



Appeal Decision

Site visit made on 13 July 2023

by C Shearing BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th August 2023

Appeal Ref: APP/J2210/D/22/3312451

118 Clare Road, Whitstable, Kent CT5 2EH

- 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 carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Cockerton against the decision of Canterbury City Council.
 - The application Ref CA/21/02672, dated 1 December 2021, was refused by notice dated 14 September 2022.
 - The application sought planning permission for 'variation of condition 2 (drawings) of planning permission CA/20/01291 for a two storey and single storey rear extension to allow change of cladding material along with structural change to roof structure and second floor' without complying with a condition attached to planning permission ref CA/21/00522 dated 4 May 2021.
 - The condition in dispute is condition no2 which states that:
The development hereby approved shall be carried out in accordance with the submitted drawings:
Site Location Plan (Received 23rd June 2020)
Proposed Block Plan (Received 22nd September 2020)
Proposed Floor Plans- Drawing no.PR01 3.2 (Received 03 Mar 2021)
Proposed Elevations- Drawing no PR02 3.2 (Received 03 Mar 2021).
 - The reason given for the condition is:
To secure the proper development of the area.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Mr Cockerton against Canterbury City Council. This application is the subject of a separate decision.

Preliminary Matters

3. Planning permission was granted by the Council for a two storey and single storey rear extension to the property in December 2020 under the Council's reference CA/20/01291. Condition 2 of that planning permission required the development to be carried out in accordance with the submitted drawings, which were listed.
4. In May 2021, under reference CA/21/00522, a variation to that permission was approved which amended the approved drawings to include changes to the cladding material and to the roof to allow for a second floor.

5. A subsequent application was made, and refused by the Council to again amend the approved drawings secured by condition 2. This was considered under the Council's reference CA/21/02672 and is the subject of this appeal.
6. Based on the evidence before me, the earlier planning permissions remain intact. As recognised by Planning Practice Guidance (PPG), my considerations therefore relate only to the disputed condition and do not entail reconsideration of the original planning applications.

Reasons

7. The appeal site lies in a residential area and forms part of a row of properties which line the western side of Clare Road and adjoin a track, belt of trees and former railway line to the rear. The properties in the surrounding area are predominately two storeys, although there are examples of bungalows and three storey properties, and other two storey properties which have been extended to varying degrees into the roof slopes. The variation in the design of the groups of buildings on Clare Road contributes positively to its character and appearance. No118 Clare Road is a detached property with a brick front elevation and front gable feature facing the road. As such it differs in its appearance to those which surround it.
8. The appeal relates to works which have been undertaken to the property, including a rear extension. The proposed amendment includes the lowering of the ground level close to the rear of the house together with the addition of dormer windows to facilitate the provision of three storeys of accommodation within the extension, as demonstrated across floor plans for three levels.
9. The PPG states that an application under section 73 of the Act can be used to vary or remove conditions associated with a planning permission. It goes on to state that section 73 cannot be used to change the description of development.
10. Case law has found that an application under section 73 may not be used to obtain a planning permission that would require a variation to the terms of the 'operative' part of the planning permission, that is, the description of the development for which the original permission was granted. Consequently, the original description of development in an existing planning permission cannot be amended at all.
11. Given the nature of the proposed development, should the appeal be allowed, the resulting development would be inconsistent with the original planning permission which refers to a two storey and single storey rear extension. Consequently, the proposal would offend the principles established by case law and is beyond the powers available under section 73. It therefore follows that the appeal cannot succeed.

Other Matters

12. I note the comments received from the main parties in respect of this matter, in particular the request that a condition be imposed to effectively omit certain windows from the rear elevation and the rear dormers. While this may give the appearance of an extension of two storeys, I am not satisfied that this would satisfactorily remove the three storeys given the internal layout. In addition, and in any event, it would remain the case that the proposal would lie outside the scope of assessment under section 73.

Conclusion

13. For the reasons given, the appeal is dismissed.

C Shearing

INSPECTOR