance¹ discourages the use of conditions of that nature unless they would clearly assist with the efficient and effective delivery of the development. In this instance I consider that a condition can be imposed that makes it clear what is necessary without needing further details to be submitted for approval.
9. For the reasons given above I conclude that while condition 4 is necessary to safeguard the privacy of the occupiers of neighbouring properties, it should be varied in the interests of precision and enforceability to allow for the possibility of the window being either a casement type or a sash and to incorporate a timing requirement for the installation of the obscured glazing. Varying the condition in this way will ensure that the privacy of the occupiers of the neighbouring properties is safeguarded in accordance with Policy DM2 of the Elmbridge Local Plan Development Management Plan of 2015 (the DMP).

Condition 7 - fencing

10. There is no dispute that there is a need to separate the various garden areas from one another in order to safeguard the living conditions of the occupiers of the neighbouring properties and to maintain privacy, in particular, I see no reason to disagree with that. I also consider that there is a need for the boundary enclosure to be available to safeguard the privacy of the residential

¹Paragraph: 006 Reference ID: 21a-006-20140306

occupiers of the development, given the proximity of the public house's garden. I therefore consider that condition 7 is necessary.

11. The appellant's concern with condition 7 relates to the need for the required details to be approved by the Council prior to the development's commencement. Condition 7 is a pre-commencement condition and Regulation 35 of The Town and Country Planning (Development Management Procedure) (England) Order 2015 (the Regulations) requires clear and precise reasoning be given for the imposition of such conditions.
12. The reason for condition 7's imposition is to 'safeguard the amenities of adjoining residents' and the need for the boundary enclosure will arise at the point when the new dwelling and the reconfigured public house and publican's accommodation are available to be occupied. The Council has submitted that the requirements of condition 7 '... are not so onerous to delay the start of the development'. While that may be true that of itself does not amount to a justification for imposing a pre-commencement condition for the purposes of the Regulations. I consider that the Council's evidence has not demonstrated an essential need for the details of the height and appearance of the boundary enclosure to be approved prior to the development's commencement.
13. For the reasons given above I conclude that boundary enclosure is necessary to safeguard the living conditions of the adjoining residents and the residential occupiers of the development. However, it is unnecessary for the details of the boundary enclosure to be approved prior to the commencement of the development. I therefore conclude that condition 7 should be varied so as to require the details for the boundary enclosure to have been approved and installed prior to the development's first occupation. That would be reasonable in the interests of safeguarding the privacy of the occupiers of the neighbouring properties and the residential accommodation within the development and would accord with Policy DM2 of the DMP.

Other Matter

14. Concern has been raised that the development would result in a loss of privacy and outlook, as a consequence of the construction of a new dwelling in close proximity to the boundary shared with 10 Anderson Road. That would, however, not be the case because the new dwelling, as I have outlined above, would arise from the part conversion of the public house immediately next to 8 Anderson Road, with the new built development being the extension between the end of public house and the single storey building next to 7 Cross Road.

Conclusion

15. For the reasons given above I conclude that conditions 4 and 7 should both be varied. The appeal is therefore allowed.

Grahame Gould

INSPECTOR