



Appeal Decision

Site visit made on 2 February 2023

by G Roberts BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st March 2023

Appeal Ref: APP/Z1775/D/22/3309727

26 Courtmount Grove, Portsmouth, PO6 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 Mr Brynley Comley against the decision of Portsmouth City Council.
 - The application Ref. 21/00906/HOU, dated 16 June 2021, was refused by notice dated 3 August 2022.
 - The development proposed is construction of two storey rear extension, dormer to side roof slope and relocation of garage.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The decision notice and Delegated Report indicate that the appeal proposal was determined on the basis on the application drawings validated on 18 June 2021 (original plans). However, the Appellant's Grounds of Appeal included a revised set of plans that they indicated were submitted to the Council on 10 October 2021, well before the decision to refuse planning permission. During my site visit it also became clear that the Appellant had constructed the rear extension in accord with these revised plans. This was on the basis that the Appellant considered the reduction in the size of the proposed extension, as shown on the revised plans, resulted in that part of the proposal falling within the scope of permitted development.
3. I invited the Council and the Appellant to comment on these events. Whilst I looked at the option of considering the revised plans, the Council's response was that these plans were never substituted and that they determined the application on the basis of the original plans. The Council went on to indicate that the failure to substitute the plans was due to human error, but that they had not considered the revised plans and to do so would require a new planning application to be submitted.
4. There were four objections from interested parties to the original application, which included several photographs of the alleged impact of the proposal on neighbours living conditions. The revised plans showed that substantial changes had been made to the original scheme and those interested parties should have been given the opportunity to comment on these changes. However, as the plans were not substituted by the Council these interested parties were never reconsulted. Whilst the revised plans were submitted with the appeal through the Householder Appeals Service (HAS), the latter only requires interested

parties to be notified that an appeal has been submitted. The HAS process does not provide interested parties with a further opportunity to comment or to be consulted on any revised submissions (plans).

5. Given the above and in applying the 'Wheatcroft Principles', in my view, the determination of the appeal on the basis of the revised plans would prejudice the interests of those interested parties as they have not been consulted on or had an opportunity to comment on these revised plans. I have, therefore, proceeded to determine the appeal on the basis of the original plans.
6. In doing so, I fully understand the Appellant's frustrations in that it appears that they sought to address the concerns raised by the Planning Case Officer (PCO) and interested parties through the submission of these revised plans. Even so, it is not possible for me to determine whether or not those changes would have led to the interested parties maintaining or withdrawing their objections. Whilst the Council contend that the failure to substitute the plans was human error, that does not appear to fully explain how, in responding to the Appellants email that accompanied the revised plans, officers did not make note of the submission of these plans or why they were not picked up when the file was allocated to a new PCO.
7. I note that the Appellant considers that their interests to have been prejudiced by the delays and errors in processing the application. However, it is essential that the appeal process is fair and open to all parties, including interested parties. As I confirmed, the changes shown on the revised plans are substantial and they were not formally substituted or subject to further consultation with the objectors. If the Appellant wishes to pursue this matter further the only suggestion I can make is that they take this complaint up directly with the Council.

Main Issues

8. The main issues are the effect of the proposed development on: (a) the character and appearance of the host property and surrounding area; and (b) the living conditions of neighbouring occupiers.

Reasons

Character and appearance

9. The appeal site is located on the southern side of Courtmount Grove close to its junction with Burrill Avenue and comprises a large two storey semi detached property located within a good sized plot. The surrounding area comprises similar semi-detached and detached two storey properties, as well as some chalet style properties, that vary in terms of their style, scale, roof forms and materials.
10. The other half of the semi to the host property is formed by 28 Courtmount Grove (No.28). Whilst the latter has been extended at the rear, on the ground and part first floor, these additions are on a much smaller scale to the proposed rear extension to the host property. In this respect, I agree with the Council that the size, depth and location of the proposed rear extension would result in it being visually prominent and overbearing, and thus harmful to the character and appearance of the host and wider area. Although sited at the rear, the proposed extension is very visible due to the elevated position of the

appeal site relative to Burrill Avenue, from where there are clear views of the rear of the host and its neighbours.

