The Planning Inspectorate

Appeal Decision

Site visit made on 2 November 2022

by D Cramond BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th December 2022

Appeal Ref: APP/K3605/D/22/3300550
14 Lodge Close, Stoke D'Abernon, Cobham, Surrey KT11 2SG

- 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 Anthony Gallagher against the decision of Elmbridge Borough Council.
- The application Ref 2022/0536, dated 21 February 2022, was refused by notice dated 23 May 2022.
- The application sought the removal of a condition attached to a planning permission Ref 2020/2658, dated 18 October 2021, which was for part two/part single-storey rear/side extensions, single-storey front extension, front canopy, rear dormer windows, rooflights, alteration to fenestration and replacement roof and gable to front projections following partial demolition of existing dwelling and removal of chimney stacks.
- The condition in dispute is 3 which states that: *Notwithstanding the approved plans, within three months of permission being granted, the first floor front window serving bedroom 04 shall be glazed with obscure glass that accords with level three obscurity as shown on the pilkington textured glass privacy levels (other glass suppliers are available) and only openable above a height of 1.7m above the internal floor level of the room to which it serves. The window shall be permanently retained in that condition thereafter*.
- The reason given for the condition is: *To preserve the reasonable privacy of neighbouring residents in accordance with policy DM2 of the Elmbridge Development Management Plan.*

Decision

1. The appeal is allowed and the planning permission Ref 2020/2658, for part two/part single-storey rear/side extensions, single-storey front extension, front canopy, rear dormer windows, rooflights, alteration to fenestration and replacement roof and gable to front projections following partial demolition of existing dwelling and removal of chimney stacks at 14 Lodge Close, Stoke D'Abernon, Cobham, Surrey KT11 2SG granted on 18 October 2021 by Elmbridge Borough Council, varied by deleting condition No 3. All other conditions on 2020/2658 are continued in full force and effect.

Main Issue

2. The main issue is whether the restrictions applied are necessary to safeguard residential amenity.

Reasons

3. The appeal property is a detached two storey dwelling in a pleasing suburban locality of varied style, generally detached, homes with good sized gardens. The appeal property is the last one in a row on the inside before the road turns at right angles. Consequently 'round the corner' a number of dwellings abut the appeal site at right angles via their rear gardens. In the case of No 16 Lodge Close its rear garden is primarily but not wholly on a plane forward of the front elevation of the appeal property. I observed that it is thus possible, leaning forward, to obtain an oblique view into parts of this rear garden from the nearest upper floor front facing window in the appeal dwelling.

4. The question is whether the degree of possible oblique viewing opportunities from within this bedroom justifies a planning condition that the window should be obscure glazed and limited in opening capability.

5. Within a residential environment of this nature there will always be a degree of intervisibility, not least through having first floor accommodation alongside every plot. It is highly likely that the everyday use of this bedroom would, when people are looking out, have them facing the road, looking straight ahead, generally positioned back from a window cill which itself is relatively high meaning one gets no view of the ground when seated. With usual household practice I would not expect a bedroom to have much use during normal daytime, not least given the very generous range and floor area of living space. Even if one made a determined effort to view across and into the rear garden there are appreciable parts which would always remain unseen due to vegetation, built structures and angles. The imposition of obscure glazing and restricted openings for a bedroom, and the loss of amenity to that bedroom, are not justified by the very limited possible effects on residents at No 16.

6. Given these points, in my opinion the imposition of the disputed condition was not necessary or reasonable. I am sorry that this will probably be a source of disappointment to the neighbours but I have considered matters very carefully in the round and I do conclude that the disputed condition was applied unnecessarily.

7. Policy DM2 of the Elmbridge Local Plan Development Management Plan 2015 (LP) seeks to ensure that development does not have any undue adverse impact on living conditions at adjoining properties. This is reflected within the Council's Design and Character Supplementary Planning Document 2012 (SPD) albeit that publication cannot be expected to cover every eventuality. I conclude that this proposal to delete the condition in question would not conflict with Policy DM2 or the SPD on the matter of residential amenity.

8. The National Planning Policy Framework (the Framework) and Planning Practice Guidance have been considered in all relevant respects including on the question of appropriate use of planning conditions. The development plan policy which I cite mirrors relevant objectives within the Framework.

Overall conclusion

9. I have found that the condition is not necessary or reasonable for reasons relating to safeguarding residential amenity. Accordingly, the appeal is allowed.

D Cramond

INSPECTOR