



Appeal Decision

Site visit made on 3 February 2022

by Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 14TH February 2022

Appeal Ref: APP/B5480/W/21/3275054
57 Askwith Road, Rainham, RM13 8EL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Enea Tanku against the decision of the London Borough of Havering.
 - The application Ref P0065/21, dated 15 January 2021, was approved on 1 April 2021 and planning permission was granted subject to conditions.
 - The development permitted is demolition of existing house and construction of 1 x 4 bedroom house
 - The condition in dispute is No.12 which states that: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, no extension or enlargement (including additions to roofs) shall be made to the dwellinghouse(s) hereby permitted without the express permission in writing of the Local Planning Authority.
 - The reason given for the condition is: In the interests of amenity and to enable the Local Planning Authority to retain control over future development, and in order that the development accords with Development Control Policies Development Plan Document Policy DC61
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Decision

1. The appeal is dismissed.

Preliminary matter

2. During my initial consideration of this appeal I raised a question with the council, via the Inspectorate's case officer, in relation to the drawings that were considered when the planning officer's report was prepared and when the grant of planning permission was issued. This was because the officer's report indicated that amended plans had been submitted during the course of consideration of the application, and that these had affected the decision to grant permission. However, the amended drawings were not listed on the decision notice. In response, the council agrees that the drawing numbers should have been revised on the officer's report and the decision notice. Therefore the plans that I am determining this appeal against are 18/310/004 rev A, 18/310/005 Rev C and 18/310/013.

Main Issue

3. There is a single issue in this case: whether the condition is justified as being necessary, precise, and reasonable in all other respects.

Reasons

The tests

4. Paragraph 55 of the National Planning Policy Framework sets out 5 tests that should be applied before any condition is imposed on a planning permission. The tests are as follows:
 1. necessary;
 2. relevant to planning;
 3. relevant to the development to be permitted;
 4. enforceable;
 5. precise; and
 6. reasonable in all other respects.The particular tests that the appellant states that condition 12 fails to meet are tests 1, 5, and 6.
5. The appellant also draws my attention to Part 1 'Powers' of 'Circular 11/95: Use of conditions in planning permission', where it is stated in paragraph 17:

"17. Conditions should be tailored to tackle specific problems, rather than impose unjustified controls. In so far as a condition is wider in its scope than is necessary to achieve the desired objective, it will fail the test of need. Where an extension to a dwellinghouse in a particular direction would be unacceptable, for example, a condition on the permission for its erection should specify that, and not simply remove all rights to extend the building."

Is the condition necessary?

6. The appellant contends the condition lacks precise justification. The council's justification does not appear to be fair or reasonable as it withholds permitted development rights from a new build property even as the approved new build property has the same characteristics as the existing property on-site. Due to this, it is difficult to ascertain why this condition has been felt necessary. Condition 12 is far wider in its scope than necessary as it removes permitted development rights entirely from the approved new build property, when it would have been far more beneficial for the council to have specified which extensions they will not permit and for what reasons.
7. I noted in paragraph 2 above that, during the course of the appeal application being considered by the council, revisions were made to the scheme. In the light of these revisions, the council found the proposed development acceptable, and granted the planning permission. The principle revision is the set back from the boundary with the neighbouring property at No. 59 Askwith Road. It was this revision that replaced a design with the northern flank wall on this boundary, with a design that set the house back by about 1.5m from this boundary that overcame the council's concern with the original proposal.
8. Therefore, it was a clear concern of the council to protect the living environment of the residents at No.59. Without condition 12 it would be possible to utilise permitted development (PD) rights. I appreciate that PD rights would not allow for a side extension to produce a building such as that initially proposed, but in my opinion a side extension using the available rights could still impinge on the living environment of those at No.59, to the extent that the inconvenience of submitting an application, on balance, is justified. I should add, with reference to the final clause in paragraph 6 above, that

condition 12 does not imply that the council will not permit certain extensions – the intention is simply to enable a proper appraisal to be undertaken.

9. Of course, condition 12 goes beyond the matter of an extension on the No.59 side, and makes an application necessary for any extension or enlargement, including additions to the roof. I do not consider that this is unreasonable or unnecessary, since to allow for some extensions under PD would mean considering the range of possibilities that might exist and consider the likely acceptability across the range. It appears to me, given that a removal of PD rights is to be made, condition 12 is clear and removes uncertainty as to whether a future proposal for an extension or enlargement comes within the restriction or not.

Is the condition precise?

10. The appellant contends that, whatever the particular concern about possible PD extensions may be, a condition that removed just these rights would have allowed the council to exercise more precise control over future development whilst not impinging upon the application site's potential for development.
11. In this respect I have indicated above what I understand the council's main concern would have been about the exercise of PD rights. The appellant has given no indication of amendments that might be made to the text of the condition that would provide both precision and would be acceptable. In any event, the condition is clear in removing the PD rights to extend or enlarge (including additions to roofs) the approved dwelling, so that I consider that the required precision is provided.

Is the condition reasonable in all other respects?

12. There are no other respects suggested whereby the condition is unreasonable, and for my part I find none.

Conclusion

13. I have found that condition 12 is necessary, is precise and reasonable in all other respects. It is also my view that the condition meets the other tests set out in paragraph 4 above. I shall therefore dismiss the appeal.

Terrence Kemmann-Lane

INSPECTOR