



Appeal Decision

Site visit made on 27 February 2024

by Nick Bowden BA(Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 March 2024

Appeal Ref: APP/B5480/W/23/3324612

Strawberry Farm, Hall Lane, Upminster, Havering RM14 1UA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Reeve against the Council of the London Borough of Havering.
 - The application Ref is P0095.23.
 - The application sought planning permission for Removal of Condition No. 9 (Permitted Development Rights) of Planning Permission Ref: P0344.21 dated 21 April 2021 (Variation of condition No. 2 (Plans) of planning permission ref: P1012.20 dated 18 September 2020 to permit changes to layout and elevations including the addition of a porch (Demolition of existing outbuilding and construction of new 3 bedroom dwelling to a similar appearance of existing outbuilding with private car parking and associated private amenity space and confirmation of external materials)).
 - The condition in dispute is No. 9 which states that: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, other than porches erected in accordance with the Order, no extension or enlargement (including additions to roofs) shall be made to the dwellinghouse(s) hereby permitted, or any detached building erected, without the express permission in writing of the Local Planning Authority.
 - The reason given for the condition is: In the interests of amenity and to enable the Local Planning Authority to retain control over future development, and in order that the development accords with Development Control Policies Development Plan Document Policy DC61.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing outbuilding and construction of new 3 bedroom dwelling to a similar appearance of existing outbuilding with private car parking and associated private amenity space at Strawberry Farm, Hall Lane, Upminster, Havering RM14 1UA in accordance with the application Ref P0095.23 without compliance with condition 9 previously imposed on planning permission Ref P0344.21 dated 21 April 2021 and subject to the conditions set out in the attached schedule.

Procedural Matters

2. The application form did not provide a description of development and referred to the supporting statement. The supporting statement did not provide a description of development. As the application was not determined by the Council, I have used the description given on the acknowledgement letter as a

starting point but have adjusted this to the wording given in my formal decision above. This is to ensure it encapsulates the development proposed and reflects those works that are development within the definition given at S55 of the Town and Country Planning Act 1990. The parties have been consulted on this and have confirmed this is an accurate reflection of the proposed development.

3. The National Planning Policy Framework (the Framework) was revised in December 2023. As the changes do not materially affect the main issues in this case, the parties have not been invited to make further comments.

Background and Main Issues

4. The appeal scheme seeks to remove condition 9 of planning permission P0344.21. This condition is a restriction on development that could be constructed with deemed planning permission under the Town and Country Planning (General Permitted Development) (England) Order 2015 (the Order) with deemed planning permission, commonly known as 'permitted development rights'.
5. Planning permission P0344.21 is, itself, an alternative scheme to the original planning permission for this scheme - P1012.20 which was for 'demolition of existing outbuilding and construction of new 3 bedroom dwelling to a similar appearance of existing outbuilding with private car parking and associated private amenity space and confirmation of external materials.'
6. The appeal is against the failure of the Council to give notice within the prescribed period of a decision on an application for planning permission. As such, there is no decision notice. However, the Council has submitted an Officer's Report (OR) that indicates planning permission would have been refused for one reason, had it decided the application. Distilling it to the simplest extent; it has indicated that its concerns rest upon the potential impact of extensions constructed upon the openness of the Green Belt and living conditions of 204 Hall Lane. The appellant has had the opportunity to comment on the Council's submission and has done so in final comments.
7. Although the condition was originally imposed to safeguard amenity, it is clear from the OR that the Council is concerned about the adverse impact that future extensions to the house and outbuildings in the garden could have on the openness of the Green Belt. Therefore, the main issue is whether the condition is reasonable or necessary in the interests of:
 - a) preserving the openness of the Green Belt, and
 - b) the living conditions of the occupants of the neighbouring property.

Reasons

Green Belt

8. The reason for the imposition of condition 9 on planning permission of P0344.21 was, in summary, in the interests of amenity. The relevant policy referenced in the condition was policy DC61 of the Havering Core Strategy and Development Control Policies Development Plan Document 2008. This development plan document was either withdrawn or superseded by the more recent Havering Local Plan 2021 (HLP). Although I do not have sight of policy DC61, it is referenced in earlier ORs in relation to urban design and amenity.

