



Appeal Decision

Site Visit made on 8 November 2021

by B Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 November 2021

Appeal Ref: APP/P3610/W/21/3272651

7 Chase End, Epsom KT19 8TN

- 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 Oakton Developments Ltd. against the decision of Epsom and Ewell Borough Council.
 - The application Ref 20/01874/REM, dated 18 December 2020, was refused by notice dated 23 February 2021.
 - The application sought planning permission for the erection of 1 x 2 bedroom and 2 x 3 bedroom semi-detached houses including new access, associated external works and parking, following demolition of No. 7 Chase End without complying with a condition attached to planning permission Ref 20/00278/OUT, dated 23 July 2020.
 - The condition in dispute is No 7 which states that: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order revoking or re-enacting or amending those Orders with or without modification), planning permission shall be required in respect of development falling within Schedule 2, Part 1, Classes A, B, C, D and E of that Order.
 - The reason given for the condition is: To ensure that development within the permitted Classes in question is not carried out in such a way as to prejudice the appearance of the proposed development or the amenities of future occupants of the development or the occupiers of adjoining property in accordance with Policy CS5 of the Core Strategy (2007) and Policies DM10 (Design Requirements for New Developments (including House Extensions)) of the LDF Development Management Policies (2015).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. An application was recently approved¹ to vary condition 7. This adjusted the provisions of the condition to exclude reference to classes C and D. As a result, this element of the condition is no longer a matter of dispute between main parties. I shall therefore focus on the effect of those works that can be undertaken by classes A, B and E. These relate to the enlargement of a dwellinghouse, additions to its roof and buildings incidental to the enjoyment of the dwellinghouse.

¹ Variation of Condition Application Reference: 21/00549/REM

Main Issue

3. The main issue is whether condition 7 is reasonable and necessary having regard to local policies and the National Planning Policy Framework (The Framework).

Reasons

4. The Framework advises that conditions should not be used to restrict Permitted Development (PD) rights unless there is clear justification to do so. Paragraph 56 requires conditions to be necessary and reasonable. Furthermore, the Guidance² states that conditions that restrict the future use of PD rights may not pass the test of reasonableness or necessity.
5. The appeal site is behind a row of dwellings arranged within the small turning head of Chase End. The site is partially overlooked by Wellington Court and close to other neighbouring buildings to the rear. This creates a relatively small and enclosed development area. The rear gardens of the approved dwellings are small, especially for plots 1 and 2. Plot 2 seems particularly constrained with two small pockets provided to the side and rear of the dwelling. The plots are not large. In contrast the development footprint and hardstanding associated with each unit, would accommodate a relatively large proportion of the site. This makes the provision and retention of available external space more important. The sense of enclosure, formed by adjacent development, further raises the importance of the availability of the associated gardens.
6. The approved dwellings would be likely to accommodate families where future occupiers would require access to a reasonable garden area for recreation and social benefits. PD rights with respect to extensions and outbuildings are relatively generous. Extensions and outbuildings could substantially erode the garden areas available to future occupiers of the scheme. Furthermore, despite the dwellings being comparatively close to their side boundaries, it is evident that these could still be extended to their sides. They would not therefore be demonstrably restricted from such development and this would further reduce the garden areas.
7. As such, the combined effect of incremental PD development could substantially diminish the size and usefulness of the garden areas. This would fundamentally reduce the quantity, and therefore quality, of the outdoor space available to the detriment of the living conditions of future occupiers. Such development would not deliver the high standard of amenity for existing and future occupiers sought by the Framework. It is for this reason that the appeal should fail as the condition is deemed both reasonable and necessary.
8. Therefore, for the above reasons the appeal is dismissed.

B Plenty

INSPECTOR

² Paragraph: 017 Reference ID: 21a-017-20190723