



Appeal Decision

Site visit made on 26 May 2020

by D.R McCreery MA BA (Hons) MRTPI

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

Decision date: 21 July 2020

Appeal Ref: APP/D5120/W/19/3241542

Holy Redeemer, Days Lane, Sidcup DA15 8JR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A 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 Oliver Morse against the decision of the Council of the London Borough of Bexley.
 - The application Ref 19/02117/FUL, dated 15 August 2019, was refused by notice dated 8th October 2019.
 - The application was for application for a minor material amendment to provide for the removal of conditions 13, 14 and 15 to planning permission 18/01008/FUL. These conditions remove permitted development rights to enlarge, improve or alter the dwellings, or the provision of balconies and erection of outbuildings. The parent permission being for the erection of 4 x 4 bedroom semi-detached properties with access from Annandale Road approved under planning permission 15/00237/FUL to allow revised design incorporating gable end features, full width rear dormers and alterations to front and rear elevations.
 - Conditions 13, 14, and 15 state that:
 - (13). No enlargement, improvement or other alteration to the dwellings, including the roofs, hereby granted permission, whether permitted or not by virtue of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended shall be carried out or in any provision equivalent to or in any statutory instrument revoking and re-enacting that Order.
 - (14). No balconies shall be constructed at the dwellings hereby approved.
 - (15). No outbuildings, enclosures, pools, decking or raised platforms shall be constructed within the curtilages of the dwellings hereby approved, whether permitted or not by virtue of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended shall be carried out or in any provision equivalent to or in any statutory instrument revoking and re-enacting that Order.
 - The reasons given for the conditions are:
 - (13). In order to control the future development of this restricted site.
 - (14). In the interests of neighbouring amenity.
 - (15). In order to control the future development of this restricted site.
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Decision

1. The appeal is allowed and amendment is granted to provide for the removal of conditions 13, 14 and 15 to planning permission 18/01008/FUL subject to the conditions in the attached schedule.

Procedural matter

2. The appellant has indicated that planning permission 18/01008/FUL has been implemented. As planning permission is sought for development already carried out this appeal will be considered under S73A Town and Country Planning Act 1990 (as amended).
3. Following submission of this appeal the Council have confirmed that they are content with the removal of condition 14 relating to the construction of balconies. This appeal will therefore focus on conditions 13 and 15.

Main issues

4. The main issues are whether conditions 13 and 15 are reasonable and necessary to meet the aims of ensuring that the development does not have a harmful effect on the character and appearance of the area or the living conditions of occupants of the development.

Reasons

5. The site is located within a residential area that is characterised by 2 storey houses of mixed architectural detail but mostly suburban appearance. The 4 new dwellings constructed on the appeal site are consistent with others in the area that are mostly arranged in terraces and sit towards the front of their plots. This arrangement provides an open aspect to the rear that contributes to the character of the area.
6. I am mindful of the tests set out in Paragraph 55 of the National Planning Policy Framework (the Framework) and, in particular, that conditions should be necessary and reasonable. Conditions 13 and 15 seeks to prevent enlargements, improvements or other alterations to the 4 dwellings and construction of structures such as outbuildings without express planning permission. The conditions are intended to include preventing development that might otherwise be permitted development¹. The reasons for imposing conditions 13 and 15 set out in the Council's decision notice relate to controlling future development at what is felt to be a restricted site.
7. The Council's concerns regarding the impact of a range of possible developments using permitted development rights are noted. However, these rights are given subject to requirements that are designed to ensure that development carried out is appropriate. Paragraph 53 of the Framework and supporting Planning Practice Guidance is clear that conditions should not be used to restrict permitted development rights unless there is clear justification.
8. To the rear, the gardens of the new dwellings span the full width of each house. The depth of the rear gardens has been dictated by the presence of the church that shares the rear boundary. Whilst not as deep as the gardens on the neighbouring Annandale Road terrace, they do not feel small or out of step with what might be expected of a suburban garden. In this regard, I do not find the gardens of the new dwellings to be particularly restricted nor do I consider the dimensions of the gardens suggested by the Council to be unusually small.

¹ Under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

9. The Council have provided figures to suggest that rear extensions to the dwellings using permitted development rights could reduce the depth of the gardens to less than 6 metres. Considering the comments above in relation to garden size, even if the permitted development rights were utilised to their maximum extent, I find that the remaining amenity space in the gardens would be appropriate in meeting the aims of saved Policies H6 and H7 of the Bexley Unitary Development Plan. I also find that the resulting space would be capable of accommodating a reasonable element of outdoor seating and play as required by the occupiers. As such, I do not find that the risk of harm to the living conditions of occupiers of the dwellings justifies conditions 13 and 15.
10. Turning to character and appearance, given the size and nature of the gardens described above, the degree of visual protection provided in particular by the Church building and the enclosed nature of the rear, I do not find that clear justification has been provided to restrict permitted development rights in relation to development at the rear of the properties, including structures such as outbuildings. The risks identified by the Council around overdevelopment of the site in particular would be mitigated by the size and other requirements attached to permitted development rights.
11. In relation to roof level alterations, it is noted that the new dwellings already include substantial dormer windows to the rear. As acknowledged by the Council, there is little room left for further alteration above and beyond what has been approved. Any development that is possible at roof level utilising permitted development rights is likely to have a minor impact on the character and appearance of the area.
12. Turning to alterations to the front of the property, it is noted that the 4 dwellings have been built to present a uniformity that contributes to the character and appearance of the area. The appeal site is also prominent by virtue of its position close to the junction with Days Lane. As such, some greater level of control over development to the front of the property is justified. However, conditions 13 and 15 as imposed are too wide in their effect. A condition seeking to restrict use of permitted development rights only in relation to the front of the property is considered to be more proportionate in the interests of ensuring satisfactory standard of external appearance.
13. The appellant has drawn my attention to a number of appeal decisions which consider similar issues to this appeal. Whilst of general relevance, as none of these decisions are within the immediate locality and each appeal must be considered on its own merits I give them limited weight.
14. For the reasons discussed above I find that conditions 13 and 15 are not reasonable and necessary to meet the aims of ensuring that the development does not have a harmful effect on the character and appearance of the area or the living conditions of occupants of the development. As such, the conditions are not necessary in order to meet the aims of Local Plan policies, including saved policies ENV39, H6, H7, and H9 of the Unitary Development Plan.

