



Appeal Decision

Site visit made on 26 March 2024

by H Wilkinson BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 May 2024

Appeal Ref: APP/K3605/W/23/3322429

88 Hurst Road, East Molesey, Surrey KT8 9AH

- 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 David Wilcox against the decision of Elmbridge Borough Council.
- The application Ref 2022/3428, dated 8 November 2022, was refused by notice dated 8 March 2023.
- The application sought planning permission for a pair of detached two storey houses with associated parking and new access following demolition of existing house without complying with conditions attached to planning permission Ref 2021/3926, dated 28 June 2022.
- The conditions in dispute are Nos 2 and 3 which state respectively that *'the development hereby permitted shall be carried out in strict accordance with the following list of approved plans: 01, 02, 04, 05 – Proposed Street scene Elevations and 05 – Proposed Floor Plans House A received on 15/11/2021, Location Plan, 03 and 06 received on 16/12/2022 and Proposed Site Plan received on 26/04/2022 and 'the development shall not be erected other than in the following materials; Walls – Yellow Stock Brick to match Hever Place, Roof – Grey Slate to match Hever Place, Windows & Doors – White triple glazed timber sash windows/French doors or such other materials as have been approved in writing by the Borough Council'*.
- The reasons given for the conditions are: *'To ensure that the development is carried out in a satisfactory manner'* and *'to ensure that a satisfactory external appearance is achieved of the development in accordance with policy DM2 of the Elmbridge Development Management Plan'*.

Decision

1. The appeal is allowed and planning permission is granted for a pair of detached two storey houses with associated parking and new access following demolition of existing house at 88 Hurst Road, East Molesey, Surrey KT8 9AH in accordance with the application Ref 2022/3428, without compliance with condition numbers 2 and 3 previously imposed on planning permission Ref 2021/3926 dated 28 June 2022 subject to the conditions in the attached schedule.

Preliminary Matters

2. The planning application form does not indicate that permission is sought to develop the land without complying with condition 3 of the original planning permission. However, it is clear from the submitted details that the proposal seeks to amend the fenestration details. I have therefore taken the description

of development from the Council's decision notice as this more accurately describes the proposal. This description is consistent with the appeal form.

3. Development has commenced at the appeal site. Following refusal of the appeal application, permission¹ to develop the land without complying with the conditions subject to the original planning permission has been given by the Council. The approved amendments relate to the siting of House B, alternative fenestration, installation of solar panels and the provision of heat pumps and acoustic enclosures. However, the enlargement of the basement (House A) has yet to be authorised. Notwithstanding the subsequent permission, for the avoidance of doubt, I have determined the appeal based on the plans and evidence before me.
4. The outline planning permission 2021/3926 was subject to a Section 106 Agreement which secured a financial contribution. The 'planning permission' is defined therein as the original permission, or any subsequent permission granted under section 73A of the Town and Country Planning Act 1990. Therefore, the financial obligation would be unaffected by my decision.

Background and Main Issues

5. The decision notice sets out that the proposal would result in the incursion into the root protection areas of protected trees. Based on the evidence, I understand that the Council's concern relates specifically to the enlargement of the basement and a protected Beech Tree (T4) which was located within the boundary of the neighbouring property. This tree has since been felled and the appellant fined. Given that it has now been removed, it no longer serves as a physical impediment to the enlargement of the basement.
6. Having regard to the above, the main issues in this appeal are the effect of varying the conditions on:
 - the character and appearance of the area, including the setting of Kent Town Conservation Area; and,
 - the living conditions of neighbouring properties with particular regard to outlook, light, privacy and noise.

