
Appeal Decision

Site visit made on 30 July 2019

by Martin Small, BA (Hons), BPI, DipCM, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th November 2019

Appeal Ref: APP/A3655/D/19/3228869

4 Glebe Gardens, Byfleet, West Byfleet, KT14 7LD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr and Mrs M Jones against the decision of Woking Borough Council.
 - The application Ref: PLAN/2019/0033 dated 15 January 2019, was refused by notice dated 30 April 2019.
 - The development is a double storey side extension.
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Decision

1. The appeal is allowed and planning permission is granted for a double storey side extension at 4 Glebe Gardens, Byfleet, West Byfleet, KT14 7LD in accordance with the terms of the application Ref: PLAN/2019/0033 dated 15 January 2019 and the plans titled Existing plans, elevations and location plan – Sheet 1; Proposed plans, elevations and site plan – Sheet 2 As Built, subject to the following condition;
 - 1) The extension hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as 4 Glebe Gardens.

Application for costs

2. An application for costs was made by Mr Michael Jones against Woking Borough Council. This application is the subject of a separate Decision.

Procedural matters

3. The application for the proposed development was made in the name of Mr and Mrs M Jones. Although the appeal is made in the name of Mr Michael Jones only, I have referred to Mr and Mrs M Jones in the banner heading as the original applicants.
4. The appellants refer to Section 73A of the Town and Country Planning Act 1990 which provides for an application to be made to retain a development without complying with a condition attached to a previous grant of planning permission. However, the application was submitted as a Householder Application for Planning Permission for works or extension to dwelling and specifically for an extension. I have determined the appeal on this basis.
5. The appeal was originally lodged on 15 May 2019 with the reason for the appeal being given as the failure of the local planning authority to give notice

of its decision within the appropriate period on an application for permission. However, the Council has confirmed that permission was refused under its officer delegated powers on 30 April 2019 and that therefore the reason for the appeal should be against the refusal of planning permission. The appellants have confirmed that they wish the appeal to be determined on this basis¹ and I have done so.

Background and Main Issue

6. Planning permission was granted under Ref: PLAN/2016/0950 for a double storey side / front extension to the appeal property on 10 January 2017 and I observed that an extension had been built at the appeal site. The development before me has a different internal layout to that previously approved. The appellants explain that the development is to provide additional living space to allow members of the appellants' family with health issues to live with the appellants and other members of their family.
7. Notwithstanding the description of development on the application form as set out in the banner heading, the Council considered that the extension as built was not ancillary to the main dwelling as it was capable of independent occupation. The Council therefore determined the application as though it was for an independent dwelling and refused it for four reasons based on the use of the extension as such.
8. In summary, these reasons were the harmful effect of the proposed development on the character and appearance of the area and the inadequacy of internal and external space; an unworkable parking arrangement; the lack of a Thames Basin Heaths Special Protection Area Strategic Access Management and Monitoring contribution; and a failure to demonstrate that the development meets the sustainable construction criteria set out in Policy CS22 of the Woking Core Strategy (2012) (WCS).
9. Against this background I consider the main issue to be whether the extension as constructed is ancillary to the main dwelling or constitutes an independent dwelling. I shall then deal with the remaining issues as Other Matters later in this Decision.

Reasons

10. The extension includes a separate external access, kitchen, bathroom, living room and two bedrooms with an internal staircase. The only connection to the main dwelling is via a double door at ground floor level.
11. The Council's Delegation Report cites an appeal decision² relating to the conversion of a garage to a self-contained unit comprising a lounge, two bedrooms, a kitchen / dining area and a bathroom. I do not have the full details of the proposal before the Inspector who determined that appeal but from the evidence before me, that Inspector concluded that there were insufficient safeguards associated with the scheme to prevent a new and separate dwelling being created.
12. However, from the evidence before me, that appeal related to a detached building with no interconnecting door to the main house. This distinguishes it

¹ By email from the appellants' agent dated 19/5/19

² APP/L3815/A/01/1079596

from the proposal before me. This distinction was also identified by the Inspector who determined another appeal relating to a proposed annex to which the appellants draw my attention³. The Inspector who determined that appeal opined that with an interconnecting door between the annex and the main dwelling the potential for independent occupation of the annex would be very limited and could be restricted by condition and allowed the appeal. From the evidence before me, this appeal scheme is more analogous to the proposal before me than that to which the Council refer.

