



Appeal Decision

Site visit made on 10 January 2023

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 February 2023

Appeal Ref: APP/G5180/D/22/3294003

Kinross, North End Lane, Downe, Orpington BR6 7HQ

- 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 without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr W Harris against the decision of the Council of the London Borough of Bromley.
 - The application Ref 19/03568/RECON, dated 30 April 2020, was refused by notice dated 28 February 2022.
 - The application sought planning permission for the demolition of existing conservatory and erection of single storey ground floor extension to the side, elevational alterations to provide roof over extended bungalow with habitable accommodation in the roof space and rooflights to sides/front without complying with conditions 2 and 4 attached to planning permission Ref 19/03568/FULL6, dated 12 March 2020.
 - The conditions in dispute are Nos 2 and 4 which state:
 - (2) "The development hereby permitted shall not be carried out otherwise than in complete accordance with the plans approved under this planning permission unless previously agreed in writing by the Local Planning Authority";
 - (4) "The materials to be used for the external surfaces of the development hereby permitted shall as far as is practicable match those of the existing building".
 - The reasons given for the conditions are:
 - (2) "In order to comply with Policy 37 of the Bromley Local Plan and in the interests of visual and residential amenity";
 - (4) "In order to comply with Policy 37 of the Bromley Local Plan and in the interests of the appearance of the building and the visual amenities of the area".
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing conservatory and erection of single storey ground floor extension to the side, elevational alterations to provide roof over extended bungalow with habitable accommodation in the roof space and rooflights to sides/front without complying with conditions 2 and 4 attached to planning permission Ref 19/03568/FULL6, dated 12 March 2020, but subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: NEL-967-NE-PD-01REVC
 - 2) Within three months of the date of this decision the rooflight in the south flank roof slope shall be obscure glazed to a minimum of Pilkington privacy level 3 and shall be non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed and the window shall be permanently retained as such.

- 3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order amending, revoking and re-enacting this Order) no buildings, structures, extensions, alterations, walls or fences of any kind shall be erected or made within the curtilage of the dwelling.

Applications for Costs

2. An application for costs was made by Mr W Harris against the Council of the London Borough of Bromley. This application is the subject of a separate decision

Background and Procedural Matters

3. Planning permission was originally granted for the erection of a single storey ground extension and alterations to provide habitable accommodation in the roof space subject to conditions. Condition No 2 was imposed on the original permission specifying adherence with the approved plans, and Condition 4 required the use of matching external materials. The application subject to the appeal seeks to amend both of these conditions to reflect works that have already been undertaken. As observed on site, the proposed glazed doors are in situ, albeit the Juliet balconies had been removed at the time of my visit, the rooflights and new slate tiles are also in place.
4. The Council's reason for refusal relates to the impact of the alterations to the fenestration on the living conditions for neighbours which would be covered by the wording of Condition 2. The use of slate roofing materials would be subject to Condition 4. While the slate tiles change the appearance of the building from the original, they do not alter the essential form, scale and character as approved. I therefore find no harm with regard to non-compliance with condition 4.

Main Issue

5. The main issue is whether the disputed condition 2 is reasonable or necessary, in the interests of the living conditions of neighbouring residents, with particular reference to privacy.

Reasons

Living conditions of neighbouring residents

6. The previously approved permission included openings at the first floor in the rear elevation which allowed limited overlooking of neighbouring properties. The Council previously found this arrangement as acceptable stating that it was not considered to result in a significant loss of amenity with particular regard to "*light, outlook, prospect and privacy*".
7. The closest neighbour at Little Orchard has a bedroom window about 2 metres from the enlarged rear windows together with a bedroom close to the side rooflight. However, the rear window closest to Little Orchard is only marginally larger than that previously approved, and the one furthest away is smaller. This together with the angle between the properties not changing means that the distances between the proposed amended windows and neighbouring property including its garden are sufficient to maintain acceptable levels of neighbour privacy within this setting.

