



Appeal Decision

Site visit made on 9 April 2024

by P Terceiro BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th May 2024

Appeal Ref: APP/K3605/W/23/3331202

37 Weston Court, Flat 2, The Broadway, Thames Ditton, Surrey KT7 0LU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Prathamesh Menon against the decision of Elmbridge Borough Council.
 - The application Ref is 2023/1041.
 - The development is the erection of outbuilding in rear garden.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The above description of development is taken from the application form. However, it is clear from the submitted particulars that the application includes the installation of an air conditioning (AC) unit. The AC unit and outbuilding were in situ at the time of my site visit. I have dealt with the appeal on the basis that permission is being sought retrospectively for the erection of the outbuilding and installation of the AC unit.
3. The decision notice specifies, in supporting commentary, that the applicant is required to “permanently remove from the land the outbuilding and air conditioning unit, and all resultant waste”. However, the decision notice clearly relates to a refusal of planning permission and there are no provisions in the context of a planning application or s78 appeal to require unauthorised development to be removed. Moreover, I have not been made aware of any enforcement notice or related appeal and, therefore, I have disregarded this statement and considered this appeal on the basis of the two reasons for refusal.
4. The appeal documents include revised floor plans and elevations showing that the AC unit has been moved closer to the main building, as well as a Noise Impact Assessment (NIA), based on the revised location of the AC unit. The planning appeals procedural guidance¹, confirms that, if an appeal is made, the appeal process should not be used to evolve a scheme, and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people’s views were sought.
5. However, in this case, the change is modest and the NIA was submitted in response to the Council’s reason for refusal. The parties have had the opportunity to comment on this information through the appeal process. As

¹ Procedural Guide: Planning appeals – England.

such, I am satisfied that no prejudice would occur to any party as a result of my consideration of their content. For the avoidance of doubt, my decision on this appeal is based on the revised plans.

Main Issue

6. The main issue is the effect of the development on the living conditions of the neighbours at 37 Weston Court, Flat 3 (Flat 3) with particular regard to (i) outlook and (ii) noise.

Reasons

Outlook

7. The appeal site is a ground floor flat with a private garden that adjoins the garden space of the neighbouring Flat 3. The garden space of Flat 3 has a limited depth and this neighbouring flat contains a rear window close to the appeal site.
8. The new outbuilding sits close to the shared boundary and runs immediately adjacent to the boundary for most of the depth of this neighbouring garden. The building projects above the height of the existing boundary fence and, due to its siting so close to the common boundary, it appears conspicuous from Flat 3's garden space and rear window closer to the appeal site. As such, the building is a dominant and visually intrusive feature, which creates an undue sense of enclosure for the occupants of Flat 3. This adverse impact is not adequately mitigated by the trellis and planting and therefore a condition securing the retention of the trellis and planting would not make the development acceptable in planning terms.
9. The appellant argues that the outbuilding has a maximum height of 2.5m and does not exceed the 2.5m height allowed under permitted development rights. However, there is no substantive evidence to demonstrate that such rights are applicable here (as the property is a flat and not a dwellinghouse) and, as such, there is no realistic fallback for me to take into account.
10. I therefore conclude that the development has a harmful effect on the outlook of the neighbours at Flat 3. There is conflict with Policy CS17 of the Elmbridge Core Strategy 2011 and Policy DM2 of the Elmbridge Local Plan Development Management Plan 2015 (DMP), where these policies support development that provides adequate residential amenities for future occupiers. There is also conflict with the Elmbridge Design and Character Supplementary Planning Document Companion Guide: Home Extensions 2012 which seeks to preserve the amenities of neighbours. The development is contrary to the Framework, where it supports development that creates places with a high standard of amenity for existing users.

Noise

11. A NIA has been produced to inform my consideration of this appeal. The methodology takes account of the BS4142:2014+A1:2019², and advice contained in the Planning Practice Guidance (PPG).
12. The NIA recorded the background sound levels throughout the measurement period, which started on a Friday afternoon and concluded on a Monday

² Methods for rating and assessing industrial and commercial sound.

afternoon. This way, the survey considers both daytime and nighttime periods over the weekend and on a typical weekday. Measurements were recorded with the AC unit turned off because units of this kind rarely operate at their maximum duty in situ. As such, the NIA used a combination of measurements and calculations to present a worst-case assessment, assuming that the unit was operating at maximum duty for the entirety of the assessment period. This ensures that the noise from the fan running at full speed is assessed. In my opinion this methodology is robust.

13. The impact on the nearest noise sensitive receptors has been calculated by comparing the calculated rating sound level with the background sound level in accordance with BS 4142. According to the NIA, the greatest impact on Flat 3's rear windows occurs in the nighttime, when background noise levels are lowest, falling in the No Observed Adverse Effect Level (NOAEL) category, as defined in the PPG. The noise exposure hierarchy set out in the PPG explains that such noise can be heard, but does not cause any change in behaviour or attitude. In such circumstances, no specific action is required to mitigate the adverse effects.
14. During the daytime the impact level falls in the No Observed Effect Level (NOEL) category, as defined in the PPG. The noise exposure hierarchy explains that there is no observed effect and no specific measures are required.
15. In conclusion, the development does not have a harmful effect on the living conditions of the neighbours at Flat 3 with particular regard to noise. There is compliance with Policy DM5 of the DMP, which seeks to ensure that proposals will not result in unacceptable living standards in terms of noise. Furthermore, the proposal complies with the Framework, where it seeks to avoid noise giving rise to significant adverse impacts on health and quality of life.

Conclusion

16. The AC unit does not cause unacceptable noise for the occupiers of Flat 3. However, there is material harm in relation to the effect of the outbuilding on outlook for these neighbours. This brings the development into conflict with the development plan read as a whole and material considerations do not indicate that a decision should be made otherwise than in accordance with it. Therefore, the appeal is dismissed.

P Terceiro

INSPECTOR