13. The appellants also draw my attention to case law in which the Court found that the occupancy of a house by people living separately did not necessarily result in the creation of separate dwellings⁴.
14. The appellants contend that the extension is still dependent on the main dwelling as it has an interconnecting door, shares a single electric, gas and water supply and there have been no external changes to detach the extension from the main dwelling. These contentions are not disputed by the Council and I confirmed the interconnecting door and lack of external changes during my site visit.
15. Although the extension provides facilities for independent day-to-day living and is capable of being occupied independently from the main dwelling this does not mean that the extension has or would necessarily become a separate planning unit from the main dwelling. The shared electric, gas and water supply, the shared vehicular access, the physical attachment of the extension to the main dwelling, the interconnecting doorway and the shared garden all indicate to me that the extension is also capable of being occupied as an annex ancillary to the main dwelling.
16. Given this degree of interdependence between the extension and the main dwelling, I consider that the occupation of the extension as an independent dwelling could be satisfactorily prevented by means of a condition requiring that occupation is solely for purposes ancillary to the residential use of the main dwelling were planning permission to be granted. This would accord with paragraph 5.3 of the supporting text to Policy DM9 of the Development Management Policies Development Plan Document (2016) (the DMP) which recognises the use of conditions to set the parameters for the occupation of extensions. It would achieve the objective of Policy DM9 to avoid the occupation of ancillary accommodation as an independent house.
17. On that basis, I conclude that the development would not conflict with Policy DM9 of the DMP in this respect.

Other Matters

18. The Council considers that the use of the extension as an independent dwelling would not be acceptable for four reasons as set out above. However, given the degree of interdependence between the extension and the main dwelling as I have identified above, I consider that occupation of the extension as an independent dwelling could be prevented by means of a condition requiring that occupation is solely for purposes ancillary to the residential use of the main dwelling.

³ APP/Q1445/W/18/3194772

⁴ Ealing Corporation v Ryan [1962] 2 QB 486

19. The extension has an acceptable external appearance in terms of design, dimensions and materials. Being to the side of the host property it is not prominent or intrusive in the street scene of Glebe Gardens. Although the extension has resulted in a reduction in the garden area available to the property, the overall plot size is unaltered. Consequently, the development does not adversely affect the character of the area.
20. Accordingly, the development does not conflict in this respect with Policies CS21 and CS24 of the Woking Core Strategy (2012) (WCS) or Policy DM10 of the DMP which, in combination and amongst other things, require new development to respect, conserve and where possible enhance character and not result in harm to the character and appearance of an area. The development would also accord with the Woking Design Supplementary Planning Document (2015) which seeks to improve design quality in the Borough and with paragraph 127 c) of the National Planning Policy Framework (the Framework) which requires planning decisions to ensure that developments are sympathetic to local character.
21. The Technical housing standards – nationally described space standard deals with internal space in new dwellings and is not applicable to extensions to dwellings. The remaining garden area is less than the recommended minimum private garden area set out in Appendix 1 of the Outlook, Amenity, Privacy and Daylight Supplementary Planning Document (2008). However, this is guidance only and with no sub-division of the garden proposed, the depth, area and shape of the remaining garden provides adequate external space to serve the extended dwelling. I therefore find no conflict in this respect with Policy CS21 of the WCS, Policy DM10 of the DMD or paragraph 127 f) of the Framework. These, in combination and amongst other things, require schemes to provide appropriate levels of private amenity space, to not involve the inappropriate subdivision of curtilages and to ensure that planning decisions create places with a high standard of amenity for existing and future users.
22. Policy CS18 of the WCS refers to minimum parking standards being set for residential development. These are enshrined in the Woking Parking Standards Supplementary Planning Document (2018) (the WPS), which sets a parking standard for a 5-bedroom dwelling of 3 spaces. The appellant contends that there are 5 spaces available for the appeal property, including 2 in the garage. However, I saw during my site visit that part of the garage had been converted to a utility room, resulting in the loss of one space. In addition, the WPS explains that spaces within garages are counted as 0.5 space. Accordingly, there are 3.5 spaces available for the property, which nevertheless meets the standard in the WPS.
23. The Delegation Report queries whether the hard standing in front of the garage, which provides 2 spaces, is within the appellants' ownership. However, this area is included within the red line on the submitted plan and I have no conclusive evidence that the hard standing is not within the appellants' control. With all the spaces within the control of the appellants, I consider that the parking arrangement is workable and does not increase on-street car parking. Accordingly, I find no conflict with Policy CS18 of the WCS or the WPS in this respect.
24. The appeal site lies in the Outer Exclusion Zone - Zone B ie between 400 m and 5 km of the Thames Basin Heaths Special Protection Area (TBH SPA) as

