



Appeal Decision

Site visit made on 14 September 2022

by A Price BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 November 2022

Appeal Ref: APP/G5180/W/22/3294674

27 Birchwood Road, Petts Wood, Orpington BR5 1NX

- 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 Mrs Lucie Moseley against the decision of the Council of the London Borough of Bromley.
 - The application Ref 18/03950/RECON, dated 27 July 2021, was refused by notice dated 8 March 2022.
 - The application sought planning permission for a 'single storey detached building in rear garden, temporary use as habitable accommodation during building works to main dwelling, then for ancillary use to main dwelling' without complying with a condition attached to planning permission Ref 18/03950/FULL6, dated 7 December 2018.
 - The condition in dispute is No 6 which states that: *Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order amending, revoking and re-enacting this Order) no building, structure or alteration permitted by Class A, B, C, or E of Part 1 of Schedule 2 of the 2015 Order (as amended), shall be erected or made within the curtilage(s) of the dwelling(s) hereby permitted without the prior approval in writing of the Local Planning Authority.*
 - The reason given for the conditions is: *In the interests of protecting the character of the area and residential amenity of neighbouring properties in accordance with Policy BE1 of the UDP.*
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Decision

1. The appeal is allowed and the planning permission Ref 18/03950/FULL6 for a single storey detached building in rear garden, temporary use as habitable accommodation during building works to main dwelling, then for ancillary use to main dwelling at 27 Birchwood Road, Petts Wood, Orpington BR5 1NX granted on 7 December 2018, is varied by deleting condition 6. Conditions previously imposed that continue to have effect are appended to this decision.

Background and Preliminary Matters

2. Planning permission has been granted for the works outlined above, which have since been implemented. The planning permission included a condition removing permitted development rights for, amongst other things, further extensions to the appeal dwelling. The Authority considers the condition to be necessary to protect the character and appearance of the Petts Wood Conservation Area (CA). The appellant, however, objects to the condition as they consider it to be unreasonable.

3. The dispute is in respect of Condition 6. Planning Practice Guidance (PPG) sets out that an appeal under Section 73 of the 1990 Act will consider only the disputed condition. I have approached the appeal on that basis.

Main Issue

4. The main issue is whether adherence with Condition 6 is necessary having regard to whether it would preserve or enhance the character or appearance of the Petts Wood CA.

Reasons

5. The appeal site comprises a two-storey detached dwelling, set back from the road behind a large open front garden. The site is surrounded by residential properties of a similar period and appearance. It is located within the Petts Wood CA.
6. Whilst there is some subtle variation in the detailed design of buildings within Birchwood Road, there is a sense of harmony between properties within the street due to their setting behind open plan gardens and the use of matching materials. Small gaps exist between properties allowing glimpsed views of mature trees in rear gardens. Where extensions have taken place previously at the appeal property and at nearby properties, these have generally used materials to match the original dwelling, whether that be roof tiles, windows or facing materials.
7. Statute places a duty on me to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA. The significance of the CA lies, insofar as this appeal is concerned, in its cohesive character derived from common design and a limited range of materials. The CA appraisal¹ refers largely to external decorative details including the use of timber framing, chimney stacks and, in some properties, panels of red brick. The appraisal sets out that extensions, where proposed, are preferred to the rear elevations. The rear of the properties along Birchwood Road cannot be appreciated from any public vantage point and do not contribute to any substantial degree to the significance of the conservation area.
8. The permitted development rights associated with Condition 6 would, in the main, permit further modest alterations and extensions to the rear of the original property, including development within the garden area itself.
9. Any further additions to the rear of the property through the exercising of these permitted development rights would result in very limited, if any, change to the character and appearance of the front of the property. This is due to the rear elevation and rear garden being out of sight from any public vantage point. In any case, there are limitations to allowances under permitted development rights, particularly given the extent of additions that have already taken place at the property and given the site's location within a CA. Nevertheless, due the scale of the plot and original dwelling, the site is not overdeveloped.
10. 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 for doing so. The PPG also advises that

¹ Supplementary Planning Guidance for Chislehurst Road, Petts Wood Conservation Area (2000, updated 2002)

conditions of this nature will rarely pass the test of necessity and should only be used in exceptional circumstances. For the reasons given I find that the relevant tests in the Framework and the PPG have not been met in this case.

11. Consequently, I conclude that the disputed condition is not reasonable or necessary in the interests of preserving or enhancing the character or appearance of the CA, in accordance with the relevant provisions of Policies 37 and 41 of the Bromley Local Plan (2019). These policies, amongst other things, seek to promote high quality design in development which responds positively to the key characteristics of the area.

Other Matters

12. I note the comments received in respect of the use of an existing outbuilding as a dwelling, overlooking, its alleged temporary nature, the subdivision of the existing property, noise and disturbance and the standard of plans submitted. However, these matters are not in dispute between the main parties and do not relate to Condition 6. There is nothing that I have read or seen to indicate that the proposal is otherwise unacceptable. The outbuilding has planning permission to be retained for ancillary use to the main dwelling.

Conditions

13. 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. This is for the purpose of clarity. I have amended the wording of some conditions in that context, without altering their fundamental aims.
14. Given that the development has commenced, the originally imposed condition 1 in respect of standard time limits is not necessary and has not been restated. Similarly, as the use of the outbuilding for temporary living accommodation has ceased, a condition restricting the use of the outbuilding as such for this period of time is unnecessary and has not been restated.
15. 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.

Conclusion

16. I therefore conclude that the appeal should be allowed. I will vary the original permission by deleting the disputed condition.

A Price

INSPECTOR

SCHEDULE OF CONDITIONS

1. The additional accommodation shall be used only by members of the household occupying the dwelling 27 Birchwood Road, BR5 1NX as ancillary accommodation (with no living accommodation) and shall not be severed to form a separate self-contained unit.
2. The obscure glazing in the two windows within the outbuilding hereby permitted, located closest to the boundary with No. 29 Birchwood Road, shall be permanently retained.
3. The boundary screening to the southern, eastern and western neighbouring properties shall be permanently retained. If any trees or plants which within a period of 5 years from the substantial completion of the development die, are removed or become seriously damaged or diseased they shall be replaced within the next planting season with others of a similar size and species to those originally planted.
4. No utilities shall be installed to the outbuilding hereby permitted without the prior approval in writing of the Local Planning Authority.