



Appeal Decision

Site visit made on 29 May 2024

by S D Castle BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 June 2024

Appeal Ref: APP/Z5630/W/23/3328535

52 Gainsborough Road, New Malden, Kingston Upon Thames KT3 5NU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Mervyn Cross against the Council of the Royal Borough of Kingston-upon-Thames.
 - The application Ref 23/01076/HOU, is dated 23 April 2023.
 - The development proposed is demolition of existing garage, erection of two-storey side extension.
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Decision

1. I decline to determine the appeal and propose to take no further action.

Reasons

2. Regulation 7 of The Town and Country Planning (Development Management Procedure) (England) Order 2015 (the Order) requires that an application for planning permission be accompanied by plans, drawings and information necessary to describe the development which is the subject of the application. Section 327A of the Act requires the local planning authority not to entertain an application if it fails to comply with any requirement of the Act, or any provision made under it, as to the form or manner in which the application must be made.
3. The Council states that during the application, the appellant was advised that there were anomalies with the submitted plans including inconsistencies between the roof plan, the elevation plans and the floor plans. The Council advises that its officers requested that the plans be corrected prior to any decision being made and contends that the inconsistencies in the submitted plans rendered the application invalid.
4. E-mails provided by the appellant indicate that revised proposed roof plans¹ and elevations² were submitted to the Council in July 2023. These revised plans were submitted with the appeal. The Council's statement advises that the appellant lodged their appeal³ before officers could consider and make a recommendation on any revised plans.
5. On inspection of the plans submitted with the appeal, inconsistencies between the plans remain. In particular, there remain discrepancies between the revised

¹ Existing & Proposed Roof Plans, Dwg Ref: 8109230, Date: July 2023

² Elevation Plans Proposed, Dwg Ref: 8109230, Date July 2023

³ Appeal submitted 29 August 2023

- proposed roof plan and revised proposed elevation plans, including the front facing gable on the proposed roof plan being materially larger than on the elevation plans. Alterations to the roof form a key element of the revised plans and the inconsistency in the plans results in unacceptable uncertainty as to the effect of the development on the character and appearance of the area.
6. Substantial construction works to the dwelling were occurring at the time of my site visit. Those works appeared to vary substantially from the plans submitted with the appeal, with the roof changing from a hip to gable design. On the day of my site visit, a full new set of amended plans were submitted⁴ to the Planning Inspectorate by the appellant. Those plans substantially differ from the plans originally submitted with the appeal