



Appeal Decision

Site Visit made on 2 March 2021

by R E Jones BSc (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 March 2021

Appeal Ref: APP/K3605/D/20/3264174

5 Medina Avenue, Esher KT10 9TJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Salim Rajabali against the decision of Elmbridge Borough Council.
 - The application Ref 2020/1031, dated 29 April 2020, was refused by notice dated 12 November 2020.
 - The development proposed is part two/part single-storey rear extension, side and rear dormer windows, front and side roof lights, conversion of garage into living space and alterations to fenestration.
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Decision

1. The appeal is allowed, and planning permission is granted for part two/part single-storey rear extension, side and rear dormer windows, front and side roof lights, conversion of garage into living space and alterations to fenestration at 5 Medina Avenue, Esher KT10 9TJ in accordance with the terms of the application, Ref 2020/1031, dated 29 April 2020, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved drawings: 3611502-AA80106-E01; 3611503-AA80106-E02; 3611504-AA80106-L01; 3611505-AA80106-P01 and 3611506-AA80106-P02.
 - 3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.
 - 4) Prior to the first occupation of the development hereby permitted the windows and roof lights in the side elevation of the development hereby permitted shall be fitted with obscured glazing that accords with level three obscurity as shown on the Pilkington textured glass privacy levels (other glass suppliers are available) and shall be top level opening only at 1.7m above the floor level of the room in which the window is installed. The windows shall be permanently retained in that condition thereafter.
 - 5) The flat roof to the extensions hereby permitted shall not at any time be altered or adapted to form a balcony, roof garden or similar amenity area.
 - 6) All flood mitigation measures shall be carried out in accordance with the approved details set out in the Flood Risk Assessment by Assi & Assi

Limited received on 30/04/2020 and the Grounds of Appeal Statement (November, 2020).

Procedural Matter

2. In my decision and banner heading above, I have taken the development description from the appeal form and the Council's refusal notice. It more accurately describes the proposal and I consider that no party is prejudiced through the use of this description.

Main Issues

3. The main issues are the effect that the proposed development would have on the living conditions of No 3 Medina Avenue (No 3), with particular regard to outlook; and the effect of the proposed development on flood risk.

Reasons

Living Conditions

4. The appeal property and its neighbour at No 3 are detached dwellings which occupy relatively wide plots. The proposal would increase the depth of the appeal dwelling by 4m at ground floor level and slightly over 3m at first floor, along the boundary with No 3, and project the same distances beyond that property's rear elevation. The proposal would be marginally set in from the boundary between the two properties, while the side walkway relating to No 3 provides a further gap between the proposal and the neighbouring flank wall.
5. No 3's rear windows look out onto the property's patio and rear garden. This area is wide and spacious and backs onto a line of tall mature trees which provide a pleasant outlook for occupiers of the property. The nearest ground floor room is served by a set of patio doors, and from within this room the proposal would be a more prominent feature than the existing boundary treatment. However, the patio doors are wide and tall and set in from the boundary with the appeal property, and despite the proposal's presence, the room served by the patio doors would continue to have a broad view over No 3's spacious rear garden ensuring a relatively open aspect. Moreover, the proposal's level of projection beyond the patio doors is not excessive in depth. Therefore, whilst the proposed development would result in some additional sense of enclosure to one side, the wider outlook from that nearest room would not be significantly harmed as a result of the proposal.
6. The proposed development's rearward projection would also result in some additional enclosure to No 3's garden alongside the common boundary. Yet this area represents a relatively small proportion of No 3's sizeable garden. Furthermore, I noted during my site visit that the covered patio furniture, and the likely location for outdoor seating, was situated away from the boundary with the appeal dwelling. I therefore consider that any additional sense of enclosure arising as a result of the proposed development would be very localised, and would not have any significant implications for the living conditions of neighbouring residents with regard to their use and enjoyment of their wider rear garden area.
7. The appeal proposal along with the deeper lying dwelling at No 1 would both flank the rear garden of No 3. However, in combination, they would not appear overly dominant or imposing upon No 3's garden area. Moreover, the open aspect at No 3's rear would be largely maintained thus ensuring no harm to the outlook of its occupiers.

