



Appeal Decision

Site visit made on 17 May 2023

by Lewis Condé Msc, Bsc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 June 2023

Appeal Ref: APP/T0355/D/22/3312224

157 Clarence Road, Windsor, Windsor and Maidenhead SL4 5AP

- 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 David Tucker against the decision of Royal Borough of Windsor and Maidenhead.
 - The application Ref 22/01610, dated 13 June 2022, was refused by notice dated 7 October 2022.
 - The development proposed is described as 'Single storey rear extension and alterations to fenestration'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Following concerns expressed by the Council during the course of the original application the appellant submitted several amended drawings showing different design options, as well as a potential scheme that could be advanced under permitted development rights. However, I understand that the appellant did not confirm that any of the subsequent drawings provided to the Council should supersede the original submitted proposal. Accordingly, the Council determined the application based on the original plans/drawings that it received.
3. The appellant has since indicated a willingness for the appeal to be determined against a revised scheme whereby the extension would incorporate a set back of approximately 1.265m.
4. Annex M of the 'Procedural Guide: Planning Appeal – England' sets out that the appeal process should not be used to evolve a scheme as it is important that what is considered by the Inspector is essentially what was considered by the local planning authority. Furthermore, having regard to the principles established by the Wheatcroft judgement¹, I consider my acceptance of revised plans for the determination of the appeal could prejudice other parties. It is therefore necessary that the appeal is determined against the plans that the Council made its decision. I have therefore proceeded on this basis.

¹ Bernard Wheatcroft Ltd v SSE [JPL, 1982, P37].

Main Issues

5. The main issues are the effect of the proposed development on: a) the living conditions of neighbouring occupiers of no. 155 Clarence Road, with particular regard to outlook and light; and b) flood risk.

Reasons

Living Conditions

6. The appeal relates to a semi-detached dwelling located in a primarily residential area. The dwelling, alongside adjacent properties, are each served by sizeable north facing rear gardens.
7. The appeal proposal would involve a rear extension set on the common boundary shared with adjoining no. 155 Clarence Road (no. 155). The flank wall of the proposal would be in close proximity to a ground floor rear facing window in the adjacent no. 155. From the information before me, I understand that this window serves a habitable room to that property, whilst this has not been contested by the appellant.
8. At approximately 7m in length, the proposed extension would extend significantly beyond the adjacent groundfloor rear elevation window of the adjoining property. The proposal would also breach the guidelines set out in the Council's Borough Wide Design Guide Supplementary Planning Document (adopted 2022) (SPD), which seeks for single storey extensions to comply with a 60-degree rule in relation to neighbouring windows.
9. The proposed development, due to its bulk and proximity to the adjacent ground floor window of no. 155 would have a dominant and overbearing impact on that neighbouring property. As well as being visually intrusive the outlook from the adjacent habitable room would be significantly impaired. There would also be a loss of light to the relevant room, the harm of which would be exacerbated by its northern orientation.
10. The appellant has suggested that proposals of a similar nature could be undertaken through permitted development rights (PDR). However, from the information before me, it appears that the proposed extension would exceed the depth of development that could be secured under PDR. The appeal scheme is therefore likely to be more harmful to the living conditions of the neighbours than the potential fallback position. In addition, there is no prior approval consent or certificate of lawfulness before me that would suggest the potential fallback position under PDR is likely to be advanced by the appellant.
11. The appellant has also highlighted that developments have been allowed at no. 161 and no. 163 Clarence Road (nos. 161 and 163) whereby the 60-degree rule was breached. I have limited details of those approved developments, including their planning histories. However, I note from the Council that the applications were assessed against different local plan policies that were in place at the time. Additionally, with respect to no. 163, I am aware that the scheme allowed was via a prior approval under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). As such, the considerations for that development may have been materially different from those of a planning application under Section 78 of the Town and Country planning Act 1990 (as amended). Accordingly, my view of the proposal does not turn on this matter.

12. Overall, I find that the proposed development would cause harm to the living conditions of the neighbouring residents at no. 155 through overbearing impacts and a loss of outlook and light. The proposal is therefore contrary to the amenity protection aims established under policy QP3 of the Royal Borough of Windsor and Maidenhead Borough Local Plan (adopted 2022) (the Local Plan) and the Council's SPD.

Flood Risk

13. The Council highlights that the appeal site is located within Flood Zone 2, which has not been refuted by the appellant.
14. Local Plan Policy NR1 identifies that development proposals will only be supported in Flood Zone 2 where an appropriate flood risk assessment has been carried out, and it has been demonstrated that development is located and designed to ensure that flood risk from all sources of flooding is acceptable in planning terms. This also follows the approach set out with the National Planning Policy Framework (the Framework) and advice contained within the Government's Planning Practice Guidance (PPG).
15. The appeal proposal has not been accompanied by any site-specific flood risk assessment. As such, I have not been able to adequately assess the potential impacts of the proposal upon flooding. The scheme is therefore in conflict with the requirements of Local Plan Policy NR1.

Other Matters

16. I note the appellant's frustration regarding the local planning authority's approach to determining the application. Particularly its requests for a flood risk assessment (FRA) when similar developments have been permitted on nearby sites, seemingly in the absence of such information. However, I do not know the specific circumstances of those cases, while the appeal scheme has been determined on its own merits. As indicated above, the adopted development plan policy is clear in its requirements for an FRA to be prepared for proposals within Flood Zone 2.

Conclusion

17. The proposal conflicts with the development plan when taken as a whole and material considerations, including the Framework, do not indicate that a decision should be made other than in accordance with it. Accordingly, the appeal is dismissed.

Lewis Condé

INSPECTOR