



Appeal Decision

Site visit made on 22 February 2022

by A Caines BSc (Hons) MSc TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 March 2022

Appeal Ref: APP/R5510/W/21/3286090

23A Chestnut Close, Hayes UB3 1JG

- 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 (the Act) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Rupinder Singh Khuard and Mrs Baldeep Kaur Khuard against the decision of the Council of the London Borough of Hillingdon.
 - The application Ref 70664/APP/2021/1918, dated 11 May 2021, was refused by notice dated 20 September 2021.
 - The application sought planning permission for two storey, 2-bed, attached dwelling with associated parking and amenity space involving demolition of single storey detached garage to rear, without complying with conditions attached to planning permission Ref 70664/APP/2015/1774, dated 9 July 2015.
 - The conditions in dispute are Nos 5 and 6 which state that:
 - 5) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no additional windows, doors or other openings shall be constructed in the walls or roof slopes of the development hereby approved.
 - 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification); no garage(s), shed(s) or other outbuilding(s), nor extension or roof alteration to any dwellinghouse(s) shall be erected without the grant of further specific permission from the Local Planning Authority.
 - The reasons given for the conditions are:
 - 5) To prevent overlooking to adjoining properties in accordance with policy BE24 of the Hillingdon Local Plan: Part Two Saved UDP Policies (November 2012).
 - 6) To protect the character and appearance of the area, including the adjoining Green Belt and amenity of residential occupiers in accordance with policies OL5, BE13, BE21, BE23 and BE24 of the Hillingdon Local Plan: Part Two Saved UDP Policies (November 2012).
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Decision

1. The appeal is allowed and planning permission is granted for two storey, 2-bed, attached dwelling with associated parking and amenity space involving demolition of single storey detached garage to rear at 23A Chestnut Close, Hayes UB3 1JG in accordance with the application Ref 70664/APP/2021/1918, dated 11 May 2021, without compliance with conditions 5 and 6 previously imposed on planning permission Ref 70664/APP/2015/1774, dated 9 July 2015, but subject to the remaining conditions imposed therein, so far as the same are still subsisting and capable of taking effect, and as set out in the Annex to this Decision.

Procedural Matters

2. Planning permission was granted for an attached two-storey dwelling at the appeal site in July 2015. According to the Council's delegated officer report, the dwelling under construction is not entirely in accordance with the approved scheme. The conclusion section of the delegated report raises a concern that the removal of the disputed conditions could have the potential to regularise any unauthorised development carried out. However, the application submitted does not seek a variation of condition 2 (the approved plans) of the planning permission, and there are no revised plans before me. It is therefore not within the scope of this appeal to determine the acceptability or otherwise of the scheme currently on site. Consequently, for the avoidance of any doubt, I have dealt with the appeal under section 73 of the Act.

Background and Main Issue

3. As set out above, planning permission has been granted for a dwelling on the site. The appellant applied to remove two conditions attached to this planning permission on grounds that they are not necessary. Both disputed conditions restrict various domestic permitted development rights for development which would fall under Schedule 2, Part 1, Classes A-E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). The conditions were imposed to protect the character and appearance of the area, and the living conditions of neighbouring residents.
4. Therefore, the main issue is whether the disputed conditions are necessary in order to protect the character and appearance of the area, and to safeguard the living conditions of neighbouring residents.

Reasons

5. Condition 5 removes permitted development rights with respect to new windows or doorways in the walls and roofslopes of the approved dwelling. Condition 6 removes permitted development rights with respect to outbuildings, extensions and roof alterations. The Council's delegated officer report states that it is not the intention to restrict such development completely, but to ensure that the character and appearance of the street scene is protected from over development, and that any extension which has the potential to impact neighbour amenity is fully assessed. This, it says, is commonly done on back-land or garden land development sites as they are often limited to small areas of land which are constrained.
6. However, the Government's Planning Practice Guidance (PPG) gives a clear steer on the use of planning conditions in this way by stating that conditions restricting the future use of permitted development rights, including blanket removal of freedoms to carry out small-scale domestic alterations, are unlikely to pass the test of reasonableness or necessity. Similarly, paragraph 54 of the National Planning Policy Framework (the Framework) states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so.
7. In this case, the appeal site lies within an established residential area containing two-storey, semi-detached and terraced housing. There is no evidence that it lies within the Green Belt. I acknowledge that the corner position means that development at the rear, particularly at roof level, could be

visible from Almond Close. Nevertheless, this situation is not unique to the appeal site, and I am mindful that Almond Close is a short cul-de-sac. The presence of garages, sheds, or other outbuildings in the rear garden would not be unusual or unexpected, and in any event, would be partially screened by the tall boundary wall. Moreover, this is not a back-land or small constrained site. Its size and layout, including plot depth, coverage, and the separation to neighbouring properties, are wholly commensurate with other properties along Chestnut Close. In addition, I observed no notable differences in ground levels between the appeal site and neighbouring properties. I also observed that the gardens of neighbouring properties, including No 23, already experience overlooking from upper floor windows, as is typical of such a residential setting.

