



Appeal Decision

Site visit made on 21 September 2022

by A. Price BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 November 2022

Appeal Ref: APP/K3605/W/21/3284574

Warehouse, Thames Street, Weybridge KT13 8JG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Richard Jones against the decision of Elmbridge Borough Council.
 - The application Ref 2020/2821, dated 22 October 2020, was refused by notice dated 23 April 2021.
 - The application sought planning permission for new windows in front and rear elevations and replacement roof with solar panels without complying with a condition attached to planning permission Ref 2015/4593, dated 5 April 2016.
 - The condition in dispute is No 2 which states that:
The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan; 100/202; and amended plans NJ/DR00190/47ts Rev 1 and NJ/DR00195/47ts R1.
 - The reason given for the condition is:
For clarity and in the interests of protecting the character and appearance of the area.
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Decision

1. The appeal is allowed and planning permission is granted for new windows in front and rear elevations and replacement roof with solar panels at Warehouse, Thames Street, Weybridge KT13 8JG in accordance with the application Ref 2020/2821 dated 22 October 2020, without compliance with condition number 2 previously imposed on planning permission Ref 2015/4593 dated 5 April 2016 and subject to the conditions appended to this decision.

Applications for costs

2. An application for costs was made by Nick Jones against Elmbridge Borough Council. This application is the subject of a separate Decision.

Background and Procedural Matters

3. Planning permission Ref 2015/4593 granted the installation of windows in the front and rear elevations of the appeal building and the replacement of the roof, including the addition of solar panels.
4. At the time of my site visit, some construction work was underway. Although this work was incomplete, there is a clear difference between the proposed plans and what appears to have been built, specifically in respect of the rear parapet wall.
5. The proposed plans show the parapet wall to be of a similar height to that indicated in the existing and previously approved plans. However, it is clear

from my site visit and the evidence before me that this wall, as constructed, appears significantly higher than shown on both of those plans. Regardless of what has been constructed to date, I have determined this appeal based on the plans before me and any works carried out not in accordance with those plans would be a matter between the Council and appellant.

6. The Council does not object to the lowering of the mono pitch roof, the removal of external drainage and its replacement with an internal gully or the replacement of the roof access doorway. From my site visit those elements of the proposal would assimilate to an acceptable standard with the site and surrounding area and I have no reason to conclude differently.
7. It has been brought to my attention that the applicant name on the application form and appellant name on the appeal form differ slightly. However, evidence has been provided to confirm that this is the same person and I am satisfied that the appeal can proceed. I am also satisfied that the appeal was submitted within the statutory timeframe.
8. The Council's first reason for refusal concludes that the proposal would result in development that would be materially different to that originally approved (under Ref 2015/4593). This is based on the alleged increase in height of the parapet wall, noted above. I have noted above why I am dealing only with the plans before me.
9. I acknowledge that the parapet wall was not specifically referenced within application Ref 2015/4593, either in the development description or within the officer report. However, the wall, both previously and now, is clearly associated with the rear part of the building, including the roof profile that was approved as being modified. I am of the view, therefore, that there would be no clear conflict between the terms of the development shown on the drawings and the description of development. My findings in that respect are consistent with the principles of *Finney v Welsh Ministers & Others [2019] EWCA Civ 1868* in that amending condition 2 would not result in a conflict between it and the description of development. As such, this does not prevent the determination of this appeal in the terms of the first bullet of the above header.

Main Issues

10. Based on the above reasoning, the main issue is the effect of the proposed variation of condition 2 on the living conditions of the occupants of neighbouring properties at 1 Portmore Park Road and 1 Portmore Park Pillars, with particular regard to outlook, daylight and sunlight.

Reasons

11. The appeal site comprises a warehouse building that fronts Thames Street. It is bounded on all sides by neighbouring residential properties. A north facing parapet wall adjoins the boundaries of properties fronting Portmore Park Road, and 1 Portmore Park Villas.
12. Based on the drawings before me, the parapet wall would be of a similar height to that shown on the existing and previously approved plans at the site. The key difference would be that instead of forming a 'three-step' wall, stepping down in height from the appeal building as it moves towards the rear of the site, the rebuilt wall would have only two steps within it. Both the plans and the

evidence before me make it clear that there would be no overall increase in height to the parapet wall as a result of the proposed development, as shown.

