



Appeal Decision

Site visit made on 15 March 2022

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th March 2022

Appeal Ref: APP/D5120/W/21/3277865

1 Longmeadow Road, Sidcup DA15 8BH

- 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 Ihor Snihurskyy against the decision of the Council of the London Borough of Bexley.
 - The application Ref 20/02924/FUL, dated 14 January 2021, was approved on 1 June 2021 and planning permission was granted subject to conditions.
 - The development permitted is Demolition of the existing dwelling and re-building of a 3 bedroom dwelling incorporating a rear dormer extension to provide rooms in the roofspace, currently under construction.
 - The conditions in dispute are Nos 1 and 2 which state that:
 - 1) The development hereby permitted shall be retained in accordance with the following approved plans and documents:
 - 01
 - 05A (received 01.06.21)
 - 06A (received 01.06.21)
 - 2) A. Notwithstanding Condition 1, within 6 months of the date this decision is issued, the built ground floor rear extension shall be amended so that all of the extension remains within the curtilage of the application property and does not project over the curtilage of 2 Longmeadow Road, as approved under the plans in Condition 1.
B. Evidence that these works have been completed must be submitted within two months of the completion of the works and approved in writing by the LPA.
 - The reasons given for the conditions are:
 - 1) For the avoidance of doubt and in the interests of good planning.
 - 2) To ensure the work is carried out and to protect the privacy of the occupier of the nearby property and to satisfy the requirements of UDP Policy H9 and ENV39 for the Council.
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Decision

1. The appeal is allowed and the planning permission Ref 20/02924/FUL for Demolition of the existing dwelling and re-building of a 3 bedroom dwelling incorporating a rear dormer extension to provide rooms in the roofspace, currently under construction at 1 Longmeadow Road, Sidcup DA15 8BH, granted on 1 June 2021 by the Council of the London Borough of Bexley, is varied by deleting condition 2.

Procedural Matters

2. The application form states the development commenced on 24 April 2020. At my visit the development had mostly been undertaken in accordance with the plans referred to in condition 1, except that part of a shared chimney had been

removed and a party wall was built over into the neighbouring No 2 Longmeadow Road. Therefore, the application is retrospective.

3. The approved plans in condition 1 (specifically 05A and 06A) show the chimney to be retained or rebuilt and the party wall wholly within the appeal site. The appellant seeks to substitute these with amended plans, with two new plans (05 and 06) showing the chimney to be removed and the party wall built over the shared boundary into No 2.
4. The chimney is a modest component of the dwelling, but its position at the front means it would have been a prominent feature. The position of the party wall is outside the appeal site address given in the application form, decision notice and appeal form. Certificate A on the planning application and appeal forms have been signed which confirms the applicant is the owner of the application/appeal site. Certificate B has not been served on No 2 and the signed party wall agreement between Nos 1 and 2 is not a substitute for this.
5. Plans 05 and 06 were provided to me late, as they were not included within the appellant's original appeal submission. I have sought the views of the Council on them, and no substantive response has been provided. However, taken individually or together the amended shared party wall and demolition of the chimney on plans 05 and 06 provided to me, represent significant changes from the scheme that was before and approved by the Council shown on approved plans 05A and 06A (received on 1 June 2021).
6. I note the appellant's financial circumstances, the effects of the pandemic upon economic activity, and that it was suggested the omission was an oversight. However, the appeal process should not be used to evolve a scheme, and what is considered by the Inspector should be essentially what was considered by the Council, and on which interested people's views were sought. I cannot be certain interested parties have had the opportunity to comment upon the amended plans. Interested parties would be significantly prejudiced without further publicity and consultation taking place on the amended plans. Therefore, I have not accepted the late amended plans, and considered the appeal based on the plans approved by the Council.

Main Issue

7. The main issue is whether conditions 1 and 2 are necessary.

Reasons

8. Condition 1 requires the development to be carried out in accordance with the approved plans. This condition is necessary in the interests of precision and for the avoidance of doubt, as it defines the approved plans that the development shall be carried out in accordance with. Therefore, I am not minded to delete it or modify its provisions.
9. Condition 2 requires compliance with the approved plans and evidence be provided within a given timescale. For the most part it duplicates the requirements of condition 1. Moreover, in setting out a timescale for compliance it seeks to duplicate the functions of the planning enforcement regime. Enforcement is a matter for the Council to pursue under the controls available under other planning legislation. Given the scope of condition 1, and other powers available, condition 2 is not necessary in this regard.

10. The reason for condition 2 includes reference to protecting the privacy of the occupier of the nearby property, which I take to be No 2. The approved development does not result in harmful effects to the living conditions of the occupiers of No 2 with reference to privacy. Therefore, it is not necessary to ensure acceptable living conditions.
11. The reason refers to compliance with Policies H9 and ENV39 of the Bexley Council Unitary Development Plan (2004) (the UDP). As well as references to the living conditions of neighbouring occupiers, these policies amongst other things require the design and external appearance of development is of a high standard and in keeping with the character of existing and adjacent buildings, and the area. The approved development secured by condition 1 is compliant with these policy objectives, so condition 2 is not necessary in this regard.

Other Matters

12. Representations set out concerns due to the application being retrospective, damage to neighbouring property, and the development not being wholly within the application site. Being retrospective does not change the merits of this development. I saw no substantive evidence that damage had occurred, or not been made good, or that it would not be covered under separate other legal rights. The elements of development outside the appeal site boundary, are not a matter for my consideration in this appeal for the reasons already outlined. This is a matter to be addressed separately by the Council, appellant, and neighbouring landowner.

Conclusion

13. For the reasons set out above condition 1 is necessary and should therefore remain. However, condition 2 is not required to make the development acceptable, it duplicates condition 1, and other planning system controls. Therefore, it does not meet the test of being 'necessary' as set out in paragraph 56 of the National Planning Policy Framework (2021) (the Framework). With condition 2 deleted the development would remain in compliance with the development plan and the Framework taken as a whole. Therefore, the appeal is allowed by deleting condition 2 as set out in the decision paragraph above.

Dan Szymanski

INSPECTOR