

Appeal Decision

Site visit made on 12 May 2023

by G Powys Jones MSc FRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 9 June 2023

Appeal Ref: APP/K3605/D/23/3316318
7 Summer Avenue, East Molesey, KT8 9LU

- 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 M Stucke against the decision of Elmbridge Borough Council.
 - The application Ref 2022/3022, dated 5 October 2022, was refused by notice dated 30 November 2022.
 - The development is summerhouse and shed.
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Decision

1. The appeal is allowed and planning permission is granted for a summerhouse and shed at 7 Summer Avenue, East Molesey, KT8 9LU in accordance with the terms of the application Ref 2022/3022, dated 5 October 2022, subject to the conditions set out in the attached Schedule to this decision.

Procedural and preliminary matters

2. The outbuilding has already been built, and the appellant wishes to retain it. I shall therefore deal with the appeal as if the original application had been made under section 73A of the Act.
3. The officer report on the application contains an assessment on the effects of the building on the locality's character & appearance and neighbouring amenity. The Council raises no objections on either count. I have no reason to disagree with the Council's assessment on these aspects.

Main issue

4. The main issue is the consequences and effects of retaining the outbuilding on matters relating to flooding.

Reasons

5. The outbuilding has been built at the end of a fairly lengthy garden serving a dwelling which is undergoing renovation and improvement. Part of the outbuilding has a workbench, and the other part was used for storage when I visited. In terms of its appearance, it is the type of structure commonly seen in gardens the length and breadth of the land; indeed, there are several examples of such structures in gardens in close proximity to the appeal site.
6. A gate provides access from the appellant's garden to amenity land upon which several small boats were stored. A slipway provided access from the amenity area to a walkway alongside the river built as part of the flood defences for

East Molesey. Between the walkway and the dwellings to the east is a flood defence wall. From the walkway I could see examples of other outbuildings built closer to the wall than the appellant's. These are not referred to in the officer report and I have not been told whether or not these have the benefit of planning permission.

Policy CS26 of the Council's Core Strategy (CS), which is directed to flooding, provides that:

Permitted development rights for development which could result in a loss of flood storage capacity or impede flood flow will be removed from new developments in flood zone 3...

7. Thus, permitted development rights are available for outbuildings on residential properties in flood zone 2. The officer report and reason for refusal refer to a '5m buffer of zone 3', but the Council, on enquiry, confirmed that this was merely an observation, and the site lies entirely within flood zone 2.
8. The appellant's most recent application for a certificate of lawfulness in respect of the outbuilding failed. This was because, being within 2m of the curtilage's boundary, the outbuilding's height should be limited to 2.5m if permitted development rights are to apply. The Council measured it at 2.56m. Had the outbuilding been built elsewhere within the garden, and not within 2m of the garden's boundary, planning permission would not have been required.
9. Had the building been 0.06m or so less in height, no planning objection could have arisen. The same would apply if the appellant relocated the outbuilding elsewhere within the garden¹ away from the flood defence wall. Given that the appropriate authorities do not seek to restrict the construction of outbuildings qualifying as residential permitted development in flood zone 2, it must logically follow that they are not regarded as problematical in these terms.
10. Taking account of all these factors, which I regard as material considerations attracting significant weight, it appears to me that the appellant's submitted Flood Risk Assessment, although displaying some omissions, contains sufficient information to make an appropriate judgment. In my view, the development, taking account of all material considerations, has and would have little or no harmful impact or consequences relating to flooding.
11. The second part of the Council's reason for refusal provides:

The development, by reason of its siting in close proximity to the existing flood defences, would be contrary to policies CS26 of the Core Strategy (2011) and DM13 of the Development Management Plan (2015), the Flood Risk SPD (2016) and the amended NPPF (2021).
12. The Council, in its officer report, does not specifically refer to those aspects of these policies or guidance which provide protection to flood defences. I have read and re-read the policies and guidance, national and local, and I can find no policy or aspect of guidance directed to the physical protection of flood defences, or possible maintenance buffers. I may, of course, have missed it.

¹ As appears to be suggested by the Environment Agency (EA) in its observations dated 14 October 2021 on a previous application to retain the outbuilding (Ref 2021/2676)

13. In this regard, the Council relies principally on the EA's response to a previous application (Ref 2021/2676), since the Agency did not respond to consultation on the application subject of appeal. The Agency's concern is that the building is sited too close to the flood defence wall so it:

'..would restrict essential maintenance and emergency access to the existing defence in addition to potentially impacting the structural integrity and the ground anchors. The permanent retention of a continuous unobstructed area is an essential requirement for future maintenance and/or improvement works.'

14. However, I saw during my visit that a significant part of the area between the outbuilding and the wall was occupied by a Thames Water pumping station. This is not mentioned in either the Council's officer report or the EAs original response, so I sought the parties' observations. The EA has since clarified that this was probably installed in the period 1975 to 1988, prior to it taking responsibility for flood defences, and it intends taking the matter up with Thames Water.
15. It seems to me that the pumping station represents a potentially more considerable impediment for access to the flood defence wall than the outbuilding, and as the EA now say, the pumping station appears to be sited *'over the ground anchors that potentially hold the flood defence wall up'*. Indeed, according to the EAs estimate of the date of construction, this has been the situation for at least 35 years, and possibly longer. There is no evidence before me that any difficulty has arisen from the siting of the pumping station.
16. Taking these factors and local policy into account, I can see no justification for withholding consent for the outbuilding.
17. I therefore conclude that there is insufficient evidence to demonstrate that the retention of the outbuilding would lead to harmful consequences in respect of flooding. Accordingly, I find no conflict with those provisions of CS policy CS26 or policy DM13 of the Council's Development Management Plan directed to measures to prevent the harmful effects of flooding.

Conditions

18. The Council has suggested the imposition of several conditions in the event of the appeal being allowed. Since the outbuilding is substantially complete, a condition identifying the approved plans is unnecessary as is the condition relating to materials.
19. It is, however, necessary to clarify the use of the building and to formalize the mitigation measures proposed by the appellant in his submitted Flood Risk Assessment. The conditions are imposed to reduce the risk of any consequential effects of potential flooding.
20. All other matters raised in the representations have been taken into account, but no other matter raised is of such strength or significance as to outweigh the considerations that led me to my conclusions.

G Powys Jones

INSPECTOR

SCHEDULE OF CONDITIONS

- 1). The outbuilding hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as 7 Summer Avenue, East Molesey, and shall not be used for overnight sleeping accommodation.
- 2). The Flood Risk Mitigation Measures set out in the appellant's Flood Risk Assessment received by the Council on 5 October 2022 shall be implemented immediately and complied with in perpetuity.