



Appeal Decision

Site visit made on 20 July 2023

by J Hobbs MRTPI MCD BSc (hons)

an Inspector appointed by the Secretary of State

Decision date: 15 September 2023

Appeal Ref: APP/K3605/W/22/3309158

Timber Ridge, 14 Eaton Park Road, Cobham KT11 2JH

- 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 D Wilson against the decision of Elmbridge Borough Council.
 - The application Ref 2021/3909, dated 12 November 2021, was refused by notice dated 21 April 2022.
 - The application sought planning permission for detached two-storey house with rooms in the roof space and dormer windows, basement, internal swimming pool, integral garage, rear terrace and landscaping following the demolition of existing building without complying with conditions attached to planning permission Ref 2018/0572, dated 1 August 2018.
 - The conditions in dispute are Nos 2 and 10 which state that: "*LIST OF APPROVED PLANS The development hereby permitted shall be carried out in strict accordance with the following list of approved plans: 01 Rev. A, 02 Rev. A, 14 Rev E, 16 Rev B, 17 Rev B and CM/17192/ELE received on 20th February 2018, CM/171921/ELE, CM/171921/1ST, CM/171921/GND, CM/171921/T and 20 Rev A received on 7th March 2018, 12 Rev B, 13 Rev H, 18 Rev F and 19 Rev B received on 22nd May 2018*"; and, "*BALCONY SCREEN Prior to commencement of work, details of privacy screen for the rear terrace shall be submitted for approval. The approved details shall be implemented prior to the first use of the terrace and maintained permanently in strict accordance with the approved plans.*"
 - The reasons given for the conditions are: "*To ensure that the development is carried out in a satisfactory manner.*" and "*To preserve the privacy of neighbouring residents in accordance with Policy DM2 of the Elmbridge Development Management Plan 2015.*"
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Decision

1. The appeal is dismissed.

Preliminary Matters and the Main Issue

2. The application form states that the applicant is "Mr D Wilson" and the appeal form states that the appellant is "Mrs Madeleine Wilson". However, only the person who made the planning application can make an appeal¹. It has been confirmed in correspondence that Mrs Madeleine Wilson is a relative of Mr D Wilson and the appeal is, in fact, made on his behalf.
3. Planning permission Ref. 2018/0572 for a detached dwelling included two conditions, amongst others, which specified the approved plans and required details of a balcony privacy screen for the rear terrace to be submitted for approval and for the approved screen to be implemented prior to first use of

¹ Section 3.3 of the Procedural Guide: Planning appeals – England

the terrace and maintained permanently in strict accordance with the approved plans. The decision notice indicates that those conditions were necessary to ensure development is carried out in a satisfactory manner and to preserve the privacy of neighbouring residents.

4. Subsequently, the appellant submitted an application, Ref. 2018/3126, to confirm compliance with condition 10, which refers to the details of the balcony privacy screen. The details submitted were for a 1.8m high obscure glazed flank balustrade to the side and a clear 1.1m high balustrade rear facing, both at ground floor level. Whilst the Council refused to formally discharge the condition as works had commenced prior to its discharge, it agreed that the submitted details were appropriate and approved them.
5. Notwithstanding the details presented under Ref. 2018/3126, the appellant has instead installed black wrought iron balustrades at the ground floor and first floor levels. In comparison, the original plans did not include balustrades or a privacy screen of any sort at first floor level and depicted screening to the sides of only a relatively modest-sized accessible external terrace at ground floor. The application subject to this appeal sought to retrospectively amend the approved plans, in relation to the proposed side and rear elevation plans, and to amend the condition requiring details of the balcony screen to be submitted to and approved by the Council to reflect the arrangement of balustrades that have been installed. I shall thus consider the appeal on a retrospective basis.
6. The Council has indicated within the delegated report that they consider that the development is materially harmful to the amenities of neighbouring occupiers, and in particular the occupants of No. 16 Eaton Park Road (No. 16). The wording in the delegated report suggests that the occupants of No. 16 may not be the only neighbours affected by the development. The appellant has also sought to address concerns with respect to the effect of the development on the living conditions of the occupants of No. 12 Eaton Park Road (No. 12) within their appeal statement. The appellant is therefore not prejudiced by me considering the effect of the development on the occupants of No. 12.
7. Taking the above background into account, the main issue is whether the disputed conditions are reasonable and necessary in the interest of protecting the living conditions of the occupants of No. 12 and No. 16.

