



Appeal Decision

Site Visit made on 15 March 2021

by Robin Buchanan BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 April 2021

Appeal Ref: APP/R3650/D/20/3264046

1 Little Austins Road, Farnham, GU9 8JR

- 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 & Ms E & C Emblem & Rice against the decision of Waverley Borough Council.
- The application Ref WA/2020/1084, dated 23 June 2020, was refused by notice dated 16 October 2020.
- The application sought planning permission for the erection of extensions and dormer windows without complying with a condition attached to planning permission Ref WA/2020/0077, dated 6 April 2020.
- The conditions in dispute is No 5 which states that: *'The first and second storey windows in the southeast elevation shall be glazed with obscure glazing to the extent that intervisibility is excluded and shall be retained, and these windows shall be non-opening below 1.7m above floor level'.*
- The reason given for the condition is: *'In the interest of the amenities of the area, in accordance with Policy TD1 of the Local Plan 2018 (Part 1) and retained Policies D1 and D4 of the Local Plan 2002.*

Decision

1. The appeal is allowed and planning permission is granted for the erection of extensions and dormer windows at 1 Little Austins Road, Farnham, GU9 8JR in accordance with the terms of the application, Ref WA/2020/1084, dated 23 June 2020, subject to the conditions in the attached schedule.

Preliminary Matter

2. The reason given for imposing condition No 5 in the banner above, which is taken from the Council's decision notice WA/2020/0077, includes Policy TD1 of the Waverley Borough Local Plan Part 1, February 2018 (the LPP1). This policy is not included in the reason for refusal in the Council's decision notice WA/2020/1084, which refers to retained Policies D1 and D4 of the Waverley Borough Local Plan, April 2002 (the LP). LPP1 Policy TD1 is though referred to in the officer report for WA/2020/1084 and a copy of this policy is in the Council's appeal questionnaire.
3. I note that the appellants' Appeal Statement only considers LP Policies D1 and D4, whereas LPP1 Policy TD1 includes objectives that are relevant to this appeal. However, these objectives are not materially different to similar objectives in LP Policies D1 and D4. Having regard to the 'Wheatcroft

Principles¹ my consideration of LPP1 Policy TD1 would not therefore prejudice the appellant. I have determined the appeal on this basis.

Background and Main Issue

4. The Council has granted planning permission WA/2020/0077 (the permitted development) for the erection of extensions and dormer windows at No 1 Little Austins Road. Condition No 5 is precisely drafted and restricts outlook by requiring the first and second storey south east elevation windows in the permitted development to be fitted with obscured glazing and to be non-opening below 1.7m above floor level. The Council considers that restricting outlook in this way would avoid detrimental overlooking of a neighbouring rear garden, including a terrace. The appellants consider that condition No 5 is not necessary or reasonable and seek to have the condition removed to allow these windows to be clear glazed and fully openable.
5. Taking this background into account, the main issue is the effect that removing condition No 5 would have on the living conditions of the existing occupiers of the neighbouring house, The Glen, having regard to its rear garden and terrace and to privacy.

Reasons

6. The appeal property is a detached two and a half storey house sited in a reasonably large, mature landscaped residential curtilage. It is in a row of well-spaced similar houses and gardens in a relatively low density, verdant residential suburb of Farnham. On one side of the house is another house at The Glen. This house and its rear garden, including a terrace, are on higher ground than the appeal site and most of the common boundary is as a result banked, and includes hedgerow, taller shrubs and some much taller mature trees. The appeal site is also located in the Great Austins Conservation Area (the CA).
7. The main extensions in the permitted development would close the intervening gap between these two houses at first floor level by 7m and at second floor level by 5.3m and include two bedrooms with side windows facing The Glen. The first floor bedroom would be a five pane window and the second floor bedroom would be two single pane windows. At my site visit I was able to look out of the existing bedroom windows in the first and second storeys of the south east elevation of the house, towards The Glen.
8. I acknowledge that the existing boundary planting may die, be reduced in height or be removed for some other reason, even the trees. It is therefore not a permanent feature. Nonetheless, this planting is well-established, includes some evergreen and beech species (thus some visual presence all year round) and is reasonably tall and dense, including branches. This planting would therefore have an appreciable moderating screening effect in downward views from the two new bedrooms towards the rear garden and terrace at The Glen, especially during summer months when fully in leaf and when this rear garden and terrace are likely to be most used for domestic activity; but also, as I saw, a meaningful screening effect at other times of the year. Some of this planting is also within the rear garden of The Glen, next to the common boundary, including near the terrace.