8. Although not referred to in the Council's refusal notice, the neighbour at No 3 has raised concerns that the proposal would result in a loss of light. With rear windows and a garden that face north east, the proposal's rearward projection would likely result in some loss of light to No 3's patio area and nearest ground floor habitable room. I also note that the proposed ground floor extension would marginally breach the 45-degree line, referred to in the Council's Supplementary Planning Document relating to Home Extensions¹ (Extensions SPD), when taken from the nearest ground floor window at No 3. But, taking account of the number of windows serving the rear of No 3, the orientation of the sun and the width and extent of its rear garden, any overshadowing which may arise would be relatively short-lived and localised, and would not result in a significant or detrimental reduction in the levels of light reaching No 3's rear garden or habitable areas.
9. For the reasons above, the proposed development would not have a significant detrimental effect on the living conditions of No 3 Medina Avenue, with particular regard to outlook. As such, there is no conflict with Policy DM2 of the Elmbridge Local Plan - Development Management Plan (April 2015) or with the aims of the Extensions SPD. Among other things, these require proposals to be designed to offer an appropriate outlook and not to dominate or overwhelm neighbours. The proposal also aligns with the guidance in paragraph 127 of the National Planning Policy Framework (the Framework), where it requires proposals to maintain a high standard of amenity for existing users.

Flood Risk

10. The appeal site is located in Flood Zone 3b, which is within an area at higher risk to flooding. Accordingly, even in the case of small-scale developments, the Council's Supplementary Planning Document (Flood Risk SPD)², requires a site-specific Flood Risk Assessment (FRA) to demonstrate that the development is not at risk of flooding. Moreover, Policy CS26 of the Core Strategy³, amongst other things, requires the risk from flooding to be minimised whilst not increasing the risk of flooding elsewhere.
11. The appellant's FRA provides flood resistant and resilient measures, whilst the appeal has been accompanied by an evacuation plan in the event of flooding at the site. However, the Council note that the FRA fails to take account of the source of flood risk in relation to the appeal site, information on flood depth and does not consider the impact of the proposed development on flood risk at other properties as a result of flood storage displacement.
12. In the absence of this information, the proposal's effect on flooding has not been demonstrated, and I can't be certain that it would not result in flood risk at the site and elsewhere. Consequently, there would be conflict with those aspects of Policy CS26 of the Core Strategy and the SPD I have referred to above. The proposal would also fail to accord with the Framework, in terms of taking full account of flood risk.
13. Given the scale of the development and it being in the minor development category, I attach significant weight to its conflict with the development plan, in taking this matter forward into the planning balance part of my assessment.

¹ Supplementary Planning Document Companion Guide: Home Extensions (April 2012)

² Flood Risk Supplementary Planning Document, May 2016

³ Elmbridge Core Strategy, July 2011

Other Matters

14. The appellant has indicated that they could build a rear extension, under permitted development rights⁴ with a comparable ground area and projection from the rear wall of the dwelling without the need to apply for planning permission. An FRA would also not be required in this instance.
15. There is nothing before me which suggests this course of action is not open to the appellant or that it could not be implemented. The prospect of this outcome is of a reasonable likelihood and is more than a theoretical possibility, given that a planning application has been submitted to increase the amount of living accommodation at the dwelling. Therefore, it represents a legitimate fallback position. Furthermore, there would be no guarantee that the extension built under the fall-back position, would incorporate the flood resilient measures proposed for the appeal development. These measures would mitigate flood risk and ensure the safety of occupiers. Accordingly, this fall-back position weighs significantly in favour of the proposed development.

Planning Balance

16. Whilst I have found there to be no harm in respect of the living conditions of No 3, this is a neutral factor that does not lend any weight in the planning balance.
17. The development does not comply wholly with the provisions of Policy CS26 and the Flood Risk SPD. However, I have given significant weight to the fall-back position and the effects of the proposed development, with particular regard to flood risk. These would be comparable, while the appeal proposal would have the added benefit of incorporating flood mitigation measures. Despite the conflict with the policies of the Development Plan, the planning balance is clearly in favour of the grant of planning permission, and the conflict with some parts of the development plan is outweighed by the material considerations set out above.

Conditions

18. In addition to the standard time limit condition I have considered it necessary to include a schedule of plans that the development relates to, for the avoidance of doubt and in the interests of certainty. A condition relating to the construction of the extension in materials to match the existing dwelling is necessary to safeguard the character and appearance of the area. It is necessary in the interests of neighbouring privacy that obscure glazing is installed in the proposed flank wall windows. Similarly, in order to protect the privacy of adjoining occupiers, it is necessary that the flat roof above the ground floor extension does not incorporate a balcony or similar development at a later date. Finally, I consider it necessary to provide the flood mitigation measures proposed to reduce the risk from flooding and ensure the safety of occupiers.

Conclusion

19. For the reasons given above I conclude that the appeal should be allowed.

RE Jones

INSPECTOR

⁴ Class A, Part 1, Schedule 2 of the Town and Country Planning (General Permitted) (England) Order 2015 (the GPDO)