



Appeal Decision

Site visit made on 10 March 2020

by C Osgathorp BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 April 2020

Appeal Ref: APP/W1905/D/19/3242036

3 The Brambles, Crossbrook Street, Cheshunt EN8 8JD

- 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 Colin Pereira against the decision of Broxbourne Borough Council.
 - The application Ref 07/19/0807/F, dated 19 September 2019, was refused by notice dated 11 November 2019.
 - The application sought planning permission for a bungalow & garage without complying with a condition attached to planning permission Ref 7/874-81, dated 16 February 1982.
 - The condition in dispute is No 6 which states that: *"Notwithstanding the provision of Article 3 of the Town and Country Planning General Development Order 1977 to 1981, no development of the types described in Class I, 1(a)(b)(c)(d)(e), 2(a)(b)(c) and 3(a)(b)(c)(d) of Schedule 1, other than that hereby permitted, shall be undertaken without the prior written approval of the Local Planning Authority."*
 - The reason given for the condition is: *"In order to safeguard the character and visual amenities of the locality"*.
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Decision

1. The appeal is allowed and planning permission is granted for a bungalow & garage at 3 The Brambles, Crossbrook Street, Cheshunt EN8 8JD, without compliance with condition number 6 previously imposed on planning permission 7/874-81 dated 16 February 1982 and subject to the following condition:
 - 1) 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 roof enlargements or roof windows that would otherwise fall within Classes B and C of Part 1 Schedule 2 of that Order shall be installed on the eastern facing rear elevation of the dwellinghouse without a separate grant of planning permission by the Local Planning Authority.

Preliminary Matter

2. The appellant submits that Condition 6 of planning permission Ref 7/874-81 is not enforceable or relevant to planning because the Town and Country Planning General Development Orders 1977 to 1981 (the GDO 1981) is no longer in force and the condition is not worded to cover subsequent amendments to the GDO 1981 or any new legislation.

3. Nevertheless, it is immaterial whether or not the legislation is still in force because the condition restricts the development *described* in the GDO 1981 i.e. Class I (1) the enlargement, improvement or other alteration of a dwellinghouse (2) the erection of a porch outside any external door of a dwellinghouse and (3) the erection of any building or enclosure required for a purpose incidental to the enjoyment of the dwellinghouse.
4. Therefore, Condition 6 is enforceable and relevant to planning and I will consider the appeal on the basis of the development described in the relevant classes of the GDO 1981, as referred to above, having regard to the current permitted development rights contained within Classes A, B, C, D and E of Part 1 Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO).

Main Issue

5. The main issue is whether or not it is reasonable and necessary to remove permitted development rights in the interests of the character and appearance of the area and the living conditions of the occupiers of neighbouring properties.

Reasons

6. Paragraph 53 of the National Planning Policy Framework states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. The Planning Practice Guidance¹ states that conditions restricting the future use of permitted development rights may not pass the test of reasonableness or necessity. Blanket removal of freedoms to carry out small scale domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity. Consequently, it is necessary to undertake a Class by Class assessment to consider if it is reasonable and necessary to restrict permitted development rights for the developments described in Condition 6 of planning permission Ref 7/874-81.
7. The appeal property is a detached bungalow, which is part of a group of 3 bungalows that are set back from Crossbrook Street. The dwelling is positioned a short distance to the eastern rear boundary and the main garden area is to the southern side of the property. There are 2 storey dwellings directly to the rear of the appeal property in Downfield Road, which have small rear gardens. Given the single storey height of the appeal property and the absence of any roof windows in the eastern facing rear elevation, there are currently minimal views into the gardens and rear windows of the neighbouring properties in Downfield Road.
8. Class B of Part 1 Schedule 2 of the GPDO permits the enlargement of a dwellinghouse consisting of an addition or alteration to its roof. Class C of Part 1 Schedule 2 of the GPDO permits any other alteration to the roof (which includes roof windows). Having regard to the short separation distance to the eastern rear boundary and the small size of the neighbouring gardens, the enlargement of the dwelling consisting of a roof addition or the installation of a roof window to the eastern facing rear elevation would have potential to allow close-range views over the boundary fence directly into the rear gardens and

¹ Paragraph: 017 Reference ID: 21a-017-20190723 Revision Date: 23 07 2019

habitable windows of the neighbouring properties at Nos 15 and 17 Downfield Road. Whilst I acknowledge that a degree of overlooking is to be expected in an urban environment, there is potential for a significant loss of privacy to the occupiers of the neighbouring properties due to the close relationship of the buildings. For these reasons, I find that there is clear justification to remove permitted development rights for the installation of roof additions or roof windows to the eastern facing rear elevation of the appeal property.