¹ *Bernard Wheatcroft Ltd v SSE* [JPL 1982 P37]

9. Notwithstanding the above, having regard to the Council's Residential Extensions supplementary planning document, October 2010 (the SPD) both of the permitted bedrooms would be principal habitable rooms, albeit that I would not normally expect a bedroom to be occupied for the same duration or times of daylight hours as, for example, a living room. Nonetheless, the SPD indicates that there should be a distance of at least 18m between the windows of these permitted bedrooms and 'neighbouring private amenity space'. On the evidence before me, the first floor bedroom windows would be 13.3m to the closest part of the rear garden of The Glen and the second floor windows would be 15m away.²
10. However, I saw at my site visit that this part of the rear garden is relatively narrow and mainly a functional utility space next to the house, including side access past the house. The main part of the rear garden extends in depth behind the house, including further away from the common boundary. The degree of infringement of the 18m guideline distance in this regard, and at this position, would not therefore unduly adversely affect the use or enjoyment of this part of the rear garden by the occupiers of The Glen.
11. Moreover, the rear terrace at The Glen would be (albeit by a small amount in respect of the first floor window) further than 18m from any of the permitted bedroom windows. Accordingly, despite the change in elevation, and even without the benefit of the intervening planting, there would be a substantial separation between the permitted windows and the terrace, and also to most of the rear garden. Both of these spaces would therefore be beyond the distance at which the SPD indicates that overlooking may otherwise cause privacy to be 'significantly reduced'.
12. Furthermore, whilst the permitted bedroom windows would be closer to The Glen than the existing bedroom windows, there would be fewer windows (and window panes) overall and one less bedroom facing the rear garden and terrace than at present. The permitted development would therefore reduce the extent of outlook towards The Glen in this regard. In addition, both of the permitted bedrooms would have clear glazed (and fully openable) windows facing in other directions, whereas one of the existing bedrooms does not. Outlook would not therefore be as constrained solely towards The Glen as it is at present.
13. I note that the SPD is intended by the Council to be 'used in a flexible way' and that the 'general rule of thumb' guidelines may be 'relaxed if the character of the immediate [area] suggests that lesser distances may be appropriate'. The appeal site is not in a tighter, more densely developed urban arrangement of houses and gardens where reasonable expectations for privacy may need to be adjusted and relaxed accordingly. Equally, on the evidence before me, there is no compelling reason to suggest that it would be appropriate in this appeal to increase the 18m distance referred to in the SPD or to require obscured glazing and partly opening windows in circumstances where the Council's relevant guideline is achieved.
14. Considering the above, notwithstanding the proximity of the permitted development to The Glen, clear glazed and fully openable bedroom windows would not result in a significant pattern of overlooking of the rear garden or terrace detrimental to the amenities of the occupiers of The Glen. It would not

² Appellants' Appeal Statement – pages 11 and 12

therefore cause harm to these living conditions of the occupiers of The Glen having regard to privacy. The development would accord with LPP1 Policy TD1 and with LP Policies D1 and D4. These include that development should not significantly harm the amenities of occupiers of neighbouring properties by way of overlooking, avoid material detriment by loss of general amenity, including privacy, and improve the quality of life of current residents. It would also accord with section 8.1 of the SPD and would be consistent with the National Planning Policy Framework paragraph 127 which includes that development should provide a high standard of amenity for existing users.

Other Matters

15. Framework paragraph 193 indicates that great weight should be given to the conservation of designated heritage assets, such as a Conservation Area. I note that the Farnham Neighbourhood Plan describes the CA as including 'a grid pattern development on the lines of a garden suburb, with wide, straight and tree-lined streets. Houses are set well back from the roads and the area has a spacious character. Gardens and roads were planted extensively, with many trees and the distinctive laurel hedging giving a verdant character to the area'.³ This is consistent with what I observed at my site visit.
16. I note that the Council considered that the permitted development would not harm the character or appearance the CA. On the evidence before me I have no reason to reach a different view in this regard. In addition, clear glazing and fully openable windows in the south east side elevation of the appeal property would have no material visual or physical consequence to the permitted development and would not therefore affect the character and appearance of the CA. Consequently, there would be no harm to, or loss of, the significance of this designated heritage asset and such glazing would therefore preserve the character and appearance of this part of the CA, and accordingly of the CA overall.

