



Appeal Decision

Site visit made on 20 June 2017

by S J Buckingham BA (Hons) DipTP MSc MRTPI FSA

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

Decision date: 6th July 2017

Appeal A Ref: APP/D1590/W/17/3171959

40 Westbury Road, Southend-on-Sea, Essex SS2 4DP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Dr Saqib Mahmud against the decision of Southend-on-Sea Borough Council.
 - The application Ref 16/01659/AMDT, dated 1 September 2016, was refused by notice dated 11 January 2017.
 - The application sought planning permission for erection of a conservatory to the rear without complying with a condition attached to planning permission Ref 14/00198/FUL, dated 21 May 2014.
 - The condition in dispute is No 2 which states that: *The development hereby permitted shall be carried out in accordance with the following approved plans: Ground Floor Plan View Proposed, Existing and Proposed Rear and Right Elevations, Proposed Left Elevation, Proposed Lean to Conservatory (roof plan)*
 - The reason given for the condition is: *To ensure that the development is carried out in accordance with the provisions of the Development Plan. (R01D)*
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Appeal B Ref: APP/D1590/W/17/3171969

40 Westbury Road, Southend-on-Sea, Essex SS2 4DP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Dr Saqib Mahmud against the decision of Southend-on-Sea Borough Council.
 - The application Ref 17/00171/AMDT, dated 1 February 2017, was refused by notice dated 14 March 2017.
 - The application sought planning permission for erection of a conservatory to the rear without complying with a condition attached to planning permission Ref 14/00198/FUL, dated 21 May 2014.
 - The condition in dispute is No 2 which states that: *The development hereby permitted shall be carried out in accordance with the following approved plans: Ground Floor Plan View Proposed, Existing and Proposed Rear and Right Elevations, Proposed Left Elevation, Proposed Lean to Conservatory (roof plan)*
 - The reason given for the condition is: *To ensure that the development is carried out in accordance with the provisions of the Development Plan. (R01D)*
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Decisions

1. Appeal A is allowed and planning permission is granted for erection of a conservatory to the rear at 40 Westbury Road, Southend-on-Sea, Essex SS2 4DP in accordance with the application Ref 16/01659/AMDT made on 1 September 2016 and the plans submitted with it numbered 1472/OS, 1472/01, 1472/02, 1472/03, 1472/04-A, 1472/05, without complying with condition No 2 set out in planning permission Ref 14/00198/FUL granted on 21 May 2014 by the Southend-on-Sea Borough Council.
2. Appeal B is allowed and planning permission is granted for erection of a conservatory to the rear at 40 Westbury Road, Southend-on-Sea, Essex SS2 4DP in accordance with the application Ref 17/00171/AMDT made on 1 February 2017 and the plans submitted with it numbered 1472/OS, 1472/01-A, 1472/02, 1472/03, 1472/04-A, 1472/05, without complying with condition No 2 set out in planning permission Ref 14/00198/FUL granted on 21 May 2014 by the Southend-on-Sea Borough Council.

Application for costs

3. An application for costs was made by Dr Saqib Mahmud against Southend-on-Sea Borough Council. This application is the subject of a separate Decision.

Procedural Matter

4. As set out above, there are two appeals on this site. I have considered each proposal on its own merits, but to avoid duplication have dealt with both appeals together, unless otherwise indicated.

Main Issue

5. The main issue is whether the condition is necessary in the interests of the character and appearance of the area.

Reasons

6. No 40 Westbury Road is a ground floor flat in a terraced, two storey maisonette building, with access to half of the subdivided garden to the rear. There is a conservatory to the rear of the building, which is the subject of the appeals. It has already been constructed, but other than in accordance with the approved plans. The disputed condition required the development to be carried out in accordance with the approved plans. It is the Council's contention that the conservatory harms the character and appearance of the area by virtue of not complying with the approved plans.
7. The conservatory as constructed represents a small increase in breadth and depth over that which was approved, and is contained between the boundary fences to either side of the garden of the host dwelling, slightly overlapping the existing single storey outhouse which partially contains it to the south. It is, however, less high than the approved conservatory, due to a shallower roof pitch, with the highest point of the roof sitting well below the cill line of the upper floor windows.
8. The structure appears to be of a standard design of rendered panels and UPVC glazing. The design of the south elevation, with a solid rendered wall and

obscured glazed door, avoids overlooking of the neighbouring garden and appears to me to be more resolved that the slightly awkward arrangement of the glazed approved elevation where it rises above the pitched roof of the outhouse.

9. The conservatory is not therefore noticeably obtrusive in relation to that previously approved, to the host dwelling or to other dwellings adjoining it in respect of its size or design. It is not, as a result, harmful to the character or appearance of the area.
10. The conservatory does not therefore conflict with the provisions of policies KP2 and CP4 of the Southend Core Strategy 2007 in seeking design of good quality which respects the character of the area, nor with policies DM1 and DM3 of the Southend Development Management Document 2015 which seek good design which respects and responds positively to the character of the area. It does not, either, conflict with the advice contained with the Southend Design and Townscape Guide 2009 which seeks rear extensions which integrate well with the character of the parent building.

Other Matters

11. It has been suggested by an interested party that the conservatory encroaches on a neighbouring property, but none of the evidence put before me, nor the evidence on the ground suggests that this is the case. In any event, the granting of planning permission cannot override ownership rights.

Conclusion

12. For the reasons given above, therefore, and taking into account all other matters raised, I conclude that the development which has been implemented without compliance with the disputed condition does not give rise to material harm, and that the appeals should be allowed.
13. The Council has suggested a condition requiring implementation of the scheme in accordance with the approved drawings, to which I have had regard. As, however, the scheme has already been implemented, I consider that such a condition is not necessary. For the avoidance of doubt, the approved drawing numbers are specified in my formal decisions. As these drawings specify the materials to be used, I do not consider it necessary to replicate the original condition requiring the use of specified materials.

S J Buckingham

INSPECTOR