
Appeal Decision

Site visit made on 27 August 2019 by Emma Worby BSc (Hons)

by Andrew Owen BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 October 2019

Appeal Ref: APP/L3625/D/19/3229898

Woodland View, Sandy Lane, Kingswood, KT20 6NL

- 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 Mr and Mrs Grant against the decision of Reigate & Banstead Borough Council.
 - The application Ref 19/00386/S73, dated 22 February 2019, was refused by notice dated 18 April 2019.
 - The application sought planning permission for a first floor extension without complying with a condition attached to planning permission Ref 17/00077/HHOLD, dated 7 March 2017.
 - The condition in dispute is No 6 which states that: The first floor windows in the rear elevation shown to serve bedrooms 2 and 4 on drawing number CO/G/04 shall be glazed with obscured glass which shall be fixed shut, apart from a top hung opening fanlight whose cill height shall not be less than 1.7 metres above internal floor level, and shall be maintained as such at all times.
 - The reason given for the condition is: To ensure that the development does not affect the amenity of the neighbouring property by overlooking with regard to Reigate and Banstead Borough Local Plan 2005 policy Ho9.
-

Decision

1. The appeal is allowed and planning permission is granted for a first floor extension at Woodland View, Sandy Lane, Kingswood, KT20 6NL in accordance with the application Ref 19/00386/S73 dated 22 February 2019, without compliance with condition number 6 previously imposed on planning permission Ref 17/00077/HHOLD dated 7 March 2017 and subject to the following conditions:
 1. The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan, Block Plan, CO/G/01, CO/G/02, CO/G/03 and CO/G/04.
 2. The materials to be used in the construction of the external surfaces of the extension (other than materials used in the construction of a conservatory) must be of a similar appearance to those used in the construction of the exterior of the existing building.
 3. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, (or any Order revoking and re-enacting that Order with or without modification) no first floor windows,

dormer windows or rooflights other than those expressly authorised by this permission shall be constructed.

Appeal Procedure

2. The site visit was undertaken by an Appeals Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Procedural Matters

3. It is noted that the first-floor windows on the rear elevation, which are subject to condition 6 of the planning application reference 17/00077/HHOLD, were in place during the site visit and were not in compliance with condition 6.
4. As part of the appeal, the appellant has submitted floor plans which show an amended first floor layout from that which was originally approved, with the window originally serving bedroom 4 now serving an en-suite bathroom. Nevertheless, as the appeal is only concerning the removal of condition 6, these amended plans will not be taken into consideration. It was also noted during the site visit that an additional first floor window has been inserted in the rear elevation. Again, this does not form part of the appeal and therefore will not be taken into consideration.

Main Issue

5. The main issue is the effect that removing condition 6 would have on the living conditions of the occupiers of neighbouring properties, with regard to privacy.

Reasons for the Recommendation

6. The appeal site is large in size with a varying ground level, which is lower to the front of the site and rises steeply towards the rear. It is occupied by a detached dwelling which has recently been extended. The site and the surrounding area is within a residential area of special character which comprises large dwellings in spacious plots with a considerable amount of landscaping and foliage.
7. As the first-floor windows on the rear elevation are in place I was able to gain views from these windows during the site visit. Due to the difference in ground level between the appeal property and the neighbouring property to the rear, with the neighbouring property at a much higher level, and due to the fence, hedging and some well-established trees along the boundary between the two properties, views into the garden and windows on the side elevation of the neighbouring property are limited. Also there is sufficient distance between the windows and the rear boundary, stated as 9.5 metres in the Council's report, to ensure that the high levels of privacy experienced within the area are maintained.
8. As stated by the Council, the hedging and trees could be removed. However, as the hedging is owned by the neighbouring property to the rear of the appeal site, it would be unlikely to be removed if there were concerns from the neighbour regarding the loss of privacy.
9. It is noted that the condition relates solely to the windows serving bedroom 2 and bedroom 4 to the rear of the property and not bedroom 5 which is also shown on the plans as being located on the first floor and is served by a rear-

facing window. Therefore, the condition would not have been wholly effective in its stated aims, even if it were retained.

10. I therefore conclude that Condition 6 is unnecessary and unreasonable as it is not required to protect the living conditions of neighbouring occupiers with regards to their privacy. As such, I find no conflict with policies Ho9 and Ho13 of the Reigate and Banstead Borough Local Plan (April 2005) and the guidance set out in the Householder Extensions and Alterations Supplementary Planning Document (March 2004) which collectively seek to protect the amenities of residents, and policy Ho15 of the Reigate and Banstead Borough Local Plan which seeks the same but with particular regard to the residential area of special character in which the site is located.

Conditions

11. The guidance in the Planning Practice Guidance makes it clear 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.
12. The application form states that the development commenced on 5 March 2018. Therefore, it is not necessary to include condition 2 of the original planning approval which requires the development to commence within three years of the permission being granted. Furthermore, condition 5 is a pre-commencement condition and although the Council have stated that the condition has not been discharged, it is not possible to fulfil this condition now the development has begun. The Council are aware of the breach but have advised that no action has been taken. Therefore, this has also been omitted.
13. I have attached a condition requiring the development to accord with the approved plans, as this provides certainty, and a condition requiring the use of materials that match that of the existing building is also necessary to ensure an appropriate on-going appearance for the development. A condition has also been included to prevent any further first floor windows, dormer windows or rooflights being inserted, to ensure that the living conditions of the occupier of the neighbouring dwelling are protected.

Conclusions and Recommendation

14. For the reasons given above and having had regard to all other matters raised, I recommend that the appeal is allowed.

Emma Worby

APPEALS PLANNING OFFICER

Inspector's Decision

15. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the appeal is allowed.

Andrew Owen

INSPECTOR