13. Although the parapet wall would be visible, I do not consider that it would unacceptably change or harm the outlook of neighbouring residential properties, irrespective of the removal of any ivy. The rear of 1 Portmore Park Pillars and 1 Portmore Park Road already face onto the appeal property and adjoining parapet wall. Any change in height relating to the proposed plans would be unlikely to result in any meaningful change to outlook. Similarly, this combined with the marginal change (reduction) in the overall height of the parapet wall, shown on the proposed drawings, means that there would be limited meaningful loss of daylight or sunlight as a result of the proposed development, providing a similar level of screening as at present.
14. Consequently, the proposed development, as indicated on the submitted plans, would not cause unacceptable harm to the living conditions of the occupiers of neighbouring properties at 1 Portmore Park Road and 1 Portmore Park Pillars, with particular regard to outlook, daylight and sunlight. As such, the proposed development would be in accordance with the relevant provisions of Policy DM2 of the Elmbridge Local Plan Development Management Plan (2015), which in summary seeks to protect the amenity of adjoining occupiers.

Other Matters

15. My attention has been drawn to the appellant's correspondence with the Council, including with its enforcement officers. I also note that a non-material amendment application was submitted in error, that a previous planning application under Ref 2016/1439 was refused and note the comments made in respect of Council procedures.
16. In addition, I acknowledge representations made by nearby residents around the effect of increasing the height of the parapet wall, the hours of construction work, loss of privacy, light pollution, and other alleged unauthorised works.
17. As reasoned above, my assessment is based on the plans before me. Matters relating to any unauthorised works would be a matter for the Council. I have no substantive evidence before me to indicate that the proposed development is, or would be, of such an extent as to be unacceptably harmful in respect of hours of construction. Similarly, I have no substantive evidence before me to demonstrate that any significant harm would be caused in respect of light pollution and privacy, and note that these matters are not in dispute between the Council and appellant.
18. I have had regard to referenced appeal Ref APP/K3605/W/19/3238325 insofar as it relates to the appeal procedure. That development is on a different site and subject to a different development proposal. I do not consider the two appeals to be directly comparable. I have considered the proposed development based on the evidence before me and my observations on site.
19. The Council makes reference to the submitted plans not being accurate. However, I consider the plans before me to be sufficiently accurate to assess the proposal without being prejudicial to interested parties.

Conditions

20. 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 to remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
21. Given that the development has commenced, the originally imposed condition 1 in respect of standard time limits is not necessary and has not been reimposed.
22. Given the detail and specifications set out in the plans and the provisions of the approved plans condition, which do not include a roof terrace or sitting out area, a further condition suggested by the Council regarding potential use of roof areas as a terrace is unnecessary. Similarly, a condition suggested by the Council requesting the removal of scaffolding is unnecessary, given those same plans and provisions.

Conclusion

23. For the above reasons, having had regard to the development plan as a whole and all other relevant material considerations, I conclude that the appeal should be allowed subject to the conditions below.

A Price

INSPECTOR

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall be carried out in accordance with the following approved plans: PD 100/147; 100/204R2; NJ/DR00202/47ts-R2; and NJ/DR00205/47ts rev2/1.
2. The windows on the rear west elevation of the development shall be fitted with obscured glazing and upright louvres, and no part of those windows that are less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened. Details of the type of obscured glazing and louvres shall be submitted to and approved in writing by the local planning authority before the windows are installed in accordance with the approved details and once installed the approved obscured glazing and louvres shall be retained thereafter.
3. The use of the door opening in the roof slope of the single storey projection shall be limited to access for maintenance purposes of the external faces/ finishes of the building only.
4. The development hereby permitted shall have no windows or other openings (other than those shown on the approved plans) inserted into the side and rear elevations.