Conditions

17. My decision should set out all of the conditions imposed on the new permission and restate the conditions imposed on planning permission WA/2020/0077 that remain relevant and continue to have effect.⁴ Where necessary I have modified the wording in the interests of clarity and in light of the tests and advice in Framework paragraph 55 and in PPG.⁵
18. Having regard to s73(5)⁶ and to PPG,⁷ the time period for the commencement of the development in this appeal should not be extended from that set out in the original permission. The 3 year period should therefore run from the date of planning permission WA/2020/0077 and I have modified the wording of the standard time limit condition (imposed as condition No 1) accordingly.
19. I agree that a condition is necessary to specify the approved plans to ensure certainty. The approved plans listed in condition No 1 of planning permission WA/2020/0077 are not in dispute and this condition is therefore re-imposed (as condition No 2) with minor modification. The details of external materials in the

³ Appellants' Appeal Statement – paragraph 2.2

⁴ Planning Practice Guidance (PPG) Paragraph ID: 21a-040-20190723

⁵ Paragraph ID: 21a-003-20190723

⁶ Town and Country Planning Act 1990, as amended

⁷ Paragraph ID: 17a-014-20140306

permitted development are also not in dispute. I agree that a condition is necessary and reasonable in this regard for the reasons stated in condition No 2 of planning permission WA/2020/0077 and it is therefore reimposed (as condition No 3) with minor modification.

20. I agree that conditions are necessary and reasonable to protect trees at the appeal site from any works, demolition or other development, including the provision or repair of services, for the reasons stated in conditions No 3 and No 4 of planning permission WA/2020/0077. These are pre-commencement of development conditions. This form of both conditions was accepted by the appellants previously and is not in dispute in this appeal. These conditions are therefore reimposed (as conditions No 4 and No 5) without modification.
21. I am satisfied that where I have modified the wording of conditions and attached a new condition these do not materially alter the development subject to the original permission, or conflict with the description of development, and are conditions that could have been imposed on the original permission.⁸

Conclusion

22. As explained above and having regard to the relevant tests of Framework paragraph 55 and related PPG,⁹ I find that condition No 5 does not serve a useful planning purpose.¹⁰ It is not necessary or reasonable to make the development permitted under application WA/2020/0077 acceptable¹¹ and should be removed.
23. For the reasons given the appeal succeeds.

Robin Buchanan

INSPECTOR

⁸ Paragraph ID: 21a-040-20190723

⁹ PPG paragraph 21a-003-20190723

¹⁰ *Newbury DC v SSE & Others* [1980] 2 WLR 379, [1981] AC 578

¹¹ Framework paragraph 54

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of planning permission WA/2020/0077, which was approved on the 6 April 2020.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - AS660/10 P01 Site plan and block plan
 - S11682-1/1 Topographic survey plan
 - S11682-1/2 REV A Existing elevations
 - S11682-1/3 Existing ground floor plan
 - S11682-2/3 Existing first floor plan
 - S11682-3/3 Existing second floor plan
 - AS660/15 P03 Proposed elevations
 - AS660/11 P01 Proposed ground floor plan
 - AS660/12 P01 Proposed first floor plan
 - AS660/13 P02 Proposed second floor plan
 - AS660/14 P01 Proposed roof plan

No material variation from these plans shall take place unless otherwise first agreed in writing with the Local Planning Authority.

- 3) Notwithstanding condition No 2, the materials to be used in the construction of the external surfaces of the development hereby permitted shall match those in the existing building.
- 4) Prior to commencement of any works on site, demolition or other development activities, a scheme of tree protection (in line with BS 5837:2012 Trees in relation to design, demolition and construction - Recommendations) shall be submitted to and agreed by the Local Planning Authority in writing. Where relevant, such scheme shall also take "off site" trees into consideration. The Local Authority Tree and Landscape Officer shall be informed of the proposed commencement date a minimum of two weeks prior to that date to allow inspection of protection measures before commencement. The agreed protection to be kept in position throughout the development period until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without written consent of the Local Planning Authority.
- 5) Prior to commencement of any works on site, details of any services to be provided or repaired including drains and soakaways, on or to the site, shall be submitted to and approved by the Local Planning Authority in writing and shall be carried out as shown. This requirement is in addition to any submission under the Building Regulations. Any amendments to be agreed with the Local Planning Authority in writing.