

Appeal Decision

Site visit made on 28 March 2017

by R J Jackson BA MPhil DMS MRTPI MCMI

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

Decision date: 06 April 2017

Appeal Ref: APP/K5600/D/17/3169230
259 Walmer Road, London W11 4EW

- 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 Ms G Miller against the decision of The Council of The Royal Borough of Kensington & Chelsea.
 - The application Ref PP/16/06512, dated 30 September 2016, was refused by notice dated 17 November 2016.
 - The application sought planning permission for "conversion of garage to habitable room, replacing garage door with window. Creation of bicycle store in front garden" without complying with a condition attached to planning permission Ref PP/16/03994, dated 24 August 2016.
 - The condition in dispute is No 4 which states that: No development shall commence until the existing crossover in front of the property has been removed with the footway in front of the site is [sic] reinstated in materials matching those of the existing footway.
 - The reason given for the condition is: to maintain the quality of the footway and provide an appropriate provision of pedestrian access in front of the site and to protect the Borough's streetscape in accordance with the development plan in particular policies CT1(b)(g)(h) & CR4 (a)(g).
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Decision

1. The appeal is allowed and planning permission is granted for conversion of garage to habitable room, replacing garage door with window. Creation of bicycle store in front garden at 259 Walmer Road, London W11 4EW in accordance with the application Ref PP/16/06512 dated 30 September 2016, without compliance with condition number 4 previously imposed on planning permission Ref PP/16/03994 dated 24 August 2016, and subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan, Block plan, M/W 16 3 01, M/W 16 3 02, M/W 16 4 03.
 - 3) All work and work of making good shall be finished to match the existing exterior of the building in respect of materials, colour, texture, profile and, in the case of brickwork, facebond and pointing, and shall be so maintained.
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- 4) Once building works pursuant to this permission have been begun the drive shall no longer be used for the parking of cars. Prior to the first use of the converted garage as habitable accommodation the existing crossover in front of the property shall be removed and the footway in front of the site reinstated in materials and level to match those of the existing adjoining footway.

Background and Main Issue

2. Planning permission was granted on 24 August 2016 for the conversion of the garage to habitable accommodation, replacing the garage door with a section of brickwork and window and the construction of a bicycle store in the front garden. Condition 4 requires the dropped kerb and crossover between the section of drive in front of the garage and the carriageway to be lifted so that it is level with the main footway.
3. The reason for the condition, as set out in the heading, relates to the quality of the footway and provision of pedestrian access. However, the reason for refusal goes beyond that in also referring to "facilitating the use of an inadequate area of hardstanding for vehicle parking".
4. In light of the above, the main issue is whether the condition is necessary, relevant to the development being permitted and reasonable in all other respects having regard to highway safety and the character and appearance of the area.

Reasons

5. The appeal property is a mid-terrace dwelling located on the east side of the street. The terrace is not set parallel to Walmer Road, but rather is set at an angle so that those properties at the northern end of the terrace are closer to the highway than those at the southern end.
6. The properties in the terrace all have an integral garage, and the angle of the terrace means that the hardstanding areas in front of them, described on the application drawings as a "drive", are of differing lengths, with that at the northern end being almost non-existent to those at the southern end being relatively long.
7. The footway between the carriageway and the front of the curtilages is approximately 2 m in width. However, to the north of the terrace the footway narrows, and only a short distance beyond that, due to a lamp column and a downpipe, it is not possible for an adult to pass without turning sideways. To the south the footway is also interrupted by a street tree and there is thus no passage way. To travel further south it is necessary to cross Walmer Road and use the footway on the western side. Consequently the overall length of useful footway is limited on this eastern side of the carriageway.
8. The footway outside the appeal property has a dropped kerb down to the carriageway to create a crossover with the footway sloping across part of its width to accommodate this. The 'drive' in front of the appeal property is approximately 2.3 m wide but varies as to its length due to the angle to the street. A central distance of this drive is approximately 4.0 m long, but that on the northern side is less. The property is approximately opposite the junction of Walmer Road with Mary Place.

