



Appeal Decision

Site visit made on 10 November 2020

by Lynne Evans BA MA MRTPI MRICS

an Inspector appointed by the Secretary of State

Decision date: 21/12/2020

Appeal Ref: APP/L3625/W/20/3248027

Plot 2, 35 The Avenue, Tadworth, Surrey KT20 5DG

- 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 carried out without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Woodgavil Ltd against the decision of Reigate & Banstead Borough Council
- The application Ref: 19/00439/S73 dated 5 March 2019, was refused by notice dated 11 December 2019.
- The application sought planning permission for erection of one 5 bed house on two floors with one en-suite bedroom within the roof space. The house is designed with an integrated double garage; as amended on 24/07/2017 without complying with conditions attached to planning permission Ref: 17/01149/F dated 27 July 2017.
- The conditions in dispute are Nos: 1, 4 and 10 which states that:
Condition 1: The development hereby permitted shall be carried out in accordance with the following approved plans:
Street Scene T332/306; Street Scene T332/305; Site Layout Plan T332/111; Location Plan T332/102; Section Plan T332/401; Arb / Tree Protection Plan Site Layout Plan 17-1352-TTP-001; Site Layout Plan T332/101/A; Floor Plan T332/223/A; Site Layout Plan T332/240; Elevation Plan T332/301/B; Street Scene T332/303; Street Scene T332/304.

Condition 4: 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 first floor windows, dormer windows or rooflights other than those expressly authorised by this permission shall be constructed.

Condition 10: The development shall not be occupied until a plan indicating the positions, designs, material and type of boundary treatment to be erected has been submitted to and approved in writing by the Local Planning Authority. The boundary treatment shall be completed before the occupation of the development hereby permitted.

- The reasons given for the conditions are:
Condition 1: To define the permission and ensure that the development is carried out in accord with the approved plans and in accordance with National Planning Practice Guidance.

Condition 4: To ensure that the development does not affect the amenity of the neighbouring property by overlooking and to protect the visual amenities of the area in accordance with Reigate and Banstead Borough Local Plan 2005 policy Ho9.

Condition 10: To preserve the visual amenity of the area and protect neighbouring residential amenities with regard to the Reigate and Banstead Local Plan policies Pc4 and Ho9.

Decision

1. The appeal is dismissed.

Preliminary and Procedural Matters

2. Planning permission was granted on appeal in April 2006 under Ref: APP/L3625/A/05/1193223) for four dwellings; the appeal site (Plot 2) is the final site to be developed. Full planning permission was granted, subject to conditions, for the property on Plot 2 under the Council's reference: 17/00149/F. It appears that a number of conditions have been discharged or submitted but not yet discharged, although limited information is before me.
3. At the time of my site visit, the development appeared to be substantially complete. There is no dispute between the parties that the dwelling as built does not fully comply with the approved plans and details submitted and approved by the Council. The main areas where there are differences with the permission granted under 17/00149/F relate to the positioning of the dwelling forward in its plot; changes to the fenestration on the front and rear elevations; additional area added to the rear garden; changed landscaping and boundary treatments and changed vehicular access and turning area at the front of the property.
4. The Council has also contended that the use of slate tiles has not been approved, which is disputed by the Appellant; I shall consider this as part of my determination of the appeal.
5. The application form was submitted with reference to the approved development without complying with conditions 1, 8 and 10 whereas the Council considered the application on the basis of Conditions 1, 4 and 10. Although there is no information before me to confirm agreement to the change, there is no suggestion by the Appellants that the Council was incorrect in the conditions it considered and indeed these are the conditions that the Appellants have referred to in their appeal documentation. These are therefore the conditions I have also assessed.
6. The Council has indicated that the changes to the fenestration, the increase in the plot size and the landscaping and boundary treatments to the rear are all acceptable. From all that I have read and my site visit, I have no reason to take a different view in respect of these elements.
7. The application form was dated 7 March 2018, although the decision notice refers to the application dated 5 March 2019 and this also is the date indicated on the appeal forms as the application date. In the absence of any information to the contrary, I shall use the date of 5 March 2019 as the application date.
8. I noted at the site visit that the vehicular access and front garden layout did not accord with any of the approved or submitted plans provided to me. Following the Council's decision, and as part of the appeal submission, the Appellant has submitted further proposed amendments to the front garden area. Whilst I appreciate that these were not before the Council and open to consultation at the application stage, I am satisfied that the Council and surrounding residents have had appropriate opportunity to consider them at the appeal stage. Furthermore, the nature of the changes are not, in my view,

so substantial that any party would be prejudiced by me taking them into account in my decision. I shall therefore consider them as an alternative proposal to the plans and layout submitted with the application.

