



Appeal Decision

Site visit made on 13 May 2021

by R Jones BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 July 2021.

Appeal Ref: APP/K3605/D/21/3267259

53 Arbrook Lane, Esher KT10 9EG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A 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 Mrs J Shillington against the decision of Elmbridge Borough Council.
 - The application Ref 2020/1040, dated 20 April 2020, was refused by notice dated 10 November 2020.
 - The application sought planning permission for rear dormer windows and front and side roof lights without complying with a condition attached to planning permission Ref 2018/2607, dated 3 December 2018.
 - The condition in dispute is No 4 which states that: Prior to the first occupation of the development hereby permitted the two rooflights on the front elevation of the development within the roofslope hereby permitted shall be glazed with obscure glass that accords with level three obscurity as shown on the Pilkington textured glass privacy levels (other glass suppliers are available) and only openable above a height of 1.7m above the internal floor level of the room to which it serves. The window shall be permanently retained in that condition thereafter.
 - The reason given for the condition is: to preserve the reasonable privacy and amenities of neighbouring residents in accordance with Policy DM2 of the Elmbridge Development Management Plan 2015.
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Decision

1. The appeal is allowed and planning permission is granted for rear dormer windows and front and side roof lights at 53 Arbrook Lane, Esher KT10 9EG in accordance with the application Ref 2020/1040 made on the 20 April 2020 without complying with condition No 4 set out in planning permission Ref 2018/2607 granted on 3 December 2018 by Elmbridge Borough Council, but otherwise subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in strict accordance with the following list of approved plans: 1808 P_101 received on 24th August 2018 and 1808 P_102 received on 8th October 2018.
 - 2) The materials to be used in the construction of the external surfaces of the extension shall match as nearly as is practically possible those of the existing building to which it is attached, in colour, type, finish and profile.

Preliminary Matter

2. The Council's decision notice incorrectly refers to Policy CS8 of the Elmbridge Core Strategy (2011) (CS) because this policy relates to Thames Ditton, Long Ditton, Hinchley Wood and Weston Green and the appeal site is in Esher. CS Policy CS9 which relates to Esher is however referred to in the Planning Officer Report and has been provided by the Council with the appeal questionnaire.

Background and Main Issue

3. No.53 Arbrook Lane is a detached dwelling which has planning permission for three rear dormer windows and front and side rooflights. I saw from my site visit that the planning permission has been implemented, at least in so far as it relates to the rooflights. The rear of the dwelling was not fully visible from the road but photographs submitted by the appellant in evidence show the three rear dormers windows.
4. The appellant wishes to remove condition 4 which required the two rooflights on the front elevation to be glazed with obscure glass and only openable above a height of 1.7m above the internal floor level of the room it served. For the avoidance of any confusion, the Existing and Proposed Elevations (drawing ref. 1808_P_101 00) approved pursuant to planning permission 2018/2607 incorrectly annotated the side elevation of the dwelling as 'Front Elevation.'
5. The main issue is the effect that removing the condition would have on the living conditions of neighbours at No.51a Arbrook Lane.

Reasons

6. The *Elmbridge Local Plan Design and Character Supplementary Planning Document (2012)* (SPD) recognises that the use of rooflights and high-level windows is effective in achieving privacy without recourse to obscure glazing. Figure 5.19 of the SPD provides an example of a rooflight above 1.7m, which would be at or above the eyeline of many people. The rooflights on the side elevation of No.53 Arbrook Lane (No.53) serve a second-floor bedroom and ensuite bathroom and are only around 1.485m above the internal floor level of these rooms. There would therefore be a degree of conflict with the technical guidance in the SPD.
7. However, the side roof of No.53 is steeply pitched and the location of the rooflights relatively high on the roof slope means any overlooking to the neighbouring dwelling, No.51a Arbrook Lane (No.51a), would be from a reasonable height and would be predominantly over the side roof. At ground floor, No.51a has two windows to the garage and utility area that face No.53. At first floor, there is living accommodation above the garage with a dormer to the front, but no windows in the side roofslope. Therefore, given the height of the rooflights, and the angle and degree of separation distance between the two dwellings (being around 9m), the rooflights would not result in overlooking so as to cause loss of privacy to the living accommodation of No.51a.
8. The building line of No.53 is set slightly forward of No.51a and whilst there could be some overlooking from the ensuite rooflight toward the driveway of No.51a, this is not an area usually afforded a high level of privacy and because of the nature of use of an ensuite it is likely to be an occasional or infrequent event.

9. The rooflight to the bedroom at the rear of No.53 is a secondary window, with a rear dormer providing dual aspect. It would be possible to overlook the rear garden of No.51a from this rooflight but the view would be from an oblique angle, from a reasonable height and distance and would also be filtered by the mature trees and vegetation on the common boundary. Whilst I acknowledge that the long-term retention of such vegetation cannot be guaranteed, in combination with the angle and separation, I do not find overlooking would result in a significant loss of privacy to a small part of the garden of No.51a. Nor do I find that, especially given the location of the windows at second floor relatively high on the roof slope, there would be a particular perception of lack of privacy.
10. Consequently, the removal of the condition would not cause harm to the living conditions of No.51a. There would therefore be no conflict with Elmbridge Core Strategy (2011) (CS) Policy CS17, Elmbridge Local Plan Development Management Plan (2015) Policy DM2 or paragraph 127 of the National Planning Policy Framework (the Framework) which all require the protection of the living conditions of existing occupiers. There would also be no conflict with CS Policy CS9 which sets out the role of Esher in delivering new development.

Conditions

11. The Planning Practice Guidance (the Guidance) makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission unless they have already been discharged. I have considered the conditions attached to the original planning permission in light of this, and paragraph 55 of the Framework.
12. Since construction of the development that is the subject of the original permission has already commenced, it is not necessary to attach the original condition 1, which sets a time limit for commencement of the development. I have however imposed a condition (no.1) specifying the relevant drawings and that materials are to match the existing (no.2) as these provide certainty.

Conclusion

13. For the reasons given above, I conclude the appeal should be allowed.

R. Jones

INSPECTOR