9. The Council has published a Supplementary Planning Document and this indicates that car parking bays should be at least 2.4 m by 4.8 m. This is the conventional size for a parking space and I consider that it is appropriate to use this for the consideration of this appeal, as it would not be possible to enforce that only a smaller car is parked on the drive. As a conventionally sized car would be longer than the space available any such vehicle parking on the drive, following the implementation of the permitted development, would overhang the carriageway.
10. The National Planning Policy Framework (the Framework) indicates that conditions should only be imposed where they meet six tests. These tests are expanded on in the national Planning Policy Guidance (the PPG)¹. The first test relates to necessity and, in simple terms, this requires a consideration as to whether, without the condition, would it be appropriate to refuse planning permission.
11. Although I have found that the length of the footway is limited, and it is not possible to travel far without having to cross the road, it provides access to the dwellings on this section of Walmer Road. It would be used by pedestrians, and in using this term I also take it to include other users of a footway, including those in buggies and in wheelchairs, and also account should be taken of those with other disabilities such as poor or no sight. Going along a footway which is not level, as is the case with a crossover, is less commodious than one which is level and can lead to slips and falls.
12. A vehicle overhanging the footway would create an obstruction meaning that the pedestrian would have to divert across the footway closer to the carriageway. The ability for those travelling in opposite directions to pass each other would be restricted and users may have to step into the carriageway. This would be harmful to highway safety, particularly close to the junction with Mary Place where drivers undertaking manoeuvres through that junction will be paying more attention to other vehicles than pedestrians seemingly on a footway. For those with a disability the obstruction would increase the danger.
13. The appellant makes the point that parking over a footway is prevented under other legislation and it is normally the case that planning legislation should not duplicate other legislation. However, by creating a full height kerb the proposal would prevent the use of the drive for the parking of a car, thereby preventing an overhang of the carriageway. The use of design as a method of controlling behaviours is a well-accepted function of good planning.
14. This section of Walmer Road is characterised by a number of crossovers to gain access to the various drives and garages. Policy CR 4 of the Royal Borough of Kensington and Chelsea Consolidated Local Plan 2015 (the KCLP) dealing with streetscape requires that all redundant or non-essential street furniture be removed, and that pavement crossovers should be resisted. The corollary of this being that redundant pavement crossovers should be removed. The removal of one crossover would have a beneficial effect on the street scape and minimise variations in height. I therefore conclude that the condition is necessary.
15. The appellant's second contention is that the condition does not relate to the development being permitted, in this case the conversion of the existing

¹ See paragraph reference ID: 21a-004-20140306 and the linked table "Key Questions"

garage into habitable accommodation. In the terms set out in the PPG the question being whether the condition fairly and reasonably relates to the development to be permitted? The existing garage is also sub-standard in size as regards a parking space, but the drive and the garage together allow a vehicle to be parked behind the footway. I am therefore satisfied that the removal of the crossover relates to the development being permitted, namely the conversion of the garage, as this affects the space available for parking.

16. Thirdly, the appellant considers that the condition is not reasonable. The PPG indicates that this may be where a condition places unjustifiable and disproportionate burdens on an applicant, or make otherwise unacceptable development acceptable. My conclusions on the necessity for the condition show that it is justified and I have nothing to show that undertaking the works would place a disproportionate burden on the developer. The development is otherwise acceptable.
17. The appellant makes the point that she considers that the removal of the crossover would prevent the use of the drive by motorcycles and bicycles parking on the front drive. This is not the case. The condition only requires the lifting of the crossover and has no effect on physical condition of the drive. This could still be used for parking either motorcycles or bicycles (although I note that as part of the approved development an enclosed bicycle store is to be provided). While these vehicles would have to be 'bumped up' the full height kerb this can be achieved relatively easily when compared to a car and would not prevent this use.
18. The reason given for the imposition of the condition was "to maintain the quality of the footway", and removing the crossover does not 'maintain' the quality of the footway. However, the second and third parts of the reason, which is "an appropriate provision of pedestrian access in front of the site and to protect the Borough's streetscape" are, for the reasons set out above proper.
19. It is not in dispute that the condition meets the other three tests set out in the Framework and PPG, that it is enforceable, precise and relevant to planning and I see no reason to disagree with this.
20. I therefore consider that the condition is justified on the basis that it is necessary, reasonably relates to the development being permitted and is reasonable in all other respects. To remove the condition would therefore be contrary to Policies CT 1 and CR 6 of the KCLP which seeks to resist development which compromises road safety, and as set out above.
21. The appellant asks that in the event that I considered the condition justified, that it be varied to require the works to take place only before the first occupation of the converted garage rather than before any development takes place. The appellant does not explain this request, but since the drive may be used to allow building materials to be stored, and these could be more easily brought to site via a dropped kerb and crossover, I consider this to be appropriate. However, once the permission has been begun and the garage no longer available for the parking of cars the use of the drive for the parking of cars should also cease for the reasons set out above.

22. The guidance in the PPG makes clear² that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant, amending any wording where necessary to reflect the advice in the Framework, the PPG, and Annex A to Circular 11/95.

Conclusion

23. For the reasons given above I conclude that the appeal should partly succeed. I will grant a new planning permission without the disputed condition but substituting another and restating those undisputed conditions that are still subsisting and capable of taking effect.

RJ Jackson

INSPECTOR

² Reference ID: 21a-031-20140306