
Appeal Decision

Site visit made on 9 March 2020 by Hilary Senior BA (Hons) MCD MRTPI

by Susan Ashworth BA (Hons) BPL MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 19th May 2020

Appeal Ref: APP/G5180/D/20/3245810

75 Lynwood Grove, Orpington, BR6 0BQ

- 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 Jinesh and Meera Patel against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/18/04731/RECON, dated 13 August 2019, was refused by notice dated 26 November 2019.
 - The application sought planning permission for demolition of existing side garage and extension, and rear extension. Two storey front/side extension and part two storey/single storey rear extension without complying with a condition attached to planning permission Ref DC/18/04731/FULL6, dated 13 March 2019.
 - The condition in dispute is No 8 which states that: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order amending, revoking and re-enacting this Order) no buildings, structures, extensions, alterations, walls or fences of any kind shall be erected or made within the curtilage(s) of the dwelling(s) hereby permitted without the prior approval in writing of the Local Planning Authority.
 - The reason given for the condition is: In the interests of protecting the character of the area and residential amenity of neighbouring properties and in accordance with Policies 6, 8 and 37 of the Council's Local Plan (2019).
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing side garage and extension, and rear extension and the erection of a two storey front/side extension and part two storey/single storey rear extension at 75 Lynwood Grove, Orpington, BR6 0BQ, in accordance with the application Ref DC/18/04731/FULL6 dated on 13 March 2019 without compliance with condition number 8 previously imposed on planning permission ref DC/18/04731/FULL6 dated on 13 March 2019 but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect.

Application for costs

2. An application for costs was made by Mr & Mrs Jinesh and Meera Patel against the Council of the London Borough of Bromley. This application is the subject of a separate Decision.

Appeal Procedure

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

Background and Main Issue

4. Planning permission was granted for the erection of extensions to the front side and rear of 75 Lynwood Grove in 2019. That permission was subject to various conditions including one (condition 8) which prevents any further alterations to the property, including the construction of extensions, buildings, walls or fences, which could otherwise be constructed without the need for planning permission, under the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (permitted development rights).
5. The main issue is whether the disputed condition is reasonable and necessary having particular regard to the effect that removing the condition would have on the character and appearance of the area and the living conditions of the occupiers of 77 Lynwood Grove.

Reasons

6. Para 55 of the National Planning Policy Framework (the Framework) lists the circumstances when planning conditions can be imposed. These include where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. The Planning Practice Guidance (PPG) states that conditions restricting the future use of permitted development rights or change of use may not pass the test of reasonableness or necessity.
7. 75 Lynwood Grove is a detached dwelling in an established residential area within the Knoll Area of Special Residential Character characterised by individually designed detached properties with a mix of styles and designs and predominantly open frontages. The property is set back from the highway and elevated above the 77 Lynwood Grove in a large plot.
8. Whilst this is a pleasant area, the site is not within a Conservation Area and there is no Article 4 direction restricting what could be constructed. Considering the previously approved extensions, and from the evidence before the appeal, it is unclear as to the level of development that could now take place at 75 Lynwood Grove without the need for planning permission. In any event, any extensions allowed as permitted development would be limited in scale and height and would only take place to the rear or side of the dwelling. Any walls or fences abutting the highway are likely to be relatively low in height. Moreover, from all I have read, the majority of the properties on Lynwood Grove retain their permitted development rights so further such development could take place in the area without planning consent.
9. I am unconvinced on that basis, that any extensions that could be constructed at the property without the need for planning permission would have a significant adverse effect on the character or appearance of the local area in terms of their presence in the street scene.
10. I note that the host property is at a higher level than 77 Lynwood Grove. However, the properties are staggered with 75 being set back from 77. I note

the concern of the occupiers of the neighbouring property but do not consider that development allowed under permitted development rights, which if close to the boundary are limited to relatively small, single storey extensions and buildings, would adversely affect the living conditions of the occupiers of the neighbouring property.

11. Consequently, for these reasons the removal of the condition 8 would have no harmful effect on the character and appearance of the area or on the living conditions of the occupiers of 77 Lynwood Grove. Even if the condition was removed the proposed development would comply with Policies 6, 8 and 37 of the London Borough of Bromley Local Plan (2019) which together seek to ensure that development is of a high standard and contribute to the character of the area. As such, the removal of permitted development rights through the imposition of condition 8 does not meet the tests above, in that it is not reasonable or necessary to make the development acceptable in planning terms.

Other Matter

12. I note the neighbour's concerns that allowing the appeal would set a precedent for applications to seek to remove conditions on permissions in the area. However, any future decisions would be made on the site specific circumstances and merits of each case.

Conditions

13. The appellant has drawn my attention to condition 9 which seeks to remove permitted development rights to change the use of the property into a House in Multiple Occupation. However, no application has been made to remove that condition and the matter does not form part of the appeal before me. In addition, the Council has not had the opportunity to comment on condition 9 under the procedure governing the determination of this appeal. Accordingly, I have not considered the matter further.
14. The guidance in the PPG makes 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. Although there is no evidence before the appeal, several of the original conditions were pre-commencement conditions which may have been discharged as the development has commenced.
15. As such I recommend that this decision reimposes the conditions of the original approval, insofar as they are still subsisting and capable of being implemented, with the exception of condition 8 as this condition does not meet the tests for conditions as set out above.

Conclusion and Recommendation

16. For the reasons given above and having regard to all other matters raised, I recommend that the appeal is allowed and the original permission should be varied by deleting condition 8.

Hilary Senior

APPEAL PLANNING OFFICER

Inspector's Decision

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

Susan Ashworth

INSPECTOR