



Appeal Decision

Site visit made on 2 November 2022

by Hannah Guest BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24/11/2022

Appeal Ref: APP/Y3615/W/22/3291670

High Brambles, Park Corner Drive, East Horsley KT24 6SE

- 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 Mrs A Larter against the decision of Guildford Borough Council.
 - The application Ref 21/P/01683, dated 30 July 2021, was refused by notice dated 14 January 2022.
 - The application sought planning permission for erection of cottage (amended plans received 14 December 2020) without complying with a condition attached to planning permission Ref 20/P/01954, dated 6 January 2021.
 - 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: HB5 P1, HB5 P3 and HB4 P1 received on 17 November 2020 and amended plans HB5 P2A and HB5 P3A received 14 December 2020.*
 - The reason given for the condition is: *To ensure that the development is carried out in accordance with the approved plans and in the interests of proper planning.*
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Decision

1. The appeal is allowed and planning permission is granted for erection of cottage (amended plans received 14 December 2020) at High Brambles, Park Corner Drive, East Horsley KT24 6SE in accordance with application Ref 21/P/01683, dated 2 August 2021 without compliance with condition number 2 previously imposed on planning permission Ref 20/P/01954, dated 6 January 2021, but subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: HB5 P1, HB5 P3, HB4 P1, all received on 17 November 2020; HB5 P3B received 2 August 2021; HB5 P2B received 24 August 2021.
 - 2) Before any dwelling hereby permitted is first occupied, the external facing and roof of the building shall have been constructed in accordance with the details and samples of materials previously submitted to, and approved in writing by, the local planning authority. These details shall include the colour and finish.
 - 3) Before any dwelling hereby permitted is first occupied, the energy efficiency measures shall have been implemented in accordance with the details set out in an energy statement previously submitted to, and approved in writing by, the local planning authority and thereafter retained as operational. The energy statement shall include details on how energy efficiency is being addressed, including benchmark data and identifying the Target Carbon

Emissions Rate TER for the site or development as per Building Regulations requirements (for types of development where there is no TER in Building Regulations, predicted energy usage for that type of development should be used) and how a minimum of 20 per cent reduction in carbon emissions against the TER or predicted energy usage through the use of on-site low and zero carbon technology shall be achieved.

- 4) The development hereby permitted must comply with regulation 36 paragraph 2(b) of the Building Regulations 2010 (as amended) to achieve a water efficiency of 110 litres per occupant per day (described in part G2 of the Approved Documents 2015). Before occupation, a copy of the wholesome water consumption calculation notice (described at regulation 37 (1) of the Building Regulations 2010 (as amended)) shall be provided to the planning department to demonstrate that this condition has been met.
- 5) The development hereby permitted shall not be occupied unless and until the proposed dwelling is provided with a fast-charge Electric Vehicle charging point (current minimum requirements – 7 kw Mode 3 with Type 2 connector – 230v AC 32 Amp single phase dedicated supply) in accordance with a scheme previously submitted to, and approved in writing by, the Local Planning Authority and thereafter retained and maintained.
- 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking or re-enacting or amending those Orders with or without modification), no development within Part 1, Classes A and B shall be carried out on the dwellinghouse hereby permitted or within its curtilage.

Procedural Matters

2. The appeal is made under section 73A of the Town and Country Planning Act 1990. It seeks to vary the list of approved plans imposed by condition 2 of the permission granted by 20/P/01954 (referred to hereon as the original permission), commonly termed a 'minor material amendment'. The amended plans would result in a part 2-storey, part single storey rear extension to the dwelling granted by the original permission (referred to hereon as the proposed rear extension).
3. Third parties have questioned whether the proposed rear extension would constitute a minor material amendment. The Planning Practice Guidance clarifies that there is no statutory definition of a minor material amendment, but that it is likely to include any amendment where its scale and/or nature results in a development which is not substantially different from the one which has been approved. In this case, while the increase in the overall Gross Internal Area (GIA) of the dwelling granted by the original permission would not be insignificant, the scale of the proposed rear extension would be proportional to, and its appearance would reflect, the permitted dwelling. Thus, it would not be substantially different.
4. Third parties have also queried whether this type of application was appropriate prior to the completion of the development granted by the original permission. I saw on my site visit that the permitted dwelling is almost complete, with the exception of the facing materials on the rear façade, and that furniture and belongings are within the property.