9. In terms of procedure, the application was submitted under Section 73 of the Town and Country Planning Act 1990 (Section 73) to undertake the development without compliance with all of the conditions attached to the earlier permission. It is not clear to me, from the information before me precisely when the breaches occurred in terms of the construction of the dwelling without compliance with the conditions originally imposed. The application forms indicate that at the time it was made, the development had commenced but was not completed.
10. Although the Appellant has contended that the proposal should be considered as one made under Section 73A of the Town and Country Planning Act 1990, I shall consider the appeal under Section 73 to carry out the development without complying with all the conditions as originally imposed. Whilst I recognise that much of the development is now complete, without complying with all the conditions imposed under the original permission, the Section 73 procedure seems more appropriate because, first, it is not clear that the development had been completed at the time the application was made and further proposals, not yet undertaken, form part of the application and this subsequent appeal.
11. Since the appeal was submitted, I am advised by the Council that a revised application has been submitted and approved under its reference 20/00632/F. However, this permission includes for a number of changes which are not part of the submission before me. It is not for me to compare alternative schemes and permissions, but only to consider the appeal before me. I have not therefore considered that permission further.
12. The Appellant has contended that policies from the Council's Development Management Plan adopted in 2019 should not be given full weight as the development was undertaken before these policies were adopted. However, all proposals must be assessed against the development plan in force at the time of the decision. This is the basis upon which I have undertaken my assessment. The Appellant has referred to a number of other policies from the Council's Core Strategy, Development Management Plan and its Local Distinctiveness Design Guide. I have taken these all into account in so far as they are relevant to the considerations before me.

Main Issue

13. The main issue in this appeal is the effect of the dwelling, with variations to Conditions 1, 4 and 10 of the original permission, including with reference to the further landscaping amendments as proposed, on the character and appearance of the local area.

Reasons

14. The appeal property is a detached dwelling on the east side of The Avenue, just south of the junction of The Avenue with Downs Way and within a predominantly residential area. The local area generally comprises individually designed detached dwellings of different sizes, on a range of plot sizes, with a staggered siting to the road. Although most of the front garden areas provide

- for parking and turning, they generally also include landscaping and planting with planting along or close to the front boundaries. As a result, the local area has a very attractive verdant character and appearance.
15. The property as built stands out in the street scene. I agree that there is a varied front building line to the street, reflecting the individual design of the houses. I have also noted that the property as permitted would have stepped forward of the adjoining house. However, although seemingly modest in absolute terms, the further forward projection of the property, as built, results in a stark and visually jarring over prominence of the house in the street scene. This is particularly noticeable when approaching from the south along The Avenue, where the side elevation and roofscape are overly dominant features.
 16. In terms of the front garden treatment, I have based my assessment on both the plans submitted with the application as well as those submitted as part of the appeal process. Both these proposals would introduce some soft planting, but the hard landscaping would be the dominant feature at the front of the house. In comparison with the plans as approved they would result in a very stark, urban frontage. Given the limited area of soft landscaping under either approach, I do not consider that the planting and soft landscaping would soften the proposed amount of uninterrupted hardstanding at the front of the property under either scheme. I consider that the dwelling, with either of the proposed revised landscaping schemes in place would present a very hard urban frontage, which would be visually discordant and fail to respect the more verdant character and appearance of the local area.
 17. The combined effect of the forward projection of the dwelling together with the overall expanse of hardstanding and limited soft planting as proposed, under either of the schemes before me, would result in a visually discordant and stark development that would detract from the more verdant character and appearance of the local area.
 18. I therefore conclude that the property as built together with the landscaping amendments proposed do not and would not respect the character and appearance of the local area. This conflicts and would conflict with National Planning Policy Framework and in particular Section 12, and Policy Des1 of the Reigate and Banstead Local Plan Development Management Plan 2019, both of which seek for new development to respect the local context and local distinctiveness.
 19. In respect of the roofing materials, I fully agree with the Council that, with only one or two exceptions, slates are not part of the palette of materials found in the local area, with almost all houses having a clay tile roof. However, the proposed use of slates for the roof was shown on the approved plans under the permission granted under the ref: 17/01149/F. This includes Plan T332/301/B showing Proposed Elevations on which the material key indicates for the roof 'Slate Roof'. The Appellant has also set out other references to the proposed use of slates in supporting documentation for that application. I note that the application to discharge Condition 3 relating to the submission of further details in respect of materials under the Council's ref: 17/01149/DET03 has not been discharged, but that condition relates to the submission of samples, rather than the approval of full details of the proposed materials. I do not therefore consider that the use of slates for the roof is, in itself, a change from the

approved plans under Permission 17/01149/F. However, my finding on this matter does not affect the conclusions I have already reached.

Conclusion

20. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

L J Evans

INSPECTOR