Conclusion

15. For the above reasons and taking account of all other matters raised in the appeal, the appeal is allowed.
16. Although the appellant has indicated that planning permission 18/01008/FUL has been implemented, I have re-imposed the conditions from 18/01008/FUL for the avoidance of doubt (with the exception of conditions 1, 13, 14, and 15 on the original decision notice). A new condition is imposed relating to removal of permitted development rights for development to the front of the property, which is discussed above.

D.R. McCreery

INSPECTOR

Schedule of conditions

1 The development hereby permitted shall not be carried out otherwise than in complete accordance with the approved plans, being Drawing No(s) PL 001, 002, 003A, 20, 21A, 22A, 30A, 31A, 32A, and 33A and any approval granted subsequently pursuant to this permission.

2 Before development commences details of the proposed surface water and foul drainage and means of disposal shall be submitted to and approved in writing by the Local Planning Authority. The development shall only be completed in accordance with the approved details.

3 Before development commences a demolition and construction methodology shall be submitted to and approved in writing by the Local Planning Authority, and the development shall not be carried out except in accordance with the approved details, which shall cover the following points:

i. demolition and construction methods and techniques (including the avoidance of burning on site and vehicle movements); days/hours of work and deliveries of construction materials. Details shall show that the demolition shall only take inwards within the footprint of the existing building.

ii. means of minimising noise and vibration (including any piling), and compliance with BS 5228;

iii. means of minimising dust and similar emissions, in accordance with Air Quality: Best Practice Guidance - The Control of Dust and Emissions During Construction and Demolition Supplementary Planning Guidance (published by the Greater London Authority, July 2014);

iv. means for the identification, removal and safe disposal of asbestos;

v. construction site lighting;

vi. contact arrangements for the public, including 'out of hours' telephone numbers for named contacts).

4 Before development commences details of measures to promote sustainable development including the use of renewable energy in the construction and operation of the development shall be submitted to and approved in writing by the Local Planning Authority, and the development shall not be carried out and subsequently operated except in accordance with the approved details.

5 Details shall be submitted to and approved in writing by the Local Planning Authority of the areas of hard standing and parking layout. The use of the land for vehicle parking shall not be commenced until the area has been laid out, surfaced and drained in accordance with the approved details and shall be permanently maintained and available for such use thereafter.

6 Prior to the construction of the dwellings a schedule of materials and finishes and, where so required by the Local Planning Authority, samples of such materials and finishes to be used for the external walls and roofs of the proposed buildings shall be submitted to and approved in writing by the Local Planning Authority. The dwellings shall only be constructed in accordance with the approved details.

7 Details of screen walls and fences shall be submitted to and approved in writing by the Local Planning Authority and such walls and fences shall be erected before the buildings with which they are associated are first occupied and shall thereafter be maintained.

8 A landscaping scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented before the development is occupied, or of any phase of the development as may be agreed with the Local Planning Authority and shall thereafter be maintained for five years. Trees and shrubs which die during this period shall be replaced.

9 Details of arrangements for storage of refuse and recycling (including means of enclosure for the area concerned where necessary) shall be submitted to, and approved in writing by, the Local Planning Authority and the approved arrangements shall be provided before the dwellings are first occupied and permanently maintained thereafter.

10 The access from the Vicarage onto Days Lane shall be extinguished upon the completion of the construction work for the alterations and extensions to the Church Hall. During the construction work for that element, this access to Days Lane shall be for construction vehicles during the working day only, and shall be fitted with gates that are closed at other times. On completion of the construction work for the alterations and extensions to the Church Hall, the access shall be permanently stopped up and the highway reinstated to the satisfaction of the Local Planning Authority and maintained thereafter.

11 The access to the parking bays shall be provided with those parts of 2.4m x 2.4m pedestrian visibility splays which can be accommodated within the site in both directions and shall be maintained free of all obstacles to the visibility between heights of 0.6m and 2.0m above the level of the adjoining highway.

12 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 enlargements, improvements or other alterations (including windows and construction of porches) shall be made to the front of the dwellings hereby approved without the prior permission of the Local Planning Authority.

13 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 windows shall be formed in any side elevations of the dwellings hereby approved without the prior permission of the Local Planning Authority.