



Appeal Decision

Site visit made on 19 September 2023

by K L Robbie BA (Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 October 2023

Appeal Ref: APP/L5810/W/23/3314950

13a and 15 Vicarage Road, Hampton Wick, Kingston upon Thames, Surrey KT1 4EB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Martyn Booth against the decision of the Council of the London Borough of Richmond Upon Thames.
 - The application Ref 22/3106/VRC, dated 15 December 2022, was refused by notice dated 22 December 2022.
 - The application sought planning permission for alterations to and conversion of property to form a pair of semi-detached houses together with garage and parking facilities without complying with a condition attached to planning permission Ref 88/90, dated 8 March 1988.
 - The condition in dispute is No. 47 which states that: *Notwithstanding the provisions of the Town and Country Planning General Development Orders 1977-81 no external alterations or extensions shall be carried out to the houses hereby approved.*
 - The reason given for the condition is: *To safeguard the amenities of neighbouring property.*
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Decision

1. The appeal is allowed and planning permission is granted for the removal of condition 47 of planning permission reference 88/90 at 13a and 15 Vicarage Road, Hampton Wick, Kingston upon Thames, Surrey KT1 4EB in accordance with the terms of the application, Ref 22/3106/VRC, dated 15 December 2022, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. The address of the appeal is given as 15 Vicarage Road (No. 15); however, the red line boundary also encompasses 13a Vicarage Road (No. 13a). Notice has been served on the occupier of No. 13a by the appellant. As I am allowing the appeal, and in the interests of clarity I have amended the address in the banner and decision above to include No. 13a as this more accurately reflects the address of the appeal site.
3. The application was made to the Council on 17 October 2022. A discrepancy relating to the service of ownership certification was brought to light during the determination of the application. This was corrected and a revised planning application form was submitted to the Council on 15 December 2022. I am satisfied that the application to which this appeal relates is valid and no injustice has been caused to any party as a result. I have determined the appeal accordingly.

Main Issue

4. The main issue is whether the condition is reasonable or necessary with respect to the reason given for its imposition and the tests in the National Planning Policy Framework (the Framework) and Planning Practice Guidance (the PPG).

Reasons

5. 15 Vicarage Road was originally a detached two storey dwelling. Planning permission 88/90 granted permission for its subdivision to two semi-detached dwellings (now No. 13a and No. 15). They are located on a wedge-shaped plot in a residential area, other similar residential properties are located to either side.
6. Condition 47 of planning permission 88/90 is wide ranging, removing national permitted development rights for all external alterations and extensions at the appeal property. Since the imposition of the condition, national permitted development rights have evolved and are now conferred by the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). An equivalent removal of permitted development right would now fall under Schedule 2 Part 1 Classes A – D of the GPDO.
7. The Framework at paragraph 56 states that planning conditions should only be imposed when they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. More specifically, paragraph 54 states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. Furthermore, the most recent version of PPG states that *"conditions restricting the future use of permitted development rights or changes of use may not pass the test of reasonableness or necessity. The scope of such conditions needs to be precisely defined, by reference to the relevant provisions in the Town and Country Planning (General Permitted Development) (England) Order 2015, so that it is clear exactly which rights have been limited or withdrawn"*¹.
8. I do not consider that the Council has set out clear justification for the removal of these national permitted development rights. The situation on the ground may not have materially changed since the permission was granted, and although the plots are small, the ability to extend or alter them is restricted by the space around them and the wedge-shaped plot upon which they are situated. I do not find that the prominence of No.15 on a corner, in this instance, sufficient reason for their removal. Furthermore, the appeal site is not located in a Conservation Area or other such designation which may warrant the removal of permitted development rights.
9. I therefore conclude that the condition is neither necessary or reasonable in the policy context and having had regard to the appeal site and its surroundings.

Other Matters

10. I note comments made by a third party relating to construction works taking place at the property, however, two planning permissions have previously been granted by the Local Planning Authority for development at the property. I have not been provided with any details of these permissions other than their

¹ Paragraph: 017 Reference ID: 21a-017-20190723

general descriptions. Furthermore, the ongoing construction which I observed at the property at the time of my site visit has had no bearing on my decision in respect of this appeal.

Conditions

11. With the exceptions of Conditions 3 and 9 of the original planning permission, which relate to the statutory time limit and works to trees immediately following commencement of the development, and Condition 47 which is the subject of this appeal, I have reimposed the conditions attached to the original planning permission. If any have been subsequently discharged, that is a matter for the parties to resolve.
12. As I am issuing a new planning permission, I have renumbered the conditions and updated the wording of conditions 3 and 6 (formerly conditions 25 and 49) to reflect current the regulations. These conditions would be no more onerous those currently imposed on the permission.

Conclusion

13. For the reasons given above, I find that condition 47 of planning permission 88/90 which removes permitted development rights for extensions and alterations to the properties in question is neither reasonable nor necessary. As such, it does not comply with government guidance in the Framework or the PPG and has been removed. The appeal therefore succeeds.

KL Robbie

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The parking/turning space(s) indicated on Drawing 401 shall be constructed as part of the development hereby approved to the satisfaction of the Local Planning Authority and shall at no time be used for any other purpose.
- 2) That highway sight lines shall be provided to the satisfaction of the Local Planning Authority.
- 3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification) no wall, fence or other means of enclosure as described in Schedule 2 Part 2 Class A of the Order or other obstruction to visibility within any part of the areas defined hereunder which is under the control of the applicant shall at any time exceed a height of 0.6 metres above ground level:

One area on each side of the proposed access, defined by:

- (i) The highway boundary.
 - (ii) The edge of the proposed vehicular access
 - (iii) A line joining a point 2.4 metres from the intersection of the highway boundary and the edge of the proposed access measured along the highway boundary, with a point 2.1 metres from that intersection measured along the edge of the proposed access.
- 4) A suitable means of enclosure shall be erected along the boundaries of the site(s) and between individual gardens in accordance with detailed drawings to be approved by the local planning authority, such works to be carried out as part of the development hereby approved.
- 5) The garage and parking spaces shall not be used for any purpose other than the garaging or parking of private motor vehicles and no trade is to be carried out in the said garage and parking spaces or part thereof.
- 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification) no building, enclosure or swimming pool as described in Schedule 2 Part 1 Class E shall be undertaken without obtaining planning permission from the Local Planning Authority.

****End of Schedule****