11. The size, height and length of the proposed dormer, on the side roof slope (as extended), would also be visually prominent within the roofscape to the host and streetscene. It would sit marginally below the ridge and marginally above the eaves to the existing main roof (as extended), covering a large part of the side roofscape. As such, it would represent a discordant feature that would overwhelm this part of the roof. Whilst I accept that there are examples of other roof dormers in the area, these appear more subservient and proportional to their hosts. Although I also consider that a dormer, on this part of the roof, could, in principle, be acceptable, the size, height and length of the proposed dormer would be excessive resulting in a feature that would not sit comfortably on the roofscape to the host property.
12. The proposed relocation of the existing single storey garage would be acceptable and would not result in any harm to the character or appearance of the host or surrounding area. Any common boundary issues that this relocation gives rise to are matters covered by other legislation.
13. In relation to the revised plans, as I confirmed earlier, these show a reduction in the size of the proposed rear extension and side dormer, albeit some of the plans are marked 'Not to Scale' but then have a scale in the 'key' and although, for example, the depth of the new rear extension is noted as being 3 metres, as drawn (on plan and elevation) it appears to be the same size as the original 4 metre extension. Even so, the Appellant contends that the construction of the revised rear extension and side dormer would constitute permitted development, and on this basis the extension has been constructed on site.
14. As I made clear when I invited the parties to comment on these events, whether a proposal is permitted development or not and thus is lawful is not a matter that I can determine within the context of an appeal that has been submitted under section 78 of the Town & Country Planning Act 1990 (TCPA 1990). I can only consider the proposal that is before me, which seeks planning permission for, amongst other works, a rear extension and dormer window. It remains open to the Appellant to apply to the Council under section 191 or 192 of the TCPA 1990 to establish the lawfulness or otherwise of the as constructed extension and/or the proposed revised dormer, and the determination of that application would not be affected by my decision on this appeal.
15. Accordingly, I find that the proposed rear extension and side dormer would be contrary to policy PCS23 of The Portsmouth Plan (Portsmouth Core Strategy) (January 2012) (TPP), which seeks, amongst other requirements, to ensure that new development is sympathetic to local character and the surrounding built environment, and is also appropriate in terms of its scale and appearance.

Living conditions – neighbours

16. I am satisfied that the proposed relocation of the existing garage and new side dormer would not result in any significant harm to the living conditions of neighbouring occupiers. The proposed dormer would be sited within the plane of the main roof (as extended) and there would remain a reasonable gap between this part of the host property and the side of 38 Burrill Avenue (to the west). Any issues of overlooking, from the proposed windows to the new

- dormer, could, if I were minded to allow the appeal, be addressed by a condition requiring obscure glazing and non-opening windows below eye level.
17. The proposed rear extension would have a depth of approximately 4 metres, with the first and second floor elements set back from the common boundary with No.28. The second floor would also be designed as a gable end. Even with the setback, the impact of this part of the extension on the living conditions of No.28 would, in my view, be harmful. That harm would result from the overbearing impact that the proposed extension would have on the rear windows and private amenity area to No.28. It would also lead to a harmful sense of enclosure.
18. For similar reasons, the proposed extension would be harmful to the living conditions of the neighbouring occupiers at 38 Burrill Avenue. Whilst the latter fronts onto Burrill Avenue, it occupies the corner plot with Courtmount Grove and in view of this and its orientation to the host property, the proposed extension would be very visible from the garden and windows of 38 Burrill Avenue, from where it would have an overbearing impact on their outlook.
19. With regard to the new windows, at first and second floor level, within the proposed rear extension, any views over adjoining properties would either be at an oblique angle or towards the rearmost part of their gardens or would not be materially different to the views which existed from the original first floor windows to the host property. In view of this and the distances between the proposed extension and some neighbouring properties, I am satisfied that these windows would not result in any harmful overlooking of neighbouring occupiers. Moreover, the relationships that arise would reflect those commonly found in built up suburban areas such as this, where mutual overlooking of adjoining windows and gardens is an inherent characteristic.
20. The Appellant has referred to the existence of permitted development rights as a fallback option and I accept that this can be a material consideration to which weight should be accorded. In this case, the relevance of this issue has largely been overtaken by the construction of the rear extension, as the Appellant contends, under permitted development rights. Even so, assuming the rear extension, as constructed, is lawful the impact on the living conditions of neighbouring occupiers of an extension that is 1 metre shorter is, in my view, materially different to the impact that would result from the appeal proposal.
21. Accordingly, I find that the proposed rear extension would be contrary to policy PCS23 of TPP and paragraph 130 f) of the National Planning Policy Framework (July 2021), which seek to ensure, amongst other requirements, that new development results in the provision of a good standard of living environment for neighbouring occupiers as well as future residents.

Conclusion

22. For the reasons given above and having taken all the matters raised into account, I conclude that the appeal should be dismissed.

G Roberts

INSPECTOR