Reasons

8. Due to the surrounding topography the ground floor of the appeal property is higher than the ground floor of both neighbouring properties. There are tall trees and dense vegetation along the boundary with both neighbouring properties, although the vegetation along the boundary with No. 16 is much thinner when compared to the boundary with No. 12.
9. Unlike the approved glazed balustrade details, the wrought iron balustrades provide very little privacy benefit as there are views through the gaps between the metalwork. Given the elevated position of the ground floor terrace, compared to the neighbouring properties, and the height and design of the wrought iron balustrades there are available views into neighbouring gardens from the ground floor rear terrace. This would similarly apply to the external space situated to the rear of the roof terrace marked as non-accessible on the submitted plans but now bound by low-level balustrading.

10. The addition of balustrades to the rear of the terrace as well as to first floor openings creates bounded external spaces that could be utilised by occupants of the appeal property. It has been put to me that the external spaces at the first floor are either not accessible, unusable, or only used for maintenance. However, any such constraint does not mean these external spaces now bordered by balustrading are either completely inaccessible or unusable. Indeed, interested parties have also provided photographic evidence of these spaces being used. Whilst the nature of these spaces dictates that they may not be regularly used, there is still the potential for unduly sensitive overlooking opportunities to be encouraged and for perceived losses of privacy to avail.
11. As the vegetation is thinner along the boundary with No. 16 there are direct views to the rear patio area, conservatory, and rooms of No. 16 from ground floor external areas and the first-floor external spaces of the appeal property. Views toward No. 12 are restricted by dense evergreen vegetation. Nevertheless, the continued presence of this vegetation is not guaranteed. This is not least because planting is ever evolving and reliant on regular maintenance to retain a consistent form. Moreover, owing to the extent of potential overlooking opportunities promoted by the various balustraded areas that have been formed (including at first floor level), the boundary planting that is in place does not, to my mind, offer appropriate and robust assurances that the privacy of No. 12's occupiers is suitably safeguarded.
12. For the reasons given above, the installation of wrought iron balustrades instead of a flank obscure glazed balustrade has had a harmful effect on the living conditions of the occupants of No. 12 and No. 16 because the installed arrangements increase the extent of realistic overlooking opportunities for residents of the appeal property and subsequently significantly reduce the privacy enjoyed by neighbouring residents. This effect is amplified by the elevated position of the appeal property compared to neighbouring properties.
13. Thus, conditions 2 and 10 attached to planning permission Ref. 2018/0572 are, as currently worded, reasonable and necessary in the interests of protecting the living conditions of occupants at No. 12 and No. 16. The proposal to amend these conditions is contrary to Policy DM2 of the Elmbridge Local Plan, Development Management Plan, April 2015 which indicates that to protect the amenity of adjoining and potential occupiers and users, development proposals should be designed to provide adequate privacy. It also conflicts with paragraph 130 of the National Planning Policy Framework which requires planning decisions to ensure that developments create places with a high standard of amenity.

Other Matters

14. It's the appellant's contention that the wrought iron balustrade has been installed to match the wrought iron balustrade already approved on the rear elevation. However, based on the approved plans provided with the appeal documentation, wrought iron balustrades were not approved as part of the original permission.
15. The balcony at first floor level at No. 16 does not set a precedent for the proposed development as it is set back from the rear elevation of the appeal property away from windows. As such, it is materially different to the appeal proposal. In any event, each case is assessed on its own planning merit.

Conclusion

16. Overall, I find that the proposed amendments to the disputed conditions would permit development that is contrary to the development plan when read as a whole and there are no material considerations to outweigh this conflict. Therefore, for these reasons, the appeal should be dismissed.

J Hobbs

INSPECTOR