

Appeal Decision

Site visit made on 8 February 2022

by K E Down MA(Oxon) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21ST February 2022

Appeal Ref: APP/N1920/D/21/3288943

1 Belmont Road, Bushey, WD23 2JT

- 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 & Mrs P Fahey against the decision of Hertsmere Borough Council.
 - The application Ref 21/0365/HSE, dated 16 February 2021, was refused by notice dated 21 September 2021.
 - The development proposed is the retention of hip to gable, 2 No rear dormers & part single storey and part two storey side extension.
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Decision

1. The appeal is allowed and planning permission is granted for a hip to gable, 2 No rear dormers & part single storey and part two storey side extension at 1 Belmont Road, Bushey, WD23 2JT in accordance with the terms of the application, Ref 21/0365/HSE, dated 16 February 2021, and the plans submitted with it, subject to the following condition:
 - 1) Within three months of the date of this decision, the window inserted in the side facing elevation of the dormer over the rear outrigger must be—
 - (i) obscure-glazed, and
 - (ii) non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed.

Main Issues

2. There are two main issues. Firstly, the effect of the flank window in the rear dormer over the outrigger on the living conditions of occupiers of 7 Elmhurst Close with respect to overlooking and privacy; and secondly, the effect of the rear dormer over the outrigger on the character and appearance of the host dwelling and the surrounding area.

Background

3. The appeal dwelling has a long planning history which is relevant to the consideration of the appeal. Briefly, Lawful Development Certificates (LDCs) were granted for a single storey side extension and a hip to gable extension with rear dormer. Planning permission was then granted for a two storey side
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extension and a similar hip to gable extension with rear dormer. A further application was submitted for the approved scheme but with the addition of a dormer over the two storey rear outrigger. The Council advised that this would not be supported on visual grounds because the combination of the dormers would appear bulky and take up more than 60% of the roof face, contrary to the Council's Planning and Design Guide, Part E: Guidelines for Residential Extensions and Alterations, 2006.

4. However, the Council's officers suggested to the appellants that an application for an LDC could be submitted for the dormer over the outrigger but that if approved it would need to be constructed prior to the construction of the approved main dormer in order to remain permitted development. An application for an LDC for the dormer over the outrigger was duly made.
5. Before the LDC was issued, a site visit was carried out which ascertained that the planning permission for the hip to gable extension and main dormer had been implemented and the development was near completion. Moreover, the dormer on the outrigger had been commenced. The LDC was therefore refused because the overall enlargement of the roof space would exceed the 50 cubic metres allowed under permitted development rights.
6. The application now being appealed was then submitted to regularise the development as built. The Council did not object to minor changes to the previously permitted two storey side extension, hip to gable extension or rear dormer. However, the dormer on the outrigger was deemed unacceptable and the application was refused.

Reasons

7. The appeal dwelling is a traditional, semi-detached house. It is situated at one end of Belmont Road which is a no through road but provides access to Elmhurst Close, a cul-de-sac of newer dwellings. The appeal property lies adjacent to 7 Elmhurst Close. Although there is a wide gap between the outrigger at the appeal dwelling and the shared boundary with No 7 the extensions, and in particular the dormer on the outrigger, are visible from the garden of No 7, including from the patio area immediately behind the dwelling.
8. The dormer has a side facing window which is clear glazed and opening. This window directly overlooks the garden and patio at No 7 and has oblique views towards rear windows in that dwelling. This overlooking and the consequent loss of privacy at No 7 materially detracts from the living conditions of occupiers and conflicts with the National Planning Policy Framework (NPPF) and the Council's Draft Planning and Design Guide, Part D: Guidelines for High Quality Sustainable Development, 2016, which, taken together, expect new development to create places with a high standard of amenity for existing and future users including, amongst other things, ensuring adequate privacy in residential buildings and gardens.
9. The appellants make clear that they would be willing to accept a condition requiring either the window to be obscure glazed and non-opening or to be relocated to the rear facing elevation of the dormer in order to overcome the issue of overlooking.

