



Appeal Decision

Site visit made on 27 June 2023

by K Townend BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 September 2023

Appeal Ref: APP/Z3635/W/22/3312109

2 Witheygate Avenue, Staines-upon-Thames, Surrey TW18 2RA

- 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 Philip Miles against the decision of Spelthorne Borough Council.
 - The application Ref 22/00974/FUL, dated 7 July 2022, was refused by notice dated 7 September 2022.
 - The development proposed is described as 'conversion of existing office and store 66m2 Class B1-B8 to a 2-bedroom residential dwelling 71m2.'
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council have referred to the Spelthorne Draft Local Plan and the Draft Staines Development Framework, which, since the Council made its decision have been submitted to the Planning Inspectorate for Examination. However, the Council have advised that, on 6 June 2023, it resolved to formally request that the Planning Inspectorate pause the Examination Hearings for a period of three months. As such I cannot be certain when the plan is likely to be adopted, if any policies are to be modified, or if there are any unresolved objections. I have therefore not given any weight to either of the emerging policy documents and have determined the appeal in accordance with the current development plan.
3. As part of the appeal submission the appellant has provided a revised plan, drawing 6028-22-100 revision B, showing bedroom 1 as a single bedroom with a larger en-suite bathroom. The amended plan results in a material change to the nature of the proposal over what was considered at the planning application stage.
4. Section 16 of the Procedural Guide: Planning Appeals – England, 2023, advises that the appeal process should not be used to evolve a scheme and that is important that what is considered by the Inspector at appeal is essentially the same scheme that was considered by the Council and interested parties at the application stage. In considering whether to accept the amended plans and additional information, I have had regard to the 'Wheatcroft Principles'¹.
5. In this case, the Council and interested parties have not had an opportunity to consider the scheme, as amended, and would therefore be prejudiced.

¹ [1] Bernard Wheatcroft Ltd v Secretary of State for the Environment [JPL, 1982, P37]

Consequently, I have not accepted the amended plan for the purposes of this appeal. In the interests of natural justice, I have determined the appeal on the basis of the plans submitted to the Council.

Main Issues

6. The main issues are:

- The effect of the proposed development on the character and appearance of the area;
- Whether the proposed development would provide acceptable living conditions for the future occupants of the property, with particular regard to internal and external space; and
- The effect of the proposed development on the living conditions of the occupiers of 2 Homestead Road (No 2), with particular regard to privacy.

Reasons

Character and appearance

7. The appeal site is a single storey, flat roof, detached building most recently used by a commercial business. The building is currently "L" shaped with a hard surfaced yard and, except for the vehicle and pedestrian gates, is enclosed along Witheygate Avenue and on the boundary with No 2 by a tall boundary wall.
8. The appeal site lies within a residential area characterised by bungalows and houses with occasional commercial uses. The appeal building itself has a commercial appearance. There is variety in the architectural style and designs of the residential properties in the area. However, Witheygate Avenue and Homestead Road are predominately hipped roof bungalows set back from, but facing, the roads with small front gardens or hard surfaced parking areas. The rows of similar designed houses and bungalows, and the set-back from the road, contributes positively to the pleasant character and appearance of the suburban residential area.
9. The Spelthorne Borough Council Design of Residential Extensions and New Residential Development Supplementary Planning Document, 2011 (SPD) provides guidance to ensure that new development, and extensions, are of a high standard and fit in with the character of the area, without significantly effecting neighbouring properties. The SPD, even though guidance rather than adopted policy, has been formally adopted by the Council and the emphasis on good design is consistent with the National Planning Policy Framework (the Framework). As a result, I attach significant weight to the SPD.
10. Paragraph 3.56 of the SPD provides guidance specific to dormers and advises that dormers should be located centrally, or symmetrically, on a roof; be set in 1m from the edge and the eaves and 0.5m from the ridge. The appellant asserts that the SPD aims to ensure that dormers do not "engulf" the roof plane, however the wording of the SPD seeks to ensure that dormers are not over-dominant or out of proportion.
11. The dormer would not meet the criteria in the SPD. Although the dormer would be set in from all the edges of the proposed new roof, and tiles would be seen on all sides of the dormer, the distances fall short of the guidance in the SPD.

Moreover, due to the width and height of the dormer, and the proposed flat roofed shape, the massing and scale would be over-dominant and out of proportion with the shape and size of the roof. The dormer would be an incongruous feature on, not secondary in nature to, the roof.