8. Accordingly, there are no site-specific features, constraints, or context that would warrant an enhanced level of restriction or control on an exceptional basis. Furthermore, I am satisfied that the GPDO provides for sufficient safeguards to prevent over-development of the site. These include limitations on the height, projection, and cubic volume for extensions, roof alterations and outbuildings, as well as restrictions on the insertion of upper floor windows. I consider it unlikely that any future proposals put forward through permitted development would be significantly in conflict with the design and neighbour protection aims of Policy BE1 of the Hillingdon Local Plan: Part One - Strategic Policies (2012), and Policies DMHB 11, DMHB 12 and DMHD 1 of the Hillingdon Local Plan: Part Two - Development Management Policies (2020). I therefore do not consider there to be a clear justification to support the continued imposition of conditions removing permitted development rights on the appeal site.
9. For these reasons, and with reference to paragraph 54 of the Framework and guidance within the PPG, I do not find conditions 5 and 6 to be necessary to protect the character and appearance of the area, or to safeguard the living conditions of neighbouring residents.

Other Conditions

10. The guidance in the PPG makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect.
11. It would appear that the 2015 planning permission has been commenced, but as I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant, with some minor editing to ensure that they meet the relevant tests. In the event that some have in fact been discharged, that is a matter that can be addressed by the parties.

Conclusion

12. For the reasons given, I conclude that the appeal should be allowed.

A Caines

INSPECTOR

ANNEX

Conditions

1. The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans, numbers XEVA/23CC/102 Rev. A, XEVA/23CC/103 Rev. A, XEVA/23CC/104 Rev. A, XEVA/23CC/105 Rev. A, XEVA/23CC/107 Rev. A XEVA/23CC/109 Rev. A, and shall thereafter be retained/maintained for as long as the development remains in existence.
2. No development above ground level shall take place until details of all materials to be used in the external construction of the dwelling hereby permitted, have been submitted to and approved in writing by the Local Planning Authority. Details should include information relating to make, product/type, colour and photographs/images. Thereafter the development shall be constructed in accordance with the approved details.
3. The dwelling hereby permitted shall not be occupied until a landscape scheme has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include:
 - Planting plans (at not less than a scale of 1:100),
 - Schedule of plants giving species, plant sizes, and proposed numbers/densities where appropriate
 - Details of Hard Landscaping
 - Means of enclosure/boundary treatments
 - Schedule for Implementation

Thereafter the development shall be carried out and maintained in full accordance with the approved details.

4. No development above ground level shall take place until a scheme for the provision of sustainable water management has been submitted to and approved in writing by the Local Planning Authority. The scheme shall clearly demonstrate that sustainable drainage systems (SUDS) have been incorporated into the designs of the development, and will: i. provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters; ii. include a timetable for its implementation; and iii. provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime. The scheme shall also demonstrate the use of methods to minimise the use of potable water through water collection, reuse and recycling and will: iv. provide details of water collection facilities to capture excess rainwater; v. provide details of how rain and grey water will be recycled and reused in the development.

Thereafter the development shall be implemented and retained/maintained in accordance with these details for as long as the development remains in existence.

5. The residential unit within the development hereby approved shall be built in accordance with Lifetime Homes Standards as set out in the Council's Supplementary Planning Document HDAS: Accessible Hillingdon.
6. The dwelling shall achieve 'Secured by Design' accreditation awarded by the Hillingdon Metropolitan Police Crime Prevention Design Adviser (CPDA) on behalf of the Association of Chief Police Officers (ACPO). The dwelling shall not be occupied until accreditation has been achieved.
7. The access for the proposed car parking shall be provided with those parts of 2.4m x 2.4m pedestrian visibility splays which can be accommodated within the site in both directions and shall be maintained free of all obstacles to the visibility between heights of 0.6m and 2.0m above the level of the adjoining highway.