



Appeal Decision

Site visit made on 6 June 2017

by AJ Steen BA (Hons) DipTP MRTPI

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

Decision date: 29 June 2017

Appeal Ref: APP/Z3635/W/17/3169239

72 Charles Road, Laleham, Staines TW18 1JX

- 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 S Fossey against the decision of Spelthorne Borough Council.
 - The application Ref 16/01818/RVC, dated 26 October 2016, was refused by notice dated 21 December 2016.
 - The application sought planning permission for erection of single storey side extension and single storey rear extension. Retrospective permission for the erection of an outbuilding for use incidental to the dwellinghouse without complying with a condition attached to planning permission Ref 14/01091/HOU, dated 8 September 2014.
 - The condition in dispute is No 3 which states: *That the outbuilding hereby approved be used ancillary to the domestic enjoyment of the main house and shall not contain any form of habitable accommodation. It should not be used as a separate unit of residential accommodation.*
 - The reasons given for the condition are:
 - a) *To safeguard the amenities and character of the locality.*
 - b) *In order not to prejudice the minimum parking standards for residential development imposed by the Local Planning Authority.*
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Decision

1. The appeal is allowed and planning permission is granted for erection of single storey side extension and single storey rear extension. Retrospective permission for the erection of an outbuilding for use incidental to the dwellinghouse at 72 Charles Road, Laleham, Staines TW18 1JX in accordance with the application Ref 16/01818/RVC dated 26 October 2016, without compliance with condition number 3 previously imposed on planning permission Ref 14/01091/HOU dated 8 September 2014 and subject to the following conditions:
 - 1) The extension hereby permitted must be carried out in facing materials to match those of the existing building in colour and texture.
 - 2) That no openings of any kind be formed in the eastern flank elevation(s) of the proposed rear extension hereby permitted.
 - 3) There shall be no raising of existing ground levels on the site within the area liable to flood, other than in accordance with the approved details.

- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: site location plan, MI/AJD/01 and 02.

Application for costs

2. An application for costs was made by Ms S Fossey against Spelthorne Borough Council. This application is the subject of a separate Decision.

Main Issue

3. Whether the condition is necessary to protect the living conditions of occupiers of neighbouring properties, with particular regard to noise and disturbance.

Reasons

4. Construction of an outbuilding to the main house has been granted planning permission, along with an extension to the house, and the description of development confirms that the outbuilding would be incidental to the use of the main dwelling at the property. Any other use, including as a separate dwelling, would be a material change of use requiring separate planning permission.
5. The outbuilding presently contains two rooms, one of which has space for a small kitchenette, and a small bathroom. Use incidental to the dwelling means that its use, such as a hobbies room or gym, could involve some noise and disturbance to occupiers of neighbouring properties. It is unclear what additional noise would result from use as habitable accommodation, including a bedroom, other than there may be some additional comings and goings and it would be in use throughout the day and night, including for sleeping. In any event, any use of the building would have to remain incidental to the dwelling given the description of development on the planning permission.
6. The condition requires the building to remain incidental to the main dwelling and not contain any form of habitable accommodation, including as a separate unit of residential accommodation. Whilst that may remove any ambiguity, for the reasons given above it is not necessary. As necessity is one of the requirements for a condition as set out at paragraph 206 of the National Planning Policy Framework, I conclude that such a condition should not be applied to this permission.
7. For these reasons, I conclude that removal of the condition would not cause harm to the living conditions of occupiers of neighbouring dwellings by reason of noise and disturbance. As such, the development accords with Policies EN1 and EN11 of the Spelthorne Borough Council Core Strategy and Policies Development Plan Document that seek to ensure a satisfactory relationship to adjoining properties, avoiding significant harm, including minimising the adverse impact of noise.
8. The Council suggest any noise and disturbance from the building would be difficult to control under Environmental Health legislation as they suggest it would not be due to a specific noise nuisance. I accept that control under Environmental Health legislation may differ from the control offered by a planning condition, but that is not sufficient to alter my conclusions on the main issue.
9. The building contains windows facing across the garden toward the house, which may result in some overlooking of neighbouring gardens and I

understand concerns over the use of the building may have affected the health of a neighbouring occupier. However, the building is incidental to the use of the existing dwelling and removal of the condition would not materially affect the amount of overlooking. In addition, use of the building incidental to the use of the main dwelling would not result in a material increase in vehicular traffic and parking at the dwelling, such that it would not affect highway safety.

Conclusion

10. On the basis of the above considerations, I conclude that the appeal should succeed and I will issue a new planning permission without the disputed condition.

Conditions

11. In allowing the appeal and granting planning permission I have considered those conditions imposed on the original planning permission. I have applied all the conditions from the original permission with the exception of the disputed condition and no condition is necessary to limit the period for commencement of the permission as it has already been commenced.
12. A condition is necessary to ensure facing materials match those of the existing building in order to protect the character and appearance of the area. A condition restricting windows in the flank elevation of the extension is necessary to protect the privacy of neighbouring occupiers. Conditions relating to ground levels of the site and storage of spoil and materials are necessary to prevent the increased risk of flooding and ensure flood storage capacity is maintained. A condition is necessary specifying the relevant drawings as this provides certainty. In some cases I have amended the wording of conditions in the interests of clarity.

AJ Steen

INSPECTOR