

Appeal Decision

Site visit made on 3 September 2020

by P. D. Biggers BSc Hons MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 September 2020

Appeal Ref: APP/Y3615/D/20/3250550

31 Millmead Terrace, Guildford, Surrey GU2 4AU.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mrs and Mr Mak against the decision of Guildford Borough Council.
 - The application Ref 19/P/02039, dated 3 December 2019, was approved on 28 January 2020 and planning permission was granted subject to conditions.
 - The development permitted is creation of a retaining wall to front to create driveway including dropping kerb, replacement windows and doors and other changes to fenestration (as amended by plans received on 20/01/20).
 - The conditions in dispute are Nos 3 and 4 which state that:
 - 3. The development hereby approved shall not be commenced until the proposed vehicular access to 31 Millmead Terrace and the scheme to remove the existing Permit holders parking bay outside 31 Millmead Terrace shall be constructed in accordance with the approved plans, Drawing No.005A, and thereafter to be permanently maintained.
 - 4. The development hereby approved shall not be first occupied until "At any time" Waiting restrictions have been introduced once the Permit holders parking bay outside 31 Millmead Terrace is removed. This is to improve safety for drivers turning in and out of the drive and avoid obstructive parking.
 - The reason given for both conditions is:
The above condition is required in order that the development should not prejudice highway safety nor cause inconvenience to other highway users.
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Decision

1. The appeal is allowed and the planning permission Ref 19/P/02039 for creation of a retaining wall to front to create driveway including dropping kerb, replacement windows and doors and other changes to fenestration (as amended by plans received on 20/01/20) at 31 Millmead Terrace, Guildford GU2 4AU granted on 28 January 2020 by Guildford Borough Council, is varied by deleting conditions Nos 3, 4 and 5 and substituting for them the following conditions:

- 3) Excavation and construction to create the extended driveway and new retaining wall hereby permitted shall not be commenced until the proposed dropped kerb access has been constructed in accordance with the approved plans, Drawing No.005A. Thereafter the access shall be permanently retained.
- 4) The parking area hereby approved, once constructed, shall be permanently retained for the parking of vehicles.

2. An application for costs was made by Mr and Mrs Mak against Guildford Borough Council. This application is the subject of a separate decision.

Preliminary Matter

3. I have also dealt with another appeal (Ref: APP/Y3615/D/20/3251149) on this site. That appeal, because it is an appeal against a refusal of an application for a further extension to the driveway alone is the subject of a separate decision.

Background and Main Issue

4. Planning permission has been granted for alterations to No 31 including the creation of a driveway and off-street parking. The appeal seeks permission to carry out the development without complying with Conditions Nos 3 and 4. These require construction of the access and the removal of the Permit Holders' parking bay and the introduction of "At Any Time" waiting restrictions. The main issue is the effect that removing or varying the conditions would have on highway safety and the convenience of highway users.

Reasoning

5. The application to which the conditions relate is for a refurbishment of the existing property at No 31 one part of which would involve widening the current access to the property which is shared with the neighbour at No 32. At present there is a short width of dropped kerb at the existing entrance across which there are double yellow lines and beyond this to the south there is a marked on-street Permit Holders' parking bay.

6. Despite the appellants' assertion that it would be possible to use the existing dropped kerb to access the widened parking bay, bearing in mind that this is shared with No 32, it would not be possible for a vehicle to safely access the extended driveway which is planned to be about 4.5 metres in width without extending the dropped kerb. Failure to do so would result in awkward manoeuvring, at an angle, across the footpath to access the drive to the potential detriment of highway and in particular pedestrian safety. These physical access works are part of the development originally applied for and it is necessary to ensure they are completed in association with the creation of the driveway/parking space to enable safe access and maintain highway safety and therefore a condition is necessary.

7. Because the access connection to the roadway would be outside the applicants' ownership Condition No 3 was expressed as a Grampian Condition i.e. negatively worded to prevent development taking place without work first taking place to construct the access. Whilst the use of Grampian Conditions is not advised where there is no prospect of the works being carried out within the timescale of the application I am not persuaded that this is necessarily the case here in respect of the dropped kerb and access across the footpath. I acknowledge that the procedure for permanent removal of the Permit Holders' parking bay, which would require a variation to the Traffic Regulation Order (TRO), could be a prolonged process. However, gaining consent for the dropped kerb and its construction, including temporary suspension of the parking bay to facilitate construction, could easily be achieved within the timescale of the application.