10. I do not consider that the re-location of the window could be required through a condition because a new location could introduce different impacts which have not been considered and in any case no design has been proposed.
11. Had the dormer been built under permitted development it would have been subject to condition B.2(c) of the Town and Country Planning (General Permitted Development) Order 2015, Schedule 2, Part 1, Class B which requires side facing windows to be obscure glazed and non-opening below 1.7m above the floor of the room in which the window is installed. Subject to an amended wording to take into account that the window is in situ, I consider that a similar condition would overcome the overlooking of and loss of privacy to No 7. Although the window serves a small bedroom, currently used as a study, I am further satisfied that the loss of outlook from this room, taken in the context of the dwelling as a whole, would not be materially detrimental to the living conditions of occupiers.
12. It is concluded on the first main issue that, subject to a planning condition as reasoned above, the flank window in the rear dormer over the outrigger would have no materially detrimental effect on the living conditions of occupiers of 7 Elmhurst Close with respect to overlooking and privacy. In consequence, it would comply with Policy CS22 of the Hertsmeire Core Strategy (CS), adopted 2013, Policy SADM30 of the Site Allocations and Development Management Policies Plan (SADMPP), adopted 2016, the NPPF and the Council's Planning and Design Guide insofar as they seek to preserve living conditions. This is expected to be achieved through ensuring that new development is designed to have a limited impact, so as to protect the amenity of occupiers and ensure adequate privacy for neighbours.
13. Turning to character and appearance, the unauthorised dormer over the outrigger is a large and bulky structure which, if allowed to remain, would through its scale and size dominate and detract from the roof slope of the outrigger and the appearance of the host dwelling. Nevertheless, it is substantially hidden from the street and, owing to its position in relation to surrounding dwellings, is seen obliquely and at a distance from windows in nearby properties. It is lower than the dormer on the main roof slope and although joined to it this limits its impact and provides a degree of separation. It is constructed to a high standard and in matching materials which further limits its effect. It would be seen most clearly from the garden at No 7 but the separation distance would ensure it was not overbearing.
14. Overall, I consider that the dormer over the rear outrigger would not meet the high standards of design expected of new development by the development plan or the NPPF. Nevertheless, the consequences of this shortfall are largely restricted to the host building and have a limited effect on the surrounding area with respect to character and appearance or visual amenity.
15. It is concluded on the second main issue that the dormer over the outrigger would have a detrimental effect on the character and appearance of the host dwelling and the surrounding area which would conflict with Policy CS22 of the CS, Policy SADM30 of the SADMPP, the NPPF and the Council's Design Guide which, taken together, seek to ensure that new development achieves a high quality of design that is visually attractive, sympathises with local character and respects, enhances or improves the visual amenity of the area.

16. The presumption in favour of sustainable development set out in the NPPF makes clear that where a planning application conflicts with an up-to-date development plan, permission should not usually be granted. Decisions that depart from an up-to-date development plan may be made, but only if material considerations in a particular case indicate that the plan should not be followed.
17. I have therefore considered whether any other material considerations apply in this case. Firstly, it is clear that there is no realistic fallback in terms of permitted development rights since this would involve substantial demolition of not just the disputed dormer but, in addition, the permitted dormer and possibly the hip to gable extension prior to any rebuilding. There is little real prospect of this.
18. Nevertheless, it is clear from the evidence that it was the Council who advised the appellants that a dormer on the outrigger, similar to the one constructed, could be achieved through permitted development. Moreover, the appellants made the necessary application for an LDC and are understood to have been advised by the Council that a decision granting an LDC was imminent. This, together with the other planning history, convinces me that it was not the appellants' intention to construct an extension that was unauthorised. On the contrary, they appear to have entered into constructive dialogue with the Council and followed the advice they were given. Their error was in failing to understand the importance of the sequence of the construction of the various elements. This resulted in the outrigger dormer falling outside the compass of the permitted development rights.
19. Whilst it is a developer's responsibility to understand what is required, I find that, although finely balanced, the particular circumstances of this case, weighed against the limited harm identified, would amount to the material planning considerations necessary to indicate that the development plan should not be followed and the appeal should be allowed.
20. The Council does not suggest any conditions and I agree that as the development has been completed none is necessary, apart from the condition requiring the side facing window in the dormer over the outrigger to be obscure glazed and non-openable, so as to make the development acceptable in planning terms. A strict timetable for compliance with this condition is necessary because as permission is being granted retrospectively it is not possible to use a negatively worded condition to secure the implementation of the obscure glazed, non-opening window before the development is first occupied. I consider that a period of 3 months would be reasonable for compliance. The condition will ensure that the existing window can be enforced against if the requirements are not met.
21. For the reasons set out above and having regard to all other matters raised, including third party concerns regarding loss of light to a utility room, I conclude that the appeal should be allowed.

K E Down
INSPECTOR