5. I am aware from the evidence before me that during the construction of the permitted dwelling, prior to the S.73A application being made to the Council, there was a period when longer steel support beams had been erected into the structure to account for the proposed rear extension, and that some of the foundation work for the proposed rear extension was started. Although this has now been rectified, this would have constituted a departure from the approved plans and may be the reason the application was made under S.73A.
6. Despite the Council determining the application under Section 73A, given the current circumstances it would be more appropriate for the appeal to be considered under Section 73. The fundamental difference between these 2 types of appeal is that a Section 73A is used where an application has been made retrospectively and, if allowed, retrospective permission is granted for a development which has already been carried out. The practical differences of determining these different types of appeal, however, are limited and therefore no injustice would arise from this approach. I have therefore considered the appeal on this basis.
7. Government guidance is clear that under Section 73 I must consider only the condition in question; in this case the proposal to extend the permitted dwelling. It is not a complete re-consideration of the original permission.

Main Issues

8. The main issues are the effect of the proposed rear extension on:
 - the character and appearance of the area; and
 - the living conditions of the occupants of Two Steps, with particular regard to outlook from and light into the rear garden.

Reasons

Character and Appearance

9. Park Corner Drive is a narrow, no-through road, with grass verges either side but no formal footway. It consists of predominately large, detached, two-storey houses set back relatively far from the highway on generous plots, which provides a sense of spaciousness. Although the houses vary in their style, and form, they are set back a similar distance from the highway, which adds a degree of uniformity to the street-scene. The front gardens are mainly laid to lawn with soft front boundary treatments including trees, hedges, and shrubs. Woodland to the north and west also provides an arboreal backdrop. There are both rises and falls in the land which the road follows and are reflected in the ground level of the houses. Overall, the road has an open and verdant character.
10. The permitted dwelling, known as High Brambles, is a two-storey detached house of a comparable scale to other properties on Park Corner Drive set on a large plot. The rear of the dwelling is not visible from the road, and neither would be the proposed rear extension. While the existing pattern of development includes deep plots, the extent of the plots cannot be read from the street scene. Notwithstanding this, while the scale of the proposed rear extension would not be insignificant, it would be reasonably proportioned and, given the substantial size of the plot, would be comfortably accommodated with little effect on the existing pattern of development.

11. It may be that the house with the proposed extension would have a larger GIA than proposals that were previously refused by Guildford Borough Council and dismissed at appeal for reasons including a bulky and dominant appearance. While I do not have the full details of the previous refusals in front of me, I understand that they related to proposals that were materially different from that now permitted, albeit by varying degrees. High Brambles benefits from the original permission and was therefore found to be acceptable in terms of its character and appearance by the Council. The scale of the proposed rear extension would be proportionate to this permitted development and would result in a building of a similar scale to others on Park Corner Drive. More importantly, the massing of High Brambles, when viewed from the street scene, would not change, thus it would continue to be comparable and in keeping with other properties along the road.
12. For these reasons, the proposed rear extension would not result in a building which is excessive in scale, nor would it be overbearing. Therefore, it would not harm the character and appearance of the prevailing area. It would accord with policy D1(4) of the Guildford Borough Local Plan: strategy and sites (2019) and policy EH-H7 (a) of the East Horsley Neighbourhood Plan. These seek to ensure that all new development reflects the local character of the area by, amongst other things, responding and reinforcing locally distinctive patterns of development and ensuring designs are in keeping with the established character of East Horsley and style of properties in the surrounding area.

Living Conditions

13. The proposed rear extension would project approximately 1.5 metres beyond the rear elevation of Juniper and 3 metres beyond the rear elevation of Two Steps. Extending beyond the rear elevation of a neighbouring property would not in itself categorically result in harm to the living conditions of the occupants of those properties.
14. Given the slopes in the land, High Brambles is at a higher ground level than Two Steps. Although this would make the proposed rear extension more prominent, given its compatible scale and modest projection past the rear elevation of Two Steps, it would not be overly dominant or overbearing. Two Steps has a deep and wide rear garden with a verdant and pleasant outlook. The proposed rear extension would affect only a very small part of this outlook.
15. The rear garden of Two Steps is south facing, and High Brambles is positioned directly to the west. The effect that the proposed rear extension would have on the light received by Two Steps and within its rear garden space would therefore be relatively minor. The proposed arrangement of development is not uncommon and the overall amount and impact of overshadowing throughout the year would be negligible.
16. Furthermore, a similar arrangement could be developed using permitted development rights. On 29th June 2022 the Council approved a Certificate of Lawfulness for a proposed development similar to the proposed rear extension. Whether or not the Council's assessment associated with the Certificate of Lawfulness included the outbuilding at the rear of the garden, the Certificate has been approved by the Council. The flank walls of the development that could be delivered using permitted development rights would project the same distance as and only be slightly shorter in height than the rear extension proposed in the amended plans. Therefore, the effect on neighbouring

