



Appeal Decision

Site visit made on 4 April 2024

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 April 2024

Appeal Ref: APP/T5720/W/23/3326725

Land adjacent to 72A Havelock Road, London SW19 8HD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Glenn Perry Capuyan against the decision of the London Borough of Merton.
 - The application Ref 23/P0964 was approved on 20 July 2023 and planning permission was granted subject to conditions.
 - The development permitted is application for planning consent to construct a 1-bed detached residential property.
 - The conditions in dispute are Nos 4 and 5 which state that:
 - 4 *Removal of PD (Extensions/Alterations) - 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 extension, enlargement or other alteration of the dwellinghouse other than that expressly authorised by this permission shall be carried out without planning permission first obtained from the Local Planning Authority.*
 - 5 *Removal of PD (Windows/Doors) - 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 window, door or other opening other than those expressly authorised by this permission shall be constructed in the 1st floor front, rear or side elevations without planning permission first being obtained from the Local Planning Authority.*
 - The reasons given for the conditions are:
 - 4 *The Local Planning Authority considers that further development could cause detriment to the amenities of the occupiers of nearby properties or to the character of the area and for this reason would wish to control any future Development Plan policies for Merton: policy D4 of the London Plan 2021, policy CS14 of Merton's Core Planning Strategy 2011 and policies DM D2 and D3 of Merton's Sites and Policies Plan 2014.*
 - 5 *To safeguard the amenities and privacy of the occupiers of nearby properties and to comply with the following Development Plan policies for Merton: policy D4 of the London Plan 2021, policy CS14 of Merton's Core Planning Strategy 2011 and policies DM D2 and D3 of Merton's Sites and Policies Plan 2014.*
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Decision

1. The appeal is allowed and the planning permission Ref 23/P0964 for application for planning consent to construct a 1-bed detached residential property at land adjacent to 72A Havelock Road, London SW19 8HD granted on 20 July 2023 by the London Borough of Merton, is varied by deleting conditions 4 and 5 and substituting for them the following condition:
 - 4 *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:*

- enlargement, improvement or other alteration of the dwellinghouse;
 - additions etc to the roof of the dwellinghouse;
 - buildings etc incidental to the enjoyment of the dwellinghouse; or
 - hard surfaces incidental to the enjoyment of the dwellinghouse,
- shall be constructed other than those expressly authorised by this permission.

Application for Costs

2. An application for costs was made by Mr Ghlen Perry Capuyan against the London Borough of Merton. This application is the subject of a separate decision.

Main Issue

3. The main issue is whether the conditions are reasonable or necessary in the interests of character and appearance, living conditions and flood risk.

Reasons

4. The proposal relates to a detached dwelling consisting of infill development between existing dwellings, and which is located on a plot which narrows significantly to the rear. The development had commenced at the time of my visit. The disputed conditions relate to the removal of permitted development rights. The site is not within a particularly sensitive location, such as a conservation area, and I have not been made aware of permitted development rights being withdrawn for nearby properties or the wider area.
5. Paragraph 54 of the National Planning Policy Framework states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. The PPG¹ also advises that conditions restricting the future exercise of permitted development rights may not pass the test of reasonableness or necessity.
6. **Condition 4** relates to the removal of permitted development rights in respect of the extension, enlargement or other alteration of the dwellinghouse. As part of the appeal, both the Council and the appellant have considered this as relating to Classes A-H of Schedule 2, Part 1 of the GPDO² which relate to development within the curtilage of the dwellinghouse. I will also consider Condition 4 on that basis.
7. Class A relates to the enlargement, improvement or other alteration of a dwellinghouse. The Council specifies that the external amenity space to the rear of the site is of a size which is below the Council's required standard. Future extensions to the rear would further limit this external amenity space and would not provide a reasonable standard of accommodation for residents. I consider that these concerns are well-founded and that a reduction in the rear external amenity area would lead to significant harm to future residents of the site.
8. The Council's Reason for Condition 4 only refers to the amenities of the occupiers of nearby properties and the character of the area. But even allowing for the constrained nature of the rear part of the site and the angled relationship with neighbouring plots, I do not consider that an extension to the

¹ Planning Practice Guidance - paragraph 21a-017-20190723

² Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

rear would be any more harmful to the living conditions of neighbouring residents or to character and appearance than a rear extension on other dwellings in this area. However, this does not lead me to a different conclusion in respect of the living conditions of future residents of the appeal site.