8. Whilst the amended openings provide Juliet balconies that would provide a modest increase in the overall projection as opposed to the more inset window originally approved, it is considered it would not result in a significant increased level of overlooking, to such a level as to be unacceptably harmful, having regard to what has previously been approved. In this context, I do not consider that the alterations proposed under the appeal scheme would result in any material harm.
9. Interested parties have raised concerns in respect to the use of the flat roof as a terraced area, indicating that it would provide an impact on privacy and a perception of overlooking to the detriment of the neighbours. The proposed plans contain the provision of a Juliet balcony which would prevent access to the flat roof. I find this treatment would be sufficient to prevent access to the flat roof and would maintain the suitable living conditions of the existing neighbouring property, in accordance with my findings above.
10. The rooflight serves an ensuite and therefore it is appropriate to ensure that it is obscure glazed and fixed. This can be secured by the imposition of a suitably worded condition to ensure that there would be no unacceptable loss of privacy.
11. For the reasons above, I conclude that the amendment would not result in harm to the living conditions of the existing occupiers of the adjoining dwelling with particular reference to privacy or overlooking. The scheme would be compliant with BLP Policies 6 and 37 which amongst other things, are concerned with housing quality and protecting residential amenity. The proposal is also consistent with the advice in the of the National Planning Policy Framework 2021 (the Framework), which amongst other things, seeks high quality design and a good standard of amenity for all existing and future occupants of buildings.

Other matters

12. The appeal site is located amongst a small group of mainly detached units which vary in style, with bungalows and two-storey dwellinghouses providing a mixed character to the area. There is also a variety in the material finishes with render, brick and clay tiles all prevalent in the area.
13. The appeal site has been renovated through the recent planning permission, with a more modern appearance and contemporary finish. The appeal scheme would not increase the overall mass and bulk of the built development. The alterations to the first floor at the rear to provide larger openings with Juliet balconies, are considered modest changes to the extant permission. Furthermore, the alterations to the rooflights on the front and side elevations are of domestic scale and appearance and in this context would conform to the general pattern of development along North End Lane and would not appear unduly dominant or out of place.
14. The application seeks permission for a development which varies from the original and which has already been implemented. Whilst I acknowledge the frustration of neighbours, planning legislation allows for such applications to be made and subsequently judged on the basis of their individual merits.
15. The overall design of the scheme is readily assimilated into the existing locality, preserving the character of the area, and would be sensitive to the defining

characteristics of the vicinity. The proposal would not therefore harm the character and appearance of the surrounding area.

16. I am mindful that the Council has already found that the extension is acceptable having regard to Green Belt policy. The amendments carried out and those proposed do not materially change the size or character of the extension and therefore the extension is still acceptable in this regard.
17. The application seeks permission for a development which varies from the original and which has already been implemented. Whilst I acknowledge the frustration of neighbours, planning legislation allows for such applications to be made and subsequently judged on the basis of their individual merits.

Conditions

18. This appeal grants a new planning permission. The Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73A should also restate the conditions imposed on earlier permissions that continue to have effect. As the development has been substantially completed, it is not necessary to impose a condition requiring commencement within a set period or to specify the materials.
19. It is necessary to specify the amended list of approved drawings as this provides certainty and defines the permission. Obscure glazing in the side rooflight is necessary to ensure neighbouring privacy is maintained, given the proximity of the development to the boundary. The three-month compliance period is reasonable given the retrospective nature of the development and extent of the works. Due to the size and shape of the site and its relationship to neighbouring dwellings, it is necessary and reasonable to remove permitted development rights for extensions and alterations, to protect the amenity of neighbours and future occupants.

Conclusion

20. For the reasons given above I conclude that the appeal should be allowed. I will grant a new planning permission with the original Condition 2 substituted, and now becoming Condition 1. I will reimpose the undisputed conditions, where they remain reasonable and necessary.

Robert Naylor

INSPECTOR