Conversely policy DC45 is listed, and this is referenced in relation to matters pertaining to the Green Belt. The commentary in the earlier ORs confirms that the reason for imposing the condition was due to the concerns relating to the impact upon the neighbouring 204 Hall Lane, particularly with regard to built form or loft conversions. Conversely, no such commentary was provided in relation to the effect of the development on the Green Belt.

9. I appreciate that permitted development extensions, outbuildings and roof extensions could have an effect on the openness of the Green Belt. However, being mindful of the guidance provided for the imposition of conditions in the Planning Practice Guidance (PPG), I am not persuaded that it would be reasonable to regard potential effects on the Green Belt as a reason for restricting permitted development rights. Whilst there could be an impact on openness, this would not be sufficiently great to warrant the removal of such rights given that they are granted by Government Order.
10. For the above reasons, it has not been shown that there is clear justification for the removal of permitted development rights due to the potential impact of such development on the Green Belt as set out in the Framework and the PPG. I therefore conclude that condition 9 is not reasonable or necessary in the interests of protecting the Green Belt. Whilst no Green Belt policies from the development plan have been referred to by the Council, the removal of the condition would not be contrary to the protection aims of the Framework.

Living conditions

11. The Order grants the opportunity for domestic properties to have alterations, extensions and outbuildings constructed with deemed permission. These permitted development rights are controlled by the conditions and limitations set out in the Order. The PPG notes that the blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity.
12. The relationship of Strawberry Farm and 204 Hall Lane is not unusual, and the two homes broadly sit side-by-side addressing Hall Lane. Indeed, by comparison to more densely populated areas where permitted development rights would apply equally, the distances between these two neighbours are greater. I have been provided with limited evidence to suggest that the relationship between these two dwellings is such that any special degree of control is required to restrict permitted development rights in the interests of neighbours living conditions. Implementing permitted development rights in full could result in a tall wall in proximity to 204 Hall Lane or result in some increased overlooking. Even so, the remaining space available for this neighbour is sufficient to ensure that any adverse effects would be fairly limited in their extent. Furthermore, increases in built form or overlooking from first floor windows would be no greater in this case than in any other situation where neighbouring dwellings occupy a similar relationship.
13. For the above reasons, it has not been shown that there is clear justification for the removal of permitted development rights in the interests of the living conditions of the neighbouring property. As such, removal of the condition would not be contrary to policy 7 and 26 of the HLP which relates to urban design and residents living environment.

Conditions

14. The appeal is to be allowed and condition 9 of planning permission P0344.21 is to be deleted in its entirety. However, as this proposal will create a new planning permission for the development that has been constructed, I have re-imposed the remaining conditions of planning permission P0344.21. This is with the exception of the time limit condition, given that the development is substantially complete. I have further adjusted the condition relating to approved plans to be in accordance with those for planning permission P0344.21.

Conclusion

15. In light of the above, I conclude that the appeal should be allowed.

Nick Bowden

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall not be carried out otherwise than in complete accordance with the approved plans (as set out on page one of planning permission P0344.21).
2. The building is to be constructed in accordance with the materials approved under planning permission Q0036.21 dated 08/04/2021 unless otherwise agreed in writing with the local planning authority.
3. Ultra-Low NOx boilers with maximum NOX Emissions less than 40 mg/kWh are to be implemented prior to occupation in accordance with the details approved under planning permission Q0036.21 dated 08/04/2021 unless otherwise agreed in writing with the local planning authority and shall thereafter be permanently retained.
4. Notwithstanding the approved elevations, no French doors are to be installed on the northern elevation of the building.
5. Refuse and recycling facilities are to be implemented prior to occupation of the development in accordance with the details approved under planning permission Q0036.21 dated 08/04/2021 unless otherwise agreed in writing with the local planning authority.
6. Cycle storage is to be implemented prior to occupation of the development in accordance with the details approved under planning permission Q0036.21 dated 08/04/2021 unless otherwise agreed in writing with the local planning authority, and thereafter permanently retained.
7. Landscaping is to be implemented in accordance with the details in the landscape plan "BR-5766_20A". All planting, seeding or turfing comprised within the scheme shall be carried out in the first planting season following completion of the development and any trees or plants which within a period of 5 years from completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local Planning Authority.

End of Schedule