properties would be comparable. It may be that these rights could not be exercised until the development is complete and occupied, however there is real prospect that permitted development rights could be exercised to deliver a similar development. This therefore carries significant weight in my determination.

17. For these reasons, the proposed rear extension would not have an overbearing and overshadowing impact that would harm the living conditions of the occupants of Two Steps with regard to the outlook from and light into the rear garden. It would accord with policy G1(3) of the Guildford Brough Local Plan (2003), which seeks to ensure that the amenities enjoyed by occupants of buildings are protected from unneighbourly development in terms of access to sunlight and daylight.

Other Matters

18. The appeal site is within the 400 to 5km buffer zone of the Thames Basin Heaths Special Protection Area (TBHSPA). The TBHSPA comprises an area of lowland heath and woodland and is designated because of the presence of breeding populations of three bird species. The Interim Avoidance Strategy for the TBHSPA only relates to proposals for new residential development, as, although some non-residential could have a significant effect on the TBHSPA, it is new residential units that are more likely to affect the natural habitats in the TBHSPA.
19. Therefore, given that the proposal would not result in any additional residential units or separate households, I am satisfied that it would not be likely to have a significant effect on the integrity of the TBHSPA, and an appropriate assessment is not required.
20. I have taken careful account of the representations of the residents of Park Corner Drive and those nearby. Their concerns include the effect of the rear extension on the privacy of occupants of neighbouring properties, as well as the living conditions of the occupants of the neighbouring property, Juniper, and also the potential for the extension to set a precedent that could result in a significant change to the character of Park Corner Drive.
21. I appreciate that the extension of a recently permitted development has caused some concerns. I also recognise that it would cause some noise and disturbance, particularly during construction. However, construction would take place for a limited period. Based on the evidence before me and my observations, given the relationship between the property and its neighbours, the compatible scale of the extension, the prevailing character of the area and that the extension would not be visible from the street scene, I am not of the view that unacceptable effects would result in relation to the matters raised.
22. Third parties have also raised concerns that the appellant has intentionally sought to manipulate and/or circumvent the planning system. However, there is no substantive evidence before me demonstrating this. While intentional unauthorised development can be a material consideration, whether or not there were previous breaches of the original permission, these have now been rectified. Also, based on the evidence before me, which shows there have been a number of previous applications for the site as well as a Certificate of Lawfulness, it would appear that the appellant has sought to regularise the

development. This concern, therefore, affords very little weight in my determination of the appeal.

Conditions

23. The guidance in the Planning Practice Guidance 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. The Council have suggested imposing all 6 conditions that were attached to the original permission Ref: 20/P/01954 including an adjusted standard time limit condition so that the permission would run from the date of the original permission. However, as the original development has started, there is no need to impose a time limit condition.
24. I have no information before me about the status of the other conditions imposed on the original planning permission. I shall therefore impose all those that I consider remain relevant. I have amended the trigger point of the external materials and energy statement conditions as, although it is not fully clear whether the property is occupied, it is evident that the development is above slab level. In the event that the property is occupied and some of the conditions have in fact been discharged, that is a matter which can be addressed by the parties.
25. In granting permission under section 73, I may also impose new conditions, provided they do not materially alter the development that was subject to the original permission and are conditions which could have been imposed on the earlier permission. The Council and third parties have requested that a condition is attached removing permitted development rights that would allow future enlargement, improvement, or alteration to the dwellinghouse, including additions or alterations to the roof. In this case, I think the condition would be necessary to protect any further effects on the living conditions of the neighbouring properties and therefore would be reasonable.

Conclusion

26. For the reasons given above, considering the development plan as a whole and all relevant material considerations, the appeal is allowed.

Hannah Guest

INSPECTOR