



Appeal Decision

Site visit made on 4 October 2022

by C Shearing BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 NOVEMBER 2022

Appeal Ref: APP/Z3635/W/21/3287804

5 Marlborough Road, Ashford TW15 3PZ

- 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 Jagir Thandi against the decision of the Borough of Spelthorne Council.
 - The application Ref 21/01392/RVC, dated 25 August 2021, was refused by notice dated 15 November 2021.
 - The application sought planning permission for the erection of a pair of semi-detached dwellings with associated parking and amenity space, following demolition of the existing dwelling without complying with a condition attached to planning permission Ref 21/00804/FUL, dated 2 August 2021.
 - The condition in dispute is No. 2 which states:
The development hereby permitted shall be carried out in accordance with the following approved plans 5MARL-EPE01 5MARL-BPLP01 (Received 17.05.2021), 5MARL-PPE01-HOUSES Rev 03 (Received 26.07.2021).
 - The reason given for the condition is:
For the avoidance of doubt and to ensure the development is completed as approved.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a pair of semi-detached dwellings with associated parking and amenity space, following demolition of the existing dwelling at 5 Marlborough Road, Ashford TW15 3PZ in accordance with the terms of the application, Ref 21/01392/RVC, dated 25 August 2021, without compliance with condition 2 (Approved Plans) previously imposed on planning permission 21/00804/FUL, dated 2 August 2021, subject to the conditions in the schedule below.

Preliminary Matters

2. I observed during my site visit that the previous building had been demolished and the new walls at the ground floor level were under construction.
3. During the course of the appeal, a further planning permission has been granted by the Council under Section 73 (S73) of the Town and Country Planning Act 1990 for changes to the development including amendments to the front elevation and windows¹. I have had regard to that decision in my assessment of the appeal scheme.

¹ 22/00140/RVC

4. This appeal is travelling with two other linked appeals relating to development on the appeal site. These are dealt with by a separate decision notice².

Main Issue

5. The main issues are the effect that varying the approved plans would have on:
- the character and appearance of the area, and;
 - the living conditions of the occupants of no.3 Marlborough Road.

Reasons

Character and Appearance

6. The appeal site lies within a predominately residential area comprised of two storey properties and bungalows, following largely consistent building lines on either side of the street. The properties are generally traditional in design, but of varying scale and different architectural features. Marlborough Road and the surrounding area exhibits a variety of roof forms including front gable features of varying sizes. The variation in the roof forms on the street, in combination with the straight front building lines, adds visual interest and contributes positively to the character and appearance of the area.
7. The recently approved S73 scheme included accommodation within the roof slopes of the development, served by front dormer windows set either side of a front gable feature, as well as windows in the side and rear gable roofs. The appeal scheme would amend the roof form to provide an enlarged front gable encompassing two additional windows at the roof level, and full gable ends to the main roof.
8. Prominent front gable features are evident within Marlborough Road, particularly among the groups of properties to the south. For this reason, and in combination with the traditional roof slopes proposed behind the front gable, I do not find this feature would be incongruous in this setting, despite its width across the front of the building.
9. The position of the appeal site, set between other properties with a similar front building line, would result in the increased bulk to the sides of the roof being heavily screened by the neighbouring roofs in long views along the street. By comparison to the approved S73 scheme and having regard to the varied wider character of the area, the alterations to the roof level would not appear out of character or harmful in this location.
10. In combination with the increase in the bulk of the roof, the new windows proposed at second floor level to the front elevation, would add prominence and further accentuate the roof level accommodation to some degree. However, the scale of the roof level openings would be modest and would appear subordinate within the roof slopes and smaller than those across the lower levels of the development, helping the roof level accommodation to appear ancillary to those floors below. For these reasons and in light of the scheme already approved, I do not find the increased prominence of the second-floor level would cause visual harm.

² APP/Z3635/W/21/3282635 and APP/Z3635/W/21/3282639

11. The alterations to the rear elevation, involving enlargement of the first-floor projection, would experience very limited visibility from the street due to the narrow gaps between the buildings, and would not be harmful to the prevailing character of the area.
12. For the reasons given, I conclude that varying the approved plans would not harm the character and appearance of the area. It would comply with Policy EN1 of the Spelthorne Core Strategy and Policies: Development Plan Document 2009 (the DPD), and the 'Design of Residential Extensions and New Residential Development' Supplementary Planning Document 2011 (SPD). Together, these require a high standard of design and, among other things, buildings which respect and make a positive contribution to the street scene and character of the area. The appeal scheme would also comply with the design objectives of the National Planning Policy Framework (the Framework).

