
Appeal Decision

Site visit made on 26 November 2019

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 December 2019

Appeal Ref: APP/G2245/W/19/3236879
74 Madan Road, Westerham TN16 1DX

- 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 & Mrs Worth against the decision of Sevenoaks District Council.
 - The application Ref 19/00283/MMA, dated 12 February 2019, was refused by notice dated 29 March 2019.
 - The application sought planning permission for alterations to existing dwelling and erection of three bedroom, two storey detached dwelling, with car parking for existing and proposed properties, upgrading works to adjacent stream, without complying with a condition attached to planning permission Ref SE/17/03631/FUL, dated 8 March 2018.
 - The condition in dispute is No 7 which states that:
The development hereby permitted shall be carried out in accordance with the following approved plans: 01702_E01 rev D05, _P01 rev D06, _SO6 rev D02, _S07 rev D02, _S09 rev P01, 997/01 revision E.
The reason given for the condition is: For the avoidance of doubt and in the interests of proper planning.
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Decision

1. The appeal is allowed and planning permission is granted for alterations to existing dwelling and erection of three bedroom, two storey detached dwelling, with car parking for existing and proposed properties, upgrading works to adjacent stream, at 74 Madan Road, Westerham, Kent TN16 1DX in accordance with the application Ref 19/00283/MMA, dated 12 February 2019, without compliance with condition number 7 previously imposed on planning permission ref SE/17/03631/FUL dated 8 March 2018 and subject to the conditions in the attached schedule.

Background and Main Issue

2. The application subject to this appeal was made under Section 73 of the Planning Act for minor material amendments. It seeks revisions to the permission so that the alterations to the existing dwelling are not included and the existing dwelling would be retained unaltered. The appeal seeks the removal of the condition specifying the approved plans, and replacement with a condition specifying the plans that reflect the amendment.
3. The works to the existing dwelling were to infill a dining room window on the ground floor and a bedroom window on the first floor, both of which are on the

side elevation facing the new house. This first floor bedroom would become a bathroom and a new obscure glazed window opening would be inserted, while the existing first floor bathroom would become a replacement bedroom. Although not stated as the reason for the condition, it is clear from the Council's evidence that the alterations to the existing dwelling were to ensure adequate living conditions for the existing occupiers.

4. It follows that the main issue is the effect of removing the condition on the living conditions of the occupiers of 74 Madan Road, with respect to outlook and light.

Reasons

5. 74 Madan Road is a semi-detached dwelling with a large side garden. The new dwelling would be sited to the side of the dwelling, leaving a gap between them with a close boarded fence. The gap is stated to be 2.5 metres in width and the fence has been erected.
6. The dining room in the existing house is served by only one window, which is on the flank elevation. The room is in the middle of the house and is separated from the living room at the front of the house by glazed doors, and from the kitchen at the rear by a single glazed door. It therefore receives some 'borrowed' light from the living room which has a large bay window, and to a lesser extent from the kitchen. The approved scheme would result in the window on the flank elevation being blocked up, which would leave the dining room with no window and thus no outlook or direct daylight/sunlight. The retention of the window would therefore be an improvement in comparison with the approved scheme, as it would mean that the room would retain some outlook, albeit restricted to an extent by the new dwelling, and some direct daylight and morning sunlight would still reach the room.
7. The first floor bedroom has one window, which looks out across the side garden. It is located at the end of the external bedroom wall, and therefore views from within the room are mostly at an oblique angle, and look towards the rear of the garden. The new dwelling would restrict the outlook from the window and the Council states that it would be in breach of its 45 degree guideline. However, it would still allow views from the window towards the end of the garden, albeit at an oblique angle. The amount of daylight and morning sunlight reaching the room would also be reduced, but as the window is at first floor level and the roof of the rear section of the new dwelling would be relatively low, the effect on daylight would not be significant. The room would still have a degree of outlook and views of the sky, and this would provide adequate living conditions for a bedroom.
8. As a result, I find that the effect of removing the condition on the living conditions of the occupiers of the existing house would not be harmful with regard to outlook and daylight/sunlight. Accordingly, the proposal does not conflict with policy EN2 of the Sevenoaks District Council Allocations and Development Management Plan 2015, insofar as it seeks to provide adequate residential amenities for existing occupiers. It would also not conflict with the guidance in the Supplementary Planning Document – Residential Extensions 2009.

Conditions

9. I will grant a new planning permission without the disputed condition, but retaining those non-disputed conditions from the original permission. The development has not been commenced and therefore it is necessary to impose the time limit for implementation as granted by the original permission. It is necessary to impose a new condition listing the approved drawings. I have adjusted the wording to conditions Nos 2, 3, 4, and 6 as there is no justification for them to require action prior to the commencement of development.

Conclusion

10. For the reasons set out above, and having regard to all matters raised, I conclude that the appeal should be allowed.

N Thomas

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from 8 March 2018.
- 2) No above ground works shall be carried out on the land until details of the materials to be used in the construction of the external surfaces of the dwelling hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out using the approved materials.
- 3) No above ground works shall take place until a scheme to promote biological diversity has been submitted and approved in writing by the local planning authority with a scheme of implementation. The development shall be carried out in accordance with the approved details and shall be maintained thereafter.
- 4) No above ground works shall take place until full details of both hard and soft landscaping have been submitted to and approved by the Local Planning Authority. These details shall cover as appropriate: Proposed finished levels or contours; Hard surfacing materials; Planting plans; Boundary Treatments; Written specification (including cultivation and other operations associated with plant and grass establishment); Schedules of plants, noting species, planting sizes and proposed numbers/densities where appropriate; Implementation timetables. The development shall be carried out in accordance with the approved details within the first available planting season following practical completion of the dwelling and shall be maintained thereafter.
- 5) If within a period of five years from the completion of the development, any of the trees or plants that form part of the approved details of soft landscaping die, are removed or become seriously damaged or diseased then they shall be replaced in the next planting season with others of similar size and species.
- 6) No above ground works shall be carried out on the land until details for the provision of facilities for the safe charging of electric vehicles has

been submitted to and approved in writing by the local planning authority. The facilities shall be installed in accordance with the details so approved prior to the first occupation of the residential unit and retained and maintained thereafter.

- 7) The development hereby permitted shall be carried out in accordance with the following approved plans: 01702_S02 Rev D10, 01702_S03 Rev D02, 01702_S04 Rev D02, 01702_P01 Rev D06, 01702_E01 Rev D05,
- 8) The forecourt parking space shown on the approved plan: 01702_S06 D02 shall be provided and kept available for such use at all times and no permanent development shall be carried out on the land so shown or in such a position as to preclude vehicular access to the forecourt parking space.
- 9) No extension or external alterations shall be carried out to the dwelling hereby approved, despite the provisions of any Development Order.