



Appeal Decision

Site visit made on 22 February 2022

by Stewart Glassar BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th March 2022

Appeal Ref: APP/H1515/W/21/3279087

Land at La Plata Grove, Brentwood CM14 4LA

- 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 Mr Christopher Pasterfield (La Plata Grove Ltd) against the decision of Brentwood Borough Council.
 - The application Ref 21/00360/FUL, dated 25 February 2021, was refused by notice dated 23 April 2021.
 - The application sought planning permission for: Proposed residential development for 3 x dwellings and alterations to existing private road, without complying with conditions attached to planning permission Ref 20/00920/FUL, dated 21 August 2020.
 - The conditions in dispute are Nos. 3 and 4 which state that:
"Aside from those indicated on the approved drawings, and notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking, re-enacting or modifying that Order), no dormer windows or windows above ground floor level on the rear elevations, shall be constructed without the prior grant of specific planning permission by the local planning authority."; and
"Notwithstanding the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking, re-enacting or modifying that Order) the dwellings shall not be extended or enlarged in any way without the prior grant of specific planning permission by the local planning authority."
 - The reasons given for the conditions are:
"To safeguard the living conditions of the occupiers of neighbouring properties."; and
"To safeguard the living conditions of the occupiers of neighbouring dwellings."
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. The current proposal seeks to replace conditions 3 and 4 of planning permission 20/00920/FUL with a single new condition that removes permitted development rights under Schedule 2, Part 1, Classes A, D, E, F, G and H of the Order¹. This new condition would allow for permitted development additions and other alterations to the roofs of the dwellings, including dormer windows, without further reference to the Council.
3. Taking the above background into account, the main issue is whether or not the existing conditions are reasonable and necessary in the interests of safeguarding the living conditions of neighbouring occupants.

¹ Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Reasons

4. Housing around the appeal site is characterised by semi-detached dwellings. As is common with such properties, there are gaps between each pair and the houses have rear gardens. As such, there is a degree of mutual overlooking across rear gardens and elevations of neighbouring properties. The three appeal dwellings have been erected although were unoccupied at the time of my site visit. Nevertheless, it was evident that despite their slightly lower ground level than some neighbouring properties, the three dwellings would also contribute and be subject to this mutual overlooking.
5. Further to this, Plot 3 has a back-to-back arrangement with 17 La Plata Grove, something which is not characteristic of the immediate area. The elevation-to-elevation distances are unlikely to create direct views into this neighbour's rooms. However, additional rear windows, particularly a dormer window to the rear of Plot 3, could create excessive and harmful overlooking to this neighbour's rear garden given the distances involved. Notwithstanding any potential impact on other neighbours, the absence of controls on the insertion of above ground floor windows or a dormer on Plot 3 could have harmful consequences for this particular neighbour.
6. Plots 1 and 2, in addition to having views across the rear gardens of some established properties on La Plata Grove, also directly overlook the rear garden of Plot 3. Indeed, the rear bedroom to Plot 2 has its window on the building's side elevation, which appears to be an attempt to minimise the overlooking of the rear garden and patio area to Plot 3. Notwithstanding any potential impact on other neighbours, the absence of controls on the insertion of rear windows above ground floor or dormers to Plots 1 and 2 would have the potential to create harmful overlooking of Plot 3.
7. I therefore find that the insertion of additional rear windows above ground floor level or dormers in the appeal properties could increase the potential overlooking of neighbouring properties. Without appropriate controls, such overlooking could be in excess of the existing levels of mutual overlooking and what might reasonably be considered acceptable in a location such as this one.
8. Condition 4 of the existing planning permission prevents any extension of the buildings, not just windows and dormers. However, the appellant is not seeking to remove this wider restriction and the proposed alternative condition would prevent development under Schedule 2, Part 1, Class A of the Order. The appellant notes that in addition to retaining an appropriate area of amenity space for each dwelling, such a restriction would prevent any works which might otherwise have an overbearing effect on neighbouring properties. It therefore appears that there is no disagreement between the main parties about the need to retain this restriction in order to safeguard the living conditions of neighbouring occupants. Based on the evidence before me, including my own observations of the position of the dwellings, their orientation and gardens, I find no reason to conclude otherwise.
9. I have had regard to the proposed alternative condition suggested by the appellant. It would not achieve the important planning purpose of safeguarding the living conditions of neighbouring occupants, which could be compromised by the insertion of additional rear windows or dormers on the appeal properties. Furthermore, it would relate to some matters which are currently not subject to restriction. I do not see that it is reasonable or necessary to

apply different restrictions, which the Council did not feel were necessary when granting planning permission, and to which I can see no planning reason for their imposition after the event.

10. Accordingly, I find that the existing conditions are necessary and reasonable to control the design of the buildings permitted by the Council and thus ensure the living conditions of neighbouring occupants are safeguarded. The proposal would therefore be in conflict with Policy CP1 of the Local Plan² which, amongst other things, seeks to protect nearby occupants and occupiers of a proposed development from unacceptable overlooking and loss of privacy.

Other Matters

11. The appellant suggests that it would be unfair to restrict future occupants of the dwellings from utilising the same rights as other occupiers on La Plata Grove. However, for the reasons I have given, there is a clear planning justification for the conditions, given the layout of the site and position and orientation of the houses, which are different from other houses in the vicinity.
12. The appellant refers to Approved Document M1 (Access to and use of buildings), which it is said does not regard a rear garden as a habitable room. Be that as it may, the planning system has different and wider responsibilities than the Building Control regime. One such responsibility is to ensure that proposals as a whole provide safeguards to the living conditions of existing neighbours, as well as a development's future occupants, through the lifetime of the development. I have already noted that there is some mutual overlooking of gardens in the vicinity of the appeal site, but it is legitimate to afford them a level of privacy which protects them from excessive overlooking.
13. The appellant considers that Classes B and C of Schedule 2, Part 1 of the Order, would ensure that any works would accord with the requirements of Policy CP1 of the Local Plan in terms of their design and appearance. However, this would not alter my findings with regard to the main issue of the appeal.

Conclusion

14. I consider that the existing conditions are reasonable and necessary to ensure the living conditions of neighbouring occupants are safeguarded. I find that the proposal would be contrary to the development plan read as a whole and there are no material considerations which would outweigh the conflict. I therefore conclude that the appeal should be dismissed.

Stewart Glassar

INSPECTOR

² Brentwood Replacement Local Plan (2005)