



Appeal Decisions

Site visit made on 15 October 2020

by **N Holdsworth MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 07 January 2021

Appeal A Ref: APP/K3605/W/20/3254942

32 St Mary's Road, Long Ditton, Surbiton, KT6 5EY

- 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 Guy Saunders of Hillcote Developments Ltd against the decision of Elmbridge Borough Council.
 - The application Ref 2020/0699, dated 7 April 2020 was refused by notice dated 15 May 2020.
 - The application sought planning permission for detached two-storey building with rooms in the roof space comprising 6 flats with associated parking, bin storage and cycle storage following demolition of existing house without complying with conditions attached to planning permission Ref 2019/1131, dated 11 November 2019.
 - The conditions in dispute are numbers 2, 6 and 16. These conditions, and the reasons given for them, are set out in Appendix 1.
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Appeal B Ref: APP/K3605/W/20/3257997

32 St Mary's Road, Long Ditton, Surbiton, KT6 5EY

- 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 Guy Saunders of Hillcote Developments Ltd against the decision of Elmbridge Borough Council.
 - The application Ref 2020/1419, dated 16 June 2020 was refused by notice dated 12 August 2020.
 - The application sought planning permission for detached two-storey building with rooms in the roof space comprising 6 flats with associated parking, bin storage and cycle storage following demolition of existing house without complying with conditions attached to planning permission Ref 2019/1131, dated 11 November 2019.
 - The conditions in dispute are numbers 2, 6 and 16. These conditions, and the reasons given for them, are set out in Appendix 1.
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Decisions

1. Both Appeal A and Appeal B are dismissed.

Background

2. The purpose of both appeals is to vary or remove conditions imposed on the original planning permission to enable the ground floor roof to the rear of the

building now under construction to be used as a balcony/terrace. In the case of Appeal A this would amount to the entire width of the roof in question. In the case of Appeal B it would be limited to part of the roof. In both cases there would be alterations to the rear fenestration and other external works to facilitate this.

Main Issues

3. In both appeals the main issues are the effect of the proposed changes on the living conditions of neighbouring residential occupants with particular regard to privacy; and on the character and appearance of the area.

Reasons

Living Conditions

4. Each proposal would create a new balcony at first floor level, to the rear of the building. Its function is to enable future residents to sit out safely for prolonged periods of time. In doing so they would be able to see into the garden of the two neighbouring properties along St Mary's Road and, in particular, the property directly to the rear at 16 Saxonbury Gardens. This would be the case even if the side facing obscure glazed panels were to be installed, as there would still be a clear line of sight over the low balustrade to the front of the balcony. The boundary vegetation would not effectively mitigate this overlooking.
5. The respective gardens described above are already overlooked by windows on the upper floors of surrounding residential properties. Consequently, they are not entirely private spaces. However, the overlooking from a balcony in a raised position is more intrusive than that which would be experienced from a typical upper floor window, as it involves future residents sitting out at a raised level for long periods of time.
6. There was previously a house on the site which had a first-floor roof terrace. However, the replacement block of flats now under construction comprises development of much greater intensity. There would be more overlooking in any event due to the number of flats. This issue was identified in previous appeal decisions¹ relating to earlier schemes that were ultimately dismissed. As such, the prior existence of a roof terrace does not justify either proposal.
7. In consequence, there would be a significant perceived and actual loss of privacy in both proposals. There would be unacceptable harm to the living conditions of the residents of neighbouring residential properties. The proposal conflicts with policy DM2 of the Development Management Plan 2015 which seeks, amongst other things, to ensure that new development protects the amenity of adjoining occupiers. The proposal would also conflict with the Elmbridge Design and Character Supplementary Planning Guide, which shares similar objectives in relation to the protection of amenity.

Character and Appearance

8. In both cases the works are set to the rear of the new building, away from any significant public views. The proposal is set within a context where there is a

¹ Paragraph 14 of linked appeal decisions APP/K3605/W/18/3205204 and APP/K3605/W/3214472

variety of building design. The use of flat roofs as a terrace, with associated means of enclosure is a common arrangement in built up areas, on both flats and houses. The glass balustrading and screens would be set well away from the main roof of the building and are not of a scale that has any significant impact on the architectural coherence of this building. The building would retain its attractive, brick faced appearance, when it is viewed from the rear. Overall, the changes would be insignificant in terms of their visual impact.

9. Consequently, there would be no harm to the character and appearance of the area. Neither proposal conflicts with policy DM2 of the Development Management Plan 2015 or policy CS17 of the Elmbridge Core Strategy 2011 which, amongst other things, seek to achieve high quality design. Nor would either proposal conflict with the Elmbridge Design and Character Supplementary Planning Guide, which shares similar objectives.

Other Considerations

10. In both cases the provision of a balcony would enhance the living conditions experienced by the future occupants of the respective flat it would serve by providing external amenity space. The proposals would also maximise the potential of the site. However, these considerations do not outweigh the harm that would arise through the significant loss of privacy experienced by existing residents, as a consequence of either development.
11. The planning policies identified above are consistent with the National Planning Policy Framework (the Framework), which seeks to achieve well-designed places. The Council refer to its inability to demonstrate a 5-year housing land supply. However, in this case the variation proposed would not facilitate the provision of new housing. It would amount instead to changes to the design of existing housing which was under construction at the time of my site visit. Consequently, for the purpose of this decision the policies most relevant for determining the application are not out of date and the tilted balance, as set out in paragraph 11 (d) ii) of the Framework does not apply.

Conclusion

12. Both proposals would be acceptable in terms of their effect on the character and appearance of the area. However, in both cases there would be unacceptable harm to the living conditions of existing residents, through loss of privacy. The disputed conditions are therefore necessary to preserve the privacy of neighbouring occupants and thus make the development acceptable in planning terms, meeting the relevant tests set out in the Framework and Planning Practice Guidance, and should not be removed or varied in the manner sought. Both proposals therefore conflict with the development plan and there are no other considerations that outweigh this finding. Both appeals should be dismissed.

Neil Holdsworth

INSPECTOR

Appendix 1 – Conditions under dispute and reasons given

Condition 2 - The development hereby permitted shall be carried out in strict accordance with the following list of approved plan numbers 2017 P 366 401 Rev A; 2017 P 366 403; 2017 P 366 405; DPA-67821-01 Rev A; DPA-67821-03 Rev C and 2017 P 366 404 all received on 23rd April 2019 and 2017 P 366 402 Rev B received on 22nd May 2019.

Reason: To ensure that the development is carried out in a satisfactory manner.

Condition 6 - The development hereby permitted shall have no windows or other openings (other than those shown on drawing number 2017 P 366 402 Rev B) inserted into the north and south elevations unless planning permission has first been granted by the Borough Council.

Reason: To preserve the reasonable privacy of neighbouring residents in accordance with Policy DM2 of the Elmbridge Development Management Plan 2015 and the Elmbridge Design and Character SPD 2012.

Condition 16- The flat roof to the extension hereby permitted shall not at any time be altered or adapted to form a balcony, roof garden or similar amenity area without the grant of a further specific permission from the Borough Council.

Reason: To prevent undue loss of privacy to adjacent properties contrary to Policy DM2 of the Elmbridge Development Management Plan 2015 and the Elmbridge Design and Character SPD 2012.