Reasons

Character and appearance

7. The appeal site lies outside of, but adjacent to Kent Town Conservation Area (CA) which lies on the south side of the river Thames. The significance of the CA is derived in part from the regularity of the grid street pattern, which is focused on St Paul's Church together with the abundance of traditional buildings. The setting of the CA is informed by the river and the abundance of green space which positively contributes to its significance.
8. The row in which the appeal site is located is characterised predominantly by large, detached dwellings which are generally set back from the road and occupy well-proportioned plots. Although more recent additions, the properties within the immediate vicinity of the appeal site reflect the design and proportions of the traditional buildings located within the CA. Together with the

¹ 2023/0743

open parkland on the opposite side of the road and the abundance of soft landscaping, this provides for an attractive street scene.

9. The extended basement area, by virtue of its subterranean nature would not have a material effect on the character and appearance of the area. House B would be closer to the rear boundary of the appeal site than currently identified on the approved plans. However, the difference in proximity would be limited and the position of the dwelling would remain broadly in line with the adjacent property at Hever Close. Consequently, the development pattern would not be unacceptably disrupted.
10. The solar panels proposed to be installed on the roof slopes of House A and B would be sensitively located on non-principal elevations, they would lie flush with the roof plane and would be set down below the ridge. Thus, they would not dominate the respective roof slopes. Whilst there would be some visibility of the solar panels from the windows and rear gardens of nearby properties, given the intervening landscape features and the viewing angles, such visibility is likely to be limited. Similarly, visibility of the solar panels from the road would be restricted. Therefore, they would not be visually obtrusive additions to the proposed dwellings.
11. The design and proportions of the proposed fenestration would be generally in keeping with the surrounding properties whilst the number of openings would not be increased. Consequently, the appearance of the dwellings would relate well to the site's surroundings. The heat pumps and acoustic enclosures would be discretely located, between the respective dwelling and the boundary treatment. Thus, visibility of the installations would be limited such that they would not be unduly prominent or obtrusive within the site.
12. For these reasons, I find that varying the conditions would not have an unacceptable effect on the character and appearance of the area, including the setting of the CA. The proposal would therefore accord with Policy DM2 of the Elmbridge Local Plan Development Management Plan 2015 (Local Plan) where it seeks to ensure that new development is of a high-quality design and preserves or enhances the character of the area. It would also be consistent with the Council's Design and Character Supplementary Planning Document where it seeks to secure the delivery of distinctive, high-quality development across the Borough which respects local character. The proposal would also satisfy the design and heritage objectives of the National Planning Policy Framework (the Framework).

Living conditions

13. House B would be the same height and size to that approved and its siting in relation to the side boundaries of the appeal site would be unchanged. It would however be located closer to the shared boundary with No 2 Harrow Gardens (No 2). Nevertheless, the difference in distance as indicated on the submitted plans would be minimal. Consequently, House B would not be perceived as an oppressive form of development when viewed from the rear windows and garden area of No 2. Further, the re-siting would have minimal effect on the level of daylight and sunlight entering the internal and external spaces of the said property respectively. Given that the approved fenestration would not increase in size or number of openings proposed, it would not generate issues of overlooking.

14. The appeal is accompanied by a noise survey² which sets out that the proposed acoustic enclosures would be sufficient to mitigate noise emissions from the heat pump installations to an acceptable level. Based on the evidence, I have no reason to disagree with the conclusions therein.
15. Accordingly, I find that varying the conditions would not harm the living conditions of the occupiers of neighbouring properties with particular regard to outlook, light, privacy and noise. It would therefore accord with Local Plan Policy DM2 which amongst other criteria, seeks to ensure that proposals are designed to protect the amenity of adjoining occupiers. It would also be consistent with the Framework where it seeks to secure a high standard of amenity for existing occupiers.

Other Matters

16. I am mindful of the concerns raised by the interested parties in relation to construction activities and noise. However, there is a lack of substantive detail before me to demonstrate that these activities are resulting in unacceptable levels of disturbance. It is accepted that the development will generate some noise. However, given the scale of development, and the advanced stage of building operations on site, it is reasonable to assume that the construction period going forward will be limited. Should noise issues arise in the future, there are adequate controls beyond the planning regime which could regulate noise at the site.

