



Appeal Decision

Site Visit made on 7 October 2020

by S Thomas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 February 2021

Appeal Ref: APP/W0340/W/20/3247180
37A Russell Road, Newbury, RG14 5JX

- 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 Peter Richardson against the decision of West Berkshire District Council.
- The application Ref 19/02676/HOUSE, dated 24 October 2019, was refused by notice dated 17 January 2020.
- The application sought planning permission for Demolish single-storey garage and rear conservatory. Proposed two-storey side and rear extensions and loft conversion, to create large family home. Widen existing dropped kerb access to provide four off road parking spaces.
- The conditions in dispute are Nos 2 & 3 which state that: (2) *The development hereby permitted shall be carried out in accordance with the approved drawings: Drawing title "Proposed" Drawing number 2855-02 Rev D. Date stamped 13th April 2018; Drawing title "Proposed Block Plan". Drawing number not present Date stamped 13th April 2018; Drawing Title "Proposed Street Scene" Drawing number 2855-02D Rev. Date stamped 13th April 2018 and (3) the materials to be used in the development hereby permitted shall be as specified on the plans and the application form.*
- The reasons given for the conditions are: (2) *For the avoidance of doubt and in the interests of proper planning and (3) To ensure that the external materials are visually attractive and respond to local character. This condition is imposed in accordance with the National Planning Policy Framework (March 2012), Policies ADPP 1, 2, CS14 and CS19 of the West Berkshire Core Strategy (2006-2026), Supplementary Planning Document Quality Design (June 2006), Supplementary Planning Guidance House Extensions (July 2004).*

Decision

1. The appeal is dismissed.

Background

2. Planning permission was granted by the Council in 2018¹ to demolish single-storey garage and rear conservatory; proposed two-storey side and rear extensions and loft conversion, to create large family home; widen existing dropped kerb access to provide four off road parking spaces. The appellant now wishes to amend the proposed development and has sought a variation of

¹ 18/00541/HOUSE

Condition 2 and 3 of planning permission 18/00541/HOUSE to amend the proposed plans and materials.

Main Issue

3. I note the reasons for the Council having refused planning permission. In addition, I note the original plans approved as part of planning permission (18/00541/HOUSE) submitted with the appellant's evidence. On their face, the plans before me as part of the appeal vary noticeably from those approved. Accordingly, I have consulted the main parties as to whether an application under Section 73 of the Town and Country Planning Act (1990) (S73) is the appropriate procedure. Accordingly, I consider this to be the main issue in this case.

Reasons

4. Taking account of recent caselaw²; the original description of development for planning permission 18/00451/HOUSE refers to 'proposed two storey side and rear extensions'. Whilst the planning application subject of this appeal amends the form of development to include a single storey element alongside a reduced two storey element, given a two storey element remains I do not consider that amending the condition would result in a conflict between it and the description of development.
5. However, any amendment can only be made provided the new condition does not fundamentally alter the original planning proposal for which planning permission has been granted. Consequently, I have considered the PPG³ which identifies that one of the uses of a S73 application is to seek a minor material amendment where there is a relevant condition that can be varied. Specifically, PPG goes on to state that '*whilst there is no statutory definition of a 'minor material amendment it is likely to include any amendment where its scale / or nature results in a development which is not substantially different from the one that has been approved'*'.
6. The original planning permission incorporated a gable roof to each side elevation. Whilst not a reason for refusal, the current scheme proposes the replacement of one gable end with a hipped roof. This differing roof form to the front elevation creates a significantly different appearance to the dwelling when viewed from the street scene.
7. To the rear elevation, the original scheme proposed a large two storey rear extension, a single storey extension and a dormer window to the roof. The amended scheme reduces the width of the two-storey element to a single pitch and incorporates a new single storey element. The depth of the two-storey extension has also increased by approximately 0.6m. Similarly, given the change to the roof profile the rear elevation now has a part hip/part gable roof form. Taken together, these amendments substantially change the proposal from the scheme that has been approved.
8. Whilst I accept the scale of development proposed in the current application is reduced from that on the original application, having regard to the original plans and the amendments proposed in the scheme before me, I conclude they are substantially different. Consequently, considering the scope of the S73

² *Finney v Welsh Ministers & Others* [2019] EWCA Civ 1868

³ Planning Practice Guidance (PPG) Reference ID's 21a-012-20140306, 17a-013-20140306, & 17a-017-20140306

procedure, the changes go beyond a minor material amendment. Therefore, there is no option other than to conclude that the variation of condition 2 under a S73 procedure is not appropriate in this particular case.

Conclusion

9. On the basis of the above, I therefore conclude that the appeal must be dismissed.

S Thomas

INSPECTOR