

Appeal Decision

Site visit made on 15 December 2022

by Martin Andrews MA(Planning) BSc(Econ) DipTP & DipTP(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 January 2023

Appeal Ref: APP/K3605/D/22/3300917

127 Cottimore Lane, Walton-on-Thames KT12 2BN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Ms Michelle Mackey against the decision of Elmbridge Borough Council.
 - The application, Ref. 2022/0327 dated 3 February 2022 was refused by notice dated 12 May 2022.
 - The development proposed is the demolition of the existing conservatory and construction of part two storey/part single storey extension to side and rear; loft conversion with dormer to rear and rooflights to front; porch to front, and internal & external alterations.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of the existing conservatory and construction of part two storey/part single storey extension to side and rear; loft conversion with dormer to rear and rooflights to front; porch to front, and internal & external alterations at 127 Cottimore Lane, Walton-on-Thames in accordance with the terms of the application, Ref. 2022/0327, dated 3 February 2022 and subject to the conditions in the attached Schedule.

Main Issue

2. The main issue is the effect of the proposed side and rear extensions on the living conditions for the occupiers of No. 129B Cottimore Lane as regards outlook.

Reasons

3. The Council's delegated report has assessed the appeal scheme having regard to the 45-degree rule set out in its Design and Character SPD. This is a planning tool primarily used to decide whether an extension would affect natural light received by the windows of habitable rooms in a neighbouring property. In this case, because the extension would form part of the northeastern elevation the Council has concluded that the extensions in the appeal scheme would not have any adverse effect. I agree with this view.
 4. However, the 45-degree rule can also be used to assess the impact on outlook and on this basis the Council considers that the extent of the single storey extension's projection beyond the existing rear wall together with its eaves
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height would breach the 45-degree sightline from the closest ground floor window at No. 129B.

5. Whilst acknowledging the use of the 45-degree rule can be helpful, I consider that whether a development would be unacceptable in its effect on outlook – and in extremis – be ‘overbearing’, is a more wide-ranging and subjective assessment than in the case of light, which can if necessary be accurately assessed under the BRE standard guidelines for daylight and sunlight.
6. In this case, the appellant points out that the ground floor window of No. 129B affected is adjacent to the staircase to the upper floor. This means that the main outlook from the lounge / diner is through the full height glazed doors of the French window further along the rear elevation at an increased distance from the proposed extensions and where the 45-degree test would be satisfied. As regards the first floor of No. 129B, the nearest window is to a non-habitable room and there is therefore no outlook to safeguard.
7. The outlook from the rear garden of No. 129B is also relevant but given its northerly aspect this would not benefit from sunlight, thereby limiting any propensity to use the area for amenity purposes. I also observed that the garden is dominated by a very large outbuilding in a position and of a scale that already limits the potential for leisure use.
8. Moreover, as the grounds of appeal make clear, in addition to the gap between No. 129B and the boundary fence the first metre width of the proposed extensions would be single storey, with a 2.8m eaves height (less than the 3m allowed under permitted development) and the roof sloping away.
9. Overall, whilst the proposed extensions would undoubtedly affect the outlook from No. 129B, I do not consider they would have a materially adverse effect on the aspect from the habitable rooms and garden of that property. On balance, the impact would therefore not be such as to necessitate the preclusion of the appeal development as being in unacceptably harmful conflict with Policy DM2 of the Elmbridge Development Management Plan 2015; the Council’s Design and Character SPD, and paragraph 130f) of the National Planning Policy Framework 2021. And although not in itself determinative I give some weight to the absence of an objection to the appeal scheme from the owners and / or occupiers of No. 129B.
10. I shall therefore allow the appeal. A condition requiring the development to be carried out in accordance with the approved plans is necessary for the avoidance of doubt and is in the interests of proper planning. An external materials condition will facilitate a harmonious form of development, whilst a condition preventing the use of the flat roof of the single storey extension will safeguard the privacy of the neighbours on both sides. The privacy of the occupiers of No. 129B will also be maintained by a condition in respect of the proposed first floor side window. Finally, a condition requiring flood mitigation measures will limit the harm caused in the event of flooding.

Martin Andrews

INSPECTOR

Schedule of Conditions

- 1) The development to which this permission relates shall begin no later than the expiration of three years beginning with the date of this Decision;
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing Nos. DE-200 Rev. A; DE-210 Rev. A; DE-211 Rev. A; DE-212 Rev. A; DE-213 Rev. A; DE-220 Rev. A; DE-221 Rev. A; DE-222 Rev. A; DE-223 Rev. A; DE-230 Rev. A;
- 3) The external materials used for the construction of the development hereby permitted shall match those used in the existing building;
- 4) The flat roof to the extension hereby permitted shall not at any time be altered or adapted to form a roof garden or similar amenity area;
- 5) The proposed first floor en-suite window shall be obscure glazed and of restricted opening to a height of 1.7m above the internal floor level in accordance with details first agreed in writing by the Local Planning Authority;
- 6) All flood mitigation measures shall be carried out in accordance with the approved details set out in the Flood Risk Assessment carried out by KRS Environmental and submitted in support of the application.