indicated in the Thames Basin Heaths Special Protection Area Avoidance Strategy 2010-2015 (the Avoidance Strategy). The TBH SPA is a European designated site afforded protection under the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations).

25. The TBH SPA comprises a network of 13 sites and is designated for its internationally important habitat which supports breeding populations of three rare bird species; Nightjars, Woodlarks and Dartford Warblers. The Conservation Objectives of the TBH SPA are to ensure that the integrity of the site is maintained or restored as appropriate and to ensure that the site contributes to the achieving the aims of the European Council Directive on the Conservation of Wild Birds (79/409/EEC).
26. The most important impact and activity with a high effect outside the SPA identified by the Joint Nature Conservation Committee as a threat and pressure on the TBH SPA is air pollution. Natural England has also identified that the new population arising from net additional housing development up to 5 km from the SPA is likely to have a significant effect (either alone or in combination with other developments). This is due, in particular, to the impact of recreational use such as dog walking on the important populations of the rare bird species.
27. However, the proposed development has not resulted in a net additional dwelling. Being ancillary to the use of the main dwelling, the occupation of the extension does not result in significant recreational pressure or vehicular movements in addition to those already associated with the main dwelling. It is therefore my conclusion that the proposed development does not have an adverse effect on the internationally important features of the TBH SPA. I therefore find no conflict in this respect with the Conservation of Habitats and Species Regulations 2017 (as amended), saved Policy NRM6 of the South East Plan 2009, Policy CS8 of the Core Strategy or the Avoidance Strategy.
28. The Council confirms that the extension has been built in accordance with Building Regulations for a householder extension. Accordingly, I find no conflict with Policy CS22 of the WCS.

Conditions

29. A new dwelling on this site would be harmful and would conflict with policy but for the reasons set out this development could be made acceptable in planning terms with the imposition of a suitably worded condition restricting occupancy. The condition ensures that occupation is solely for purposes ancillary to the residential use of the main dwelling and it is attached in the interests of ensuring that the dwelling remains in single family occupation and to comply with Policies CS8, CS18 and CS21 of the WCS. I have not imposed the standard time limit for commencement or conditions relating to materials or requiring the development to be carried out in accordance with the approved plans as the development has already taken place.

Conclusion

30. It is clear that the use of the development as an independent dwelling would be unacceptable and conflict with a number of policies of the development plan. However, I am satisfied that the occupancy of the development can be

restricted by a condition that meets the six tests for conditions set out in the Framework. With such a restriction, the development is acceptable.

31. Accordingly, for the reasons given above, the appeal is allowed.

Martin Small

INSPECTOR