Conditions

17. To assist with clarity, the Planning Practice Guidance sets out that decision notices for the grant of planning permission under section 73 should repeat the relevant conditions from the original permission, unless they have already been discharged. It is the conditions attached to the 2022 permission which are relevant in this case. The evidence indicates that the details which were required by several of the conditions on the original permission have been agreed with the Council which is reflected in the worded conditions.
18. Given that the development has commenced, it is not necessary to impose the standard time condition. There is a condition requiring the installation and maintenance of the agreed tree protection measures throughout the course of development. This condition would provide adequate control and could be enforced against were a breach to occur. It is therefore not necessary to impose a separate condition requiring evidence of compliance.
19. A separate condition restricting the insertion of windows is not necessary as this would be covered by the removal of permitted development rights. As the Noise Impact Assessment sets out noise emissions resulting from the proposed heat pumps, the undertaking of a further noise survey is not necessary. Nevertheless, as there is no detailed information relating to the mitigation and future maintenance, in the interests of living conditions, I have imposed a condition requiring these details to be provided prior to installation (House A). The heat pump at House B has been installed. Therefore, as permission is being granted retrospectively, and it is not possible to use a negatively worded condition to secure the approval and implementation of the mitigation measures before the development takes place, a separate condition with a

² Environmental Noise Survey & Noise Impact Assessment dated 3 February 2023

strict timetable for compliance is necessary. The condition will ensure that the development can be enforced against if the requirements are not met.

20. There appears to be no formal requirement for the Beech tree to be replaced. There is however a condition relating to landscaping imposed which will ensure that the site is adequately landscaped and contributes to the character and appearance of the area.

Conclusion

21. For the reasons given above I conclude that the appeal should succeed. I will grant a new planning permission without the disputed conditions but will substitute these with others and restate those undisputed conditions that are still subsisting and capable of taking effect.

H Wilkinson

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following plans;
 - Site Location Plan
 - Drawing No: D(2)09 – Proposed Site Plan
 - Drawing No: D(2)01 – House A – Proposed Basement and Ground Floor Plan
 - Drawing No: D(2)02 – House A – Proposed First Floor, Loft and Roof Plans
 - Drawing No: D(2)03 – House A – Proposed Front and Rear Elevations
 - Drawing No: D(2)04 – House A – Proposed Left and Right Side Elevations
 - Drawing No: D(2)05 – House B – Proposed Ground and First Floor Plans
 - Drawing No: D(2)06 – House B – Proposed Loft and Roof Plans
 - Drawing No: D(2)07 – House B – Proposed Front and Rear Elevations
 - Drawing No: D(2)08 – House B – Proposed Left and Right Side Elevations

- 2) Unless within 3 months of the date of this decision full details of the heat pump and acoustic enclosure in relation to House B are submitted in writing to the local planning authority for approval and unless the heat pump and acoustic enclosure are implemented within 3 months of the local planning authority's approval, the heat pump and acoustic enclosure together with all equipment and materials brought onto the land for the purposes of such operations shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within 9 months of the date of this decision, the heat pump and acoustic enclosure together with all equipment and materials brought onto the land for the purposes of such operations shall be removed until such time as a scheme is approved and implemented.

Upon implementation of the approved heat pump and acoustic enclosure specified in this condition, the heat pump and acoustic enclosure shall thereafter be maintained and retained as such permanently.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limit specified in this condition will be suspended until that legal challenge has been finally determined.

- 3) Prior to first installation, details of the heat pump and acoustic enclosures in relation to House A shall be submitted to and approved in writing by the local planning authority. The heat pump and acoustic enclosure shall thereafter be provided in accordance with the approved details and the acoustic enclosures shall be provided prior to the first use of the heat pumps. The installation shall thereafter be maintained and retained as such permanently.