9. Class B relates to additions etc to the roof of a dwellinghouse, more specifically the enlargement of a dwellinghouse consisting of an addition or alteration to its roof. Due to the angled layout of the appeal site and neighbouring properties I consider that an addition such as a rear dormer could lead to an elevated and intrusive degree of overlooking of neighbouring properties. That would be the case even given the relationship between the appeal proposal and the rear elevations of neighbouring properties. I therefore consider that the Council's concerns on this matter are well-founded.
10. Class C relates to any other alteration to the roof of a dwellinghouse. The Council now accepts that the removal of this permitted development right is excessive, and I see no reason to disagree.
11. Class D relates to porches, and the Council contends that a porch would disrupt the symmetry of the front elevation and would be harmful to the character of the approved dwelling and the streetscene. However, it has not been demonstrated that this right has been removed from other properties in the area, including the Edwardian dwellings on Havelock Road. Given that the evidence suggests that nearby properties could exercise the permitted development right to erect a porch, it is not reasonable or necessary to withdraw this right for the appeal site.
12. Class E relates to buildings etc incidental to the enjoyment of a dwellinghouse, with further details regarding buildings, enclosures, pools or containers. As is reflected in my consideration of Class A, outbuildings in the rear garden could harm the living conditions of future residents due to a reduction in external amenity space. However, my conclusions on the Reason given for the condition in respect of Class A also apply here, including with regards to the effect on neighbouring residents as well as character and appearance. Nevertheless, I consider that the removal of this class of development right is reasonable and necessary in the interests of the living conditions of future residents of the appeal site.
13. Class F relates to hard surfaces incidental to the enjoyment of a dwellinghouse. The Council refers to the site being within a Critical Drainage Area and is at risk of surface water flooding. Due to the circumstances of the site and the effect of hard surfacing on flooding and drainage issues, I consider that restrictions in respect of Class F are reasonable and necessary. That said, the Council's Reason for this condition does not refer to flood risk or drainage, but this does not negate my conclusions on this matter.
14. Class G relates to chimneys, flues etc on a dwellinghouse, and the Council refers to the potential effect on first floor side windows of No 72A Havelock Road. However, evidence submitted with the application³ indicates that those windows would be removed, and this reflects my observations on my visit. I therefore consider that the removal of Class G rights is not reasonable or necessary.

³ Including the Daylight, Sunlight and Overshadowing Assessment, March 2023

15. Class H relates to microwave antenna on a dwellinghouse. The Council refers to potential harm to the amenity of neighbouring residents and to the character of the area. However, it has not been demonstrated that this right has been removed from other properties in the area. Even given the relatively unusual layout of the site and the relationship with nearby properties, it has not been demonstrated that the circumstances of the proposal are such that the withdrawal of development rights in this Class is justified.
16. No reference has been made to Class AA. However, given the effects of the conditions and the 'prior approval' procedure in respect of that Class then I do not need to consider this further having regard to the Council's Reason for Condition 4.
17. **Condition 5** states that no window, door or other opening other than those expressly authorised by this permission shall be constructed in the 1st floor front, rear or side elevations. The Reason for this condition refers to the amenities and privacy of the occupiers of nearby properties.
18. However, even allowing for the unusual layout of the site, further openings on the first floor to the front and rear would be no more intrusive in respect of neighbouring properties than those openings already permitted.
19. First floor windows on a side elevation of the proposal may have enabled intrusive overlooking into first floor windows on the side of No 72A, but as stated previously these windows are proposed to be removed.
20. Reference is made to windows on the ground floor of No 72A, although the submitted evidence indicates that these are either a secondary window or for a non-habitable room. In any event, first floor windows on the side elevation would only enable a very narrow viewing angle downwards into any side ground floor windows of 72A.
21. There are also no windows on the side elevation of 74 Havelock Road which may be affected by the proposal.
22. I therefore conclude that Condition 5 is not reasonable or necessary with regards to the amenities and privacy of the occupiers of nearby properties, and I note that the Council has not sought to defend this condition in its Statement of Case.

Conclusion

23. On the issue of Condition 4, I have concluded that the removal of permitted development rights in respect of Classes A, B, E and F is reasonable and necessary for the living conditions of future residents of the site in respect of external amenity space, the living conditions of neighbouring residents in respect of privacy, as well as flood risk and sustainable drainage. Reference to the wording of these Classes in a condition will also provide a suitable degree of precision.
24. However, with regard to Condition 4, the removal of permitted development rights in respect of Classes C, D, G and H would not meet the tests of reasonableness and necessity.
25. Condition 5 in respect of window, door or other openings on the 1st floor of the dwelling would also not meet the tests of reasonableness and necessity.

26. I will therefore remove Condition 4 and replace it with one which refers only to development within Classes A, B, E and F of the GPDO. I will also delete Condition 5. On that basis, the development would comply with the design and amenity considerations of Policies D4 of the London Plan 2021, CS14 of the Core Planning Strategy 2011, and DM D2 and DM D3 of the Sites and Policies Plan 2014. My attention has not been drawn to development plan policies in respect of flood risk and sustainable drainage, but this does not negate my conclusions on that issue.
27. For the reasons set out above, I conclude that the planning permission should be varied as set out in the formal decision.

David Cross

INSPECTOR