12. The scale and massing of the dormer would also result in it being highly visible from Witheygate Avenue, not only from oblique views. Although it would be partially screened from longer distance views by existing buildings and the existing landscaping in the garden of No 2, I have no guarantee that the landscaping in the neighbour's garden would be retained.
13. Moreover, although some of the views are oblique, the massing of the dormer would also be obvious when viewed alongside the gable end of the proposal, as viewed from immediately outside the site. Both the height and width of the dormer would be visually prominent from further along Witheygate Avenue, when viewed from the opposite side of the road. The dormer would, therefore, be prominent in views of the street scene and, due to its scale and massing, would not make a positive contribution to the street scene or the character of the area.
14. Although I saw evidence of rear dormers in the vicinity of the appeal site, and other side dormers on the corner properties of the junction of Homestead Road and Commercial Road, I have not been provided with any evidence of front dormers in the area. Moreover, I have not been made aware of any dormers of a comparable size to the appeal proposal and, even if there were others, there are not so many as to change the character of the area and justify the proposal.
15. I acknowledge that the appeal would be for conversion of the existing building. However, the plot layout and size would also be a smaller plot than any of the plots in the immediate area and, due to the garden being to the side, it would be of a different shape to other plots in the area. The proposal would not replicate the layout of other properties in the area and would, therefore, not be in keeping with the surrounding built development. The position of the garden to the side and the size of the plot would, alongside the massing and scale of the dormer, result in a development which appears cramped and contrived.
16. Moreover, albeit a conversion, the resultant density of the development would not be compliant with the general range of density set within the Council policy nor with the density of the surrounding area.
17. For the above reasons I find that the proposed development would have a harmful effect on the character and appearance of the area. It would, therefore, be contrary to Policy EN1 of the Spelthorne Borough Council Core Strategy and Policies Development Plan Document, 2009 (CSP) which, amongst other matters, seeks high standards of design which respect and make a positive contribution to the street scene and the character of the area, paying regard to scale, height, proportions, layout and other characteristics.
18. For the same reasons the scheme would not comply with the guidance set out in the SPD, which, amongst other matters seeks to ensure that development is of a high standard, is in keeping with and makes a positive contribution to the character of an area, respects plots sizes, layouts and separation distances and seeks to ensure that dormers are not over-dominant or out of proportion with the host dwelling.

19. The proposed development would also not meet the requirements of paragraphs 126 and 130 of The National Planning Policy Framework (the Framework) which seeks to ensure that development achieves high quality well-designed places that are visually attractive and maintain a strong sense of place.

Living conditions of future occupiers

20. Both parties have referred to the Technical Housing Standards – nationally described space standard, 2015 (NDSS) which requires, for a two-bedroom, 4-person, dwelling the minimum floor area must be 79m². Both parties have also quoted the SPD which sets a minimum floor area of 83m² for a 2-storey, 4-person, house.
21. The appellant contends that the SPD should be given less weight, if not considered out of date, due to the conflict between the NDSS and the SPD. However, the NDSS sets minimum requirements and there is nothing within the NDSS which advises that Council's cannot set higher minimums.
22. Policy EN1 of the CSP seeks to ensure that all development is of a high standard. The supporting text of EN1 confirms that the Council intended to produce the SPD to provide more detail on how the requirements of EN1 were to be applied. Although not expressly referred to in EN1, as it post-dates the policy, the SPD supports EN1. Both the policy and the SPD aim to ensure that development provides reasonable living conditions.
23. However, neither the adopted policy nor the SPD refer to the NDSS. As a result, the NDSS should only be considered as guidance. Even if I were to take the appellant's figures, that the scheme would provide 72m² floorspace, the proposed development would fall short of the minimum within the NDSS.
24. The bedrooms would be of a sufficient size for 4-person occupation. However, this leaves limited floorspace on the ground floor for the proposed open plan living space. Once furnished, this room would have limited circulation space. As a result of the constrained floorspace proposed the proposed development would not provide appropriate living conditions for occupation by 4 persons.
25. Although the internal layout of the property would not result in an awkward living arrangement with circulation space and storage areas shown on the plan, the proposal would not provide appropriate internal living conditions for the future occupants of the dwelling, by reason of internal floorspace provision.
26. I have not been provided with any substantive evidence of any other dwellings of this size. Moreover, each scheme must, in any case, be considered on its own merits.
27. Table 2 of the SPD advises that, for a two-bedroom dwelling, the proposal would need to provide 60m² of garden. The minimums are set to ensure that all dwellings are provided with sufficient garden area for the size of the dwelling to ensure appropriate living conditions for the occupants of the property. The scheme also falls short of this requirement.
28. Moreover, paragraph 3.30 of the SPD advises that driveways and accesses are not to be included in the calculation of usable, private, garden space. From the evidence before me the appeal scheme includes the car parking space within the area identified as garden which would be contrary to the advice in the SPD.