9. Any roof additions or roof windows installed to the side elevations of the dwelling under Classes B or C of Part 1 Schedule 2 of the GPDO would be subject to a condition that any window installed on a wall or roof slope forming a side elevation of the dwellinghouse must be – (i) obscure-glazed, and (ii) non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed. Given the separation to the side boundaries, this would ensure that roof additions or roof windows installed to the side elevations of the dwelling would not cause a significant loss of privacy to the occupiers of neighbouring properties.
10. In respect of the character and appearance of the area, there is no clear justification before me to show that the removal of permitted development rights for roof additions or alterations under Classes B or C is reasonable and necessary, particularly as these are national permitted development rights that are likely to be available to most other neighbouring properties which are not within a conservation area. There is no substantive evidence before me to show that this is not the case.
11. Class A of Part 1 Schedule 2 of the GPDO permits the enlargement of a dwelling, including the erection of rear extensions and side extensions. Any such extensions would be subject to the restrictions and limitations in Class A and would be relatively modest in scale. This includes height restrictions having regard to the proximity of an extension to the boundary, which would limit the impact on the outlook from the gardens and windows of neighbouring properties. I am satisfied that extensions or alterations under Class A could be accommodated without causing significant harm to the character and appearance of the area or the living conditions of the occupiers of neighbouring properties.
12. Class D of Part 1 Schedule 2 of the GPDO permits the erection of a porch outside any external door of a dwellinghouse, which is subject to size limitations. Any porch erected under Class D would be small in size and therefore it would not cause harm to the character and appearance of the area or the living conditions of the occupiers of neighbouring properties.
13. Class E of Part 1 Schedule 2 of the GPDO provides permitted development rights for buildings, storage containers and other structures within the curtilage of a dwelling subject to certain restrictions and limitations. This includes that any building must be for purposes incidental to the enjoyment of the dwellinghouse, and it would also be subject to height restrictions having regard to its distance from the boundary. In this respect, I am satisfied that the restrictions and limitations in Class E would ensure that any building or structure would not be harmful to the living conditions of the occupiers of neighbouring properties. Furthermore, although not extensive, I consider that the garden of the appeal property is sufficiently large to accommodate

structures of the type and scale permitted by Class E without any significant risk of harm to the character and appearance of the area.

14. Taking the above factors into account, an element of restriction of permitted development rights within Classes B and C is both reasonable and necessary to prevent roof additions and roof windows on the eastern facing rear elevation of the dwelling that may affect the living conditions of the occupiers of neighbouring properties at Nos 15 and 17 Downfield Road.
15. For the above reasons, I conclude that the deletion of the condition in full would conflict with Policy H6 of the Borough of Broxbourne Local Plan Second Review 2001-2011 (December 2005), which, amongst other things, seeks to ensure that proposals for extensions would not materially harm the privacy, amenity or environment of nearby residents. However, apart from the potential adverse effect from roof additions and roof windows on the eastern facing rear elevation, other enlargements and alterations could be carried out under Schedule 2, Part 1 Classes A, B, C, D and E of the GPDO without causing harm to the character and appearance of the area or the living conditions of the occupiers of neighbouring properties. I shall therefore replace Condition 6 with a modified condition.

Other Matters

16. Whilst I note that the only reason given for Condition 6 was to safeguard the character and visual amenities of the locality, the Local Planning Authority were clearly concerned at the time of the original planning permission about the effect of further development on the living conditions of the occupiers of neighbouring properties. This is evidenced by Condition 3 of planning permission 7/874-81, which prevents the insertion of windows, doors or openings of any kind on the elevations of the dwelling in order to safeguard the privacy of the occupiers of the adjoining properties. I deal with the relationship between Conditions 3 and 6 below.

Conditions

17. I have found that the installation of roof additions or roof windows on the eastern facing rear elevation of the dwelling has potential to cause a significant loss of privacy to the occupiers of neighbouring properties at Nos 15 and 17 Downfield Road. It is therefore reasonable and necessary to impose a condition to the grant of planning permission to remove permitted development rights for such developments. This could be achieved through a modified version of Condition 6.
18. Section 73 of the Town and Country Planning Act 1990 as amended is drafted widely and so, in addition to considering the disputed condition, it does provide the power to attach new conditions, to not attach conditions which were previously imposed or to attach modified versions of them.
19. Condition 3 of planning permission 7/874-81 states that "*no further windows, doors or openings of any kind shall be inserted in the elevations of the development hereby approved, unless the Local Planning Authority otherwise agrees in writing*". The reason for the condition was to "*safeguard the privacy of occupiers of the adjoining properties*". I have invited comments from the main parties as to whether this condition is reasonable and necessary having regard to Paragraph 55 of the Framework.

20. I find that Condition 3 is too restrictive and therefore is not reasonable and necessary because the installation of any window at ground floor on the rear elevation; on the side elevations; or the front elevation of the dwelling in accordance with the restrictions and limitations of Schedule 2, Part 1 Classes A, B and C of the GPDO would not cause a significant loss of privacy to the occupiers of neighbouring properties. In light of my modified version of Condition 6, Condition 3 is not necessary.
21. In allowing the appeal, I am granting a new planning permission which is separate from the original permission. The Council has not suggested any other conditions to be imposed in respect of the granting of a new planning permission. Given that the original planning permission was granted in 1981 and that the development was laid out and constructed some considerable time ago, it is not necessary to impose any other conditions that were attached to the original planning permission.

Conclusion

22. For the reasons given above I conclude that the appeal should be allowed.

C Osgathorp

INSPECTOR