Living Conditions

13. No.3 Marlborough Road is a semi-detached property to the north of the appeal site and its rear elevation includes doors and windows at the ground floor level. Closest to the boundary is a window and a partially glazed door, which would appear to serve a kitchen.
14. The 'Design of Residential Extensions and New Residential Development' SPD includes measures which can be used to establish whether new development would be likely to maintain adequate daylighting levels to neighbouring rooms. This includes a 45-degree horizontal and 45-degree vertical guide, and these have been carried out on the above-mentioned window. The main parties agree that the development would comply with the vertical guide.
15. While the annotations on the supporting ground floor plan show that the 45-degree horizontal guide would be met, this line is not taken from the position of the window nearest to the boundary. Based on evidence provided by the Council, which shows a line taken from that window, the development would breach the line, and consequently would not comply with that part of the guidance.
16. Despite this, the SPD is clear that these measures should be applied as a useful guide. In this case, the extent of the breach is not significant, only part of the test is failed, and the Council accept that the approved scheme, which had the same overall depth at both ground and first floor level, similarly breached the 45-degree horizontal guide. Taken together, I find that the effects of the proposed development on the overall living conditions of the occupants of no.3 would not be materially different to the original approved scheme.
17. On this main issue, I find that the appeal scheme would preserve the living conditions of the occupants of no.3 Marlborough Road and would not cause harm. The development would be compliant with Policy EN1 of the DPD insofar as it requires development to achieve a satisfactory relationship to the adjoining properties, avoiding significant harmful impacts on matters including daylight.
18. While there is conflict with the SPD in respect of the 45-degree horizontal guide, the development would comply with the document when viewed as a whole, which requires, among other things, that the living conditions of adjoining occupiers is not significantly harmed.

Conditions

19. The Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should restate the conditions imposed on earlier permissions that continue to have effect. I have amended the wording where necessary in the interests of simplicity, clarity and precision.
20. As the original development has been started, I do not need to impose a time limit condition. I have varied the drawing numbers listed in the approved drawings to reflect those supporting this appeal. I have deleted a condition relating to demolition works as these have been completed and the condition is therefore unnecessary. I have re-instated those non-disputed conditions from the original permission that appear still to be relevant, and these amendments are informed by comments from the main parties. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties. I do not consider that any additional conditions are necessary.

Conclusion

21. For the above reasons, having taken account of the development plan as a whole, the approach in the Framework, along with all other relevant material considerations, the appeal is allowed.

C Shearing

INSPECTOR

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall be carried out in accordance with the following approved plans 5MARL-BPL01, 5MARL-EPE01, 5MARL-PPE01-HOUSES REV.04.
2. No further ground works shall be undertaken until a survey report detailing ground conditions of the site has been submitted to and approved in writing by the Local Planning Authority. Where made ground or contamination is encountered a scheme to investigate, assess and remediate contamination risks shall be agreed in writing with the Local Planning Authority, and shall be carried out in accordance with the agreed details and timetable.
3. Prior to the first use or occupation of the development, and on completion of the agreed contamination remediation works, a validation report that demonstrates the effectiveness of the remediation carried out shall be submitted to and agreed in writing by the Local Planning Authority.
4. No development above damp course level shall take place until details of the materials to be used for the external surfaces of the buildings and surface material for parking areas are submitted to and approved by the Local Planning Authority. The development shall then be constructed in accordance with the approved materials.
5. The works shall be carried out in accordance with the Construction Transport Management Plan received by the Council on 01 Nov 2021.
6. The application shall be carried out in accordance with details in the Ful SAP Calculation Printouts, Clear Stream Energy Assessment, and the 'Dwelling Sign Off Reports' (Received by the Council 01.11.2021) and 10% of the energy requirements generated by the development as a whole will be achieved utilising renewable energy methods. The agreed measures shall be implemented with the construction of the building and thereafter retained.
7. Details of a scheme of both soft and hard landscaping works shall be submitted to and approved by the Local Planning Authority prior to first occupation of any part of the development hereby approved. The approved scheme of tree and shrub planting shall be carried out prior to first occupation of the buildings and/or site. The planting so provided shall be maintained as approved for a minimum period of 5 years, such maintenance to include the replacement in the current or next planning season, whichever is the sooner, of any trees or shrubs that may die, are removed or become seriously damaged or diseased, with others of similar size and species, unless the Local Planning Authority gives written permission to any variation.
8. Details of facilities within the curtilage of the site for the storage of refuse and recycling materials shall be submitted to and approved by the Local Planning Authority prior to the first occupation of the development. The agreed details shall be implemented prior to the occupation of the development hereby approved and retained thereafter.

9. Prior to the occupation of the development, details of a scheme of the means of enclosure shall be submitted to and approved in writing by the Local Planning Authority indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed before the buildings are occupied. Development shall be carried out in accordance with the approved details and maintained as approved.
10. No part of the development shall be first occupied unless and until the proposed new and modified vehicular accesses to 5 Marlborough Road have been constructed in accordance with the approved plans and provided with a dropped kerb crossover on Marlborough Road.
11. The development hereby approved shall not be first occupied unless and until space has been laid out within the site in accordance with the approved plans for vehicles and cycles to be parked. Thereafter the parking areas shall be retained and maintained for their designated purposes.
12. Prior to the occupation of the development hereby permitted the first and second floor window(s) on the northern and southern flank elevation(s) shall be obscure glazed and be non-opening to a minimum height of 1.7 metres above the internal floor level in accordance with details/samples of the type of glazing pattern to be submitted to and approved in writing by the Local Planning Authority. The(se) window(s) shall thereafter be permanently retained as installed.
13. The development hereby approved shall not be occupied unless and until each of the proposed dwellings are provided with a fast charge socket (current minimum requirements - 7 kw Mode 3 with Type 2 connector - 230v AC 32 Amp single phase dedicated supply) and thereafter retained and maintained to the satisfaction of the Local Planning Authority.
14. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order), no extensions or outbuildings shall be erected to the residential development hereby permitted without the prior planning permission of the Local Planning Authority.

End of schedule