8. However, Condition No 3 has been phrased in terms of a pre-commencement condition to the whole development. Such conditions are now restricted in their use by the *Town and Country Planning (Pre-commencement Conditions) Regulations 2018* in order to avoid unnecessary delay in implementing developments. It has been put to me by the Council that this is not a pre-

commencement condition as defined in the *Town and Country Planning Act 1990* as it does not prevent commencement and does not require any other approval from the Council. However, quite clearly the wording of the condition specifically prevents development commencing and further approval from the Highway Authority would be required for variation to the TRO to remove the parking bay. In this particular case there is no reason why other aspects of the development, in terms of the internal and external refurbishments to the house itself, could not commence without the access being completed. It is only at the point that work begins on the driveway and parking bay that the widened dropped kerb access should be provided. I have considered whether it would be sufficient to impose a revised condition on the basis that the driveway should not be brought into use before the access arrangements are completed but once the driveway works are complete a condition preventing it being brought into use would be difficult to enforce.

9. Therefore, whilst Condition No 3 should be deleted in its current form, a replacement Grampian Condition should be imposed to require the widening of the dropped kerb and creation of the access before work commences to excavate the garden and construct the extended driveway. I have not included the requirement to remove the parking bay in the revised condition because, although this would be physical work that needs to be done for the satisfactory operation of the parking space, it involves a variation to the TRO which cannot necessarily be achieved in the same time frame as provision of the dropped kerb.

10. Regarding Condition No 4, this seeks to exercise control in respect of a public highway, which is not under the control of the applicant. It requires a change to a TRO which, while important to the safe operation of the highway, is not the responsibility of the Local Planning Authority but rather the responsibility of the Highway Authority. Unlike the situation with revised Condition No 3, Condition No 4 is specifically requiring compliance with other regulatory regimes and the advice in the *Planning Practice Guidance* states that such conditions will not meet the test of necessity and may not be relevant to planning.

11. Condition No 4 also prevents occupation of an existing house (which has already been occupied and is simply being renovated) until such time as the "At Any Time" Waiting Restriction is in place. Changes to TROs have to go through due process and the outcome, because it involves public consultation, is not necessarily guaranteed at the end of the process. It would therefore be unreasonable to require occupation to be dependent on this process.

12. *Planning Practice Guidance* advises that the best way to draw applicants' attention to requirements under other regulatory regimes is to attach an informative to a permission. There is already a very clear informative attached to the permission in this case which sets out the requirement for the applicants to go through the process of seeking an alteration to the TRO. I am therefore satisfied that Condition No 4 is unnecessary and is unreasonably tied to occupation of the property which, as set out above, is an existing house which has already been in occupation.

13. Although not raised by the appellants, Condition No 5 raises a similar issue in being worded such as to prevent occupation without the parking area having been completed. This is unreasonable as the house has clearly been previously occupied on the basis of no off-street parking provision. A S79 Conditions Appeal allows me to consider all aspects of the original decision and it would be

inconsistent to leave Condition No 5 in place in its original form where, as with Condition Nos 3 and 4, it is unreasonable in the way it has been drafted. Accordingly, I propose to delete Condition No 5 and replace it as set out above.

14. The revised conditions are necessary in respect of policy D1 of the *Guildford Local Plan Strategy and Sites* (GLPSS) which at clause 6) requires development to be designed to ensure it connects appropriately with the existing street pattern and creates safe and accessible spaces. Policy ID3 at clause 6) also requires development to provide suitable access. Moreover, Policy G1(2) of the *Guildford Local Plan 2003* (GLP) requires satisfactory access to be provided.

Conclusion

15. The appeal is allowed in that I have found that Conditions Nos 3 and 4 as originally imposed, fail to meet the tests set out in the Framework for the reasons set out above. I have therefore deleted these two conditions. However, a condition to require the installation of the dropped kerb and access to the roadway is necessary, serves a planning purpose and directly relates to the development on site and the development should not be completed without the dropped kerb access being in place. I have therefore substituted a new varied Condition No 3 as set out in the decision above which meets the tests. For consistency I have also deleted the original Condition No 5 and substituted a new varied Condition No 4 removing the restriction preventing occupation. All other aspects of the planning permission ref 19/P/02039 remain unaltered.

P. D. Biggers

INSPECTOR