29. Although the garden area would be square and would provide space for a number of uses, and would not discourage occupiers from using the space, the plot size would not be sufficient to provide appropriate garden space for the size of the dwelling. The garden area proposed would be below the minimum garden area detailed in the SPD and the shortfall would be greater than that detailed in the appellant's evidence.
30. For the above reasons I, therefore, find that the proposal would not provide acceptable living conditions for the future occupants of the property, with regard to internal and external space and would, therefore, not comply with Policy EN1 of the CSP which, amongst other matters, requires new development to be a high standard in design and layout.
31. The scheme would also conflict with the guidance in the SPD in not providing sufficient internal floorspace or garden space which would result in poor living conditions for the future occupants of the scheme.
32. For the same reasons, the proposal would be contrary to the Framework, specifically paragraph 130 which, amongst other matters, aims to create places with a high standard of living conditions for future occupiers.
33. As detailed in Preliminary Matters above, the appellant has also submitted an amended plan with the appeal which I have not accepted as a substitute for the submitted plans. The amended plan, therefore, does not represent a fallback position as there is no planning permission in place for the revised scheme. The amended plan indicates a potential scheme for a property with 3-person occupation, which would therefore comply with the NDSS. However, this scheme is not before me and would, in any case, not overcome the shortfall in garden space or the other harms I have identified in this decision.

Living conditions of neighbouring occupiers

34. No 2 is a detached bungalow sitting on the corner of Witheygate Avenue, with its rear elevation facing towards the appeal site and its rear, private, garden area between. The garden is enclosed with a high fence along the back of the pavement on Witheygate Avenue.
35. The dormer in the proposed dwelling would have three windows facing towards No 2 and, due to the limited width of the side garden of the scheme, the windows in the dormer would be close to the garden of No 2 and result in overlooking of the garden. Although there would be a greater distance to the dwelling at No 2 the overlooking of the garden would result in harm to the living conditions of the occupants of the neighbouring dwelling. Furthermore, even based on the appellant's evidence, the separation distance between the existing and proposed dwellings would fall short of the minimum distances set out in the SPD.
36. I have considered whether the harm could be overcome through suitably worded conditions to require the windows in the dormer to be obscure glazed and non-openable below 1.7m as suggested by the appellant. Two of the windows serve non-habitable rooms/ spaces and could be obscure glazed and non-opening.
37. However, obscure glazing almost all of the large bedroom window, although technically possible, would result in poor living conditions for the future occupants of the proposed scheme. Although the future occupants would have

light to the room the only outlook from the bedroom would be from the sections above 1.7m high or the single, small, rooflight in the other roof-slope. The outlook would be significantly constrained and restricted by the obscure glazing. Furthermore, this would be contrary to paragraph 3.8 of the SPD which advises against main windows to habitable rooms being obscure glazed.

38. For the above reasons, the proposal would not provide acceptable living conditions for the occupiers of No 2, with particular regard to privacy and would, therefore, not comply with Policy EN1 of the CSP which, amongst other matters, aims to achieve a satisfactory relationship between properties.
39. The scheme would also be contrary to the advice provided in the SPD, specifically paragraph 3.7 which seeks to ensure that the position of windows avoid views of an adjoining property, patios, sitting out and garden areas.
40. For the same reasons it would also be contrary to the Framework, specifically paragraph 130 which, amongst other matters, aims to create places with a high standard of living conditions for existing occupiers.

Other Matters

41. The Council states that it is not able to demonstrate a five-year supply of deliverable housing sites. Paragraph 11(d) of the Framework therefore applies. In this case there are no specific policies in the Framework relevant to footnote 7 which indicate that development should be restricted.
42. The proposal would accord with paragraph 60 of the Framework which seeks to significantly boost the supply of housing. I also acknowledge there would be general social and economic benefits as supported by the Framework. However, in providing one additional property these benefits are limited. Nevertheless, these benefits contribute positively and carry moderate weight in favour of the proposal.
43. There would be adverse environmental impacts in terms of the scale and massing of the dormer, the limited size of the plot for the size of the dwelling proposed and the harmful effect on the living conditions of both the future occupiers of the scheme and the occupiers of the neighbouring property, No 2. The development would, therefore, be contrary to paragraphs 124, 126 and 130 of the Framework, which amongst other matters seek to secure well-designed and attractive places, promote good design, maintain a strong sense of place, and create places with a high standard of living conditions for existing and future users. These environmental impacts are afforded significant weight.
44. The adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework, taken as a whole. As a result, the presumption in favour of sustainable development does not apply.
45. The appellant asserts that the site can no longer facilitate the growth plans of the business and, due to the residential area, has seen little interest from buyers and should be redeveloped for residential use. From the evidence before me there is no disagreement between the main parties on this matter. However, this would not outweigh the harm identified in the main issues above.

Conclusion

46. The proposal would conflict with the development plan as a whole and there are no other considerations, including the provisions of the Framework, which would outweigh this. Therefore, the appeal is dismissed.

K Townsend

INSPECTOR