- 4) Prior to the first occupation of that dwelling all the side facing windows and roof lights above first floor including the stair windows shall be glazed with obscure glass that accords with level three obscurity as shown on the Pilkington textured glass privacy levels and shall only be openable above a height of 1.7m above the internal floor level of the room to which it serves. The windows shall thereafter be permanently retained.
- 5) Prior to the first occupation of the development, a personal flood plan including an escape/egress route shall be submitted to and approved in writing by the local planning authority. The personal flood plan shall thereafter be adhered to for the lifetime of the development.
- 6) Prior to the first occupation of the development, a scheme of hard and soft landscaping including an implementation and maintenance strategy shall be submitted to and approved in writing by the local planning authority. The hard and soft landscaping shall thereafter be implemented and maintained in accordance with the approved details.
- 7) Prior to first occupation of the development, details of a secure and covered cycle storage facility shall be submitted to and approved in writing by the local planning authority. The cycle storage shall thereafter be provided in accordance with the approved details prior to the first occupation of that dwelling and shall thereafter be permanently retained.
- 8) Prior to the first occupation of the development, a fast charge socket (current minimum requirements - 7 kw Mode 3 with Type 2 connector - 230v AC 32 Amp single phase dedicated supply) shall be provided in accordance with a scheme to be submitted and approved in writing by the local planning authority. The fast charge socket shall thereafter be maintained and retained permanently.
- 9) Prior to the first occupation of the development, the parking and turning areas shall be laid out within the site in accordance with Drawing No D(2)09 – Proposed Site Plan. Thereafter the parking and turning areas shall be permanently retained and maintained for their designated purposes.
- 10) Prior to the first occupation of the development, the existing access from the site to Hurst Road shall be permanently closed and any kerbs, verge, footway, fully reinstated.
- 11) The development shall not be erected other than in the following materials:
Walls - Yellow Stock Brick to match Hever Place, Roof – Grey Slate to match Hever Place.
- 12) The development hereby permitted shall be carried out in accordance with the approved details and method statements contained in the Arboricultural Planning Report prepared by Arb Consultancy Limited, dated 22 November 2022. All tree protection measures identified therein shall be installed in the positions identified on the approved Tree Protection Plan (Drawing number 22 2265 TPP 01) and maintained for the course of the development.
- 13) The development hereby permitted shall be carried out in accordance with the Ecological Enhancement Plan approved through application 2022/0187.

- 14) The development hereby permitted shall be carried out in accordance with the Construction Environmental Management Plan approved through application 2022/0187.
- 15) The development hereby permitted shall be carried out in accordance with the conclusions and recommendations set out in the report by AAe Consultants including any biodiversity enhancements, received on 30/05/2022.
- 16) The development hereby permitted shall be carried out in accordance with the Construction Management Plan approved through application 2022/2197.
- 17) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking or re-enacting that order) no development falling within Part 2, Classes A, B and E of Schedule 2 to the said order shall take place within the curtilage of the dwellinghouses hereby permitted.
- 18) All existing trees, hedges or hedgerows shall be retained, unless shown on the approved drawings as being removed and paragraphs (a) and (b) below shall have effect until the expiration of 5 years from the first occupation of the proposed development.
 - (a) no retained tree, hedge or hedgerow shall be cut down, uprooted or destroyed, nor shall any retained tree be pruned other than in accordance with the approved plans and particulars. Any pruning shall be carried out in accordance with British Standard 3998: 2010 (tree work) and in accordance with any approved supplied arboricultural information.
 - (b) if any retained tree, hedge or hedgerow is removed, uprooted or destroyed or dies, another tree, hedge or hedgerow of similar size and species shall be planted at the same place, in the next available planting season or sooner.
- 19) All flood mitigation measures shall be carried out in accordance with the approved details set out in the flood risk assessment prepared by Three Counties Flood Risk Assessment and the Drainage Strategy by zussmanbear.
- 20) The flat roof single storey projections on House A and House B shall not at any time be altered or adapted to form a balcony, roof garden or similar amenity area.

END OF SCHEDULE