



Appeal Decision

Site visit made on 20 January 2020

by P W Clark MA(Oxon) MA(TRP) MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 24th January 2020

Appeal Ref: APP/C3620/D/19/3242043

42 Deepdene Vale, Dorking RH4 1NL

- 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 D Cochrane against the decision of Mole Valley District Council.
 - The application Ref MO/2019/1383/CC, dated 1 August 2019, was refused by notice dated 27 September 2019.
 - The application sought planning permission for the erection of a single storey rear extension and partial conversion of existing garage with connected single storey side/rear extension without complying with a condition attached to planning permission Ref MO/2019/0757/PLAH, dated 16 July 2019.
 - The condition in dispute is No 3 which states that: Notwithstanding the provisions of the Town and Country (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no extensions within Schedule 2, Part 1, Classes A, B, or C to any dwelling hereby permitted shall be erected.
 - The reason given for the condition is: To control any subsequent enlargements in the interests of the visual and residential amenities of the locality, in accordance with Mole Valley Local Plan policy ENV22 and policy CS14 of the Mole Valley Core Strategy.
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Procedural matter

1. This appeal is stated to be made against a refusal of planning permission by the Council. The decision taken by the Council was on an application to carry out development without complying with a condition attached to planning permission MO/2019/0757/PLAH. But the development proposed (the erection of a single storey rear extension and partial conversion of existing garage with connected single storey side/rear extension) complies with that earlier permission and is, in fact, permitted by it. So, the appeal cannot be understood as an appeal against a refusal of permission for development not complying with a condition because the development proposed accords with the condition.
2. It appears, from the case made, that the appeal is actually intended to be an appeal against the original grant of planning permission subject to conditions. However, because that grant of planning permission containing the condition in dispute was based on a householder application, any appeal should have been made by 7 October 2019. Instead of an appeal to the Secretary of State, a further application was made to the Council within that timescale. The appeal now made against the Council's second decision is outside the timescale for an

appeal against the Council's first decision, within the timescale for challenging the second decision but can only be understood as an appeal against the first decision.

3. The appeal has been duly made and accepted. Whatever the procedural niceties, it is clear that condition 3 of permission MO/2019/0757/PLAH is the matter in dispute. I deal with the appeal accordingly.

Decision

4. The appeal is allowed and planning permission is granted for the erection of a single storey rear extension and partial conversion of existing garage with connected single storey side/rear extension at 42 Deepdene Vale in accordance with the application Ref MO/2019/1383/CC dated 1 August 2019, without compliance with condition number 3 previously imposed on planning permission Ref MO/2019/0757/PLAH dated 16 July 2019 but with the other conditions imposed by that permission remaining in force.

Main Issue

5. The main issue is the effect of the removal of the condition on the living conditions of residents at neighbouring properties, particularly numbers 38 and 40 Deepdene Vale.

Reasons

6. Number 42 Deepdene Vale is a detached house which stands, on the inside of a bend, at right angles and in very close proximity, to the pair of semi-detached houses numbered 38 and 40. Their common boundary is at an angle of 45 degrees between them. A side window in a first floor rear bedroom at number 42 faces directly towards the rear elevation of number 40 at a distance of about 6-7m. If it were not for the existence of evergreen planting on the boundary, there would be severe mutual overlooking and loss of privacy between the three properties.
7. The proposal is for a small extension to the rear of the garage at number 42 and for its conversion to a habitable room and for a more considerable single storey extension to the rear of the main house, at an angle of 45 degrees in plan, reflecting the boundary line with numbers 38 and 40. Both extensions would have windows in their flank walls, a little over 1m from the boundary. The existing boundary treatment would provide mutual privacy to residents on both sides of the boundary fence. No condition other than that requiring compliance with the approved plans is necessary to make this development more acceptable in terms of its effect on the living conditions of neighbours.
8. The Council's report refers to previous proposals in 2008, not implemented, for a loft conversion involving an increase in the ridge height of the property. It notes that similar elements were deleted from the current proposal before its approval in July 2019. It speculates on what might be the effects of a loft conversion carried out as permitted development before deciding to impose a condition removing from the property the permitted development rights provided by Schedule 2, Part 1, Classes A, B or C of the Town and Country (General Permitted Development) Order 2015.
9. Whilst I can well understand that the Council might wish to withdraw permitted development rights from numbers 38, 40 and 42 Deepdene Vale and possibly

others nearby, given the particular circumstances in which they co-exist, that consideration has nothing at all to do with the development as currently proposed in this application. The correct procedure to follow would be to use an Article 4 Direction. The condition does not fairly and reasonably relate to the development permitted. It therefore fails several of the tests for conditions set out in paragraph 55 of the government's National Planning Policy Framework (NPPF). Moreover, it would have the effect of depriving the property owner of the compensation provisions which come into play if permission is refused for a development where permission is only required because of an Article 4 Direction. Government policy is that planning conditions should not be used to restrict nationally permitted development rights unless there is clear justification to do so.

10. I conclude that the development proposed in this appeal would comply with policies ENV22 and ENV32 of the Mole Valley Local Plan adopted in October 2000. These require design and layout to be appropriate to a site and not to harm neighbours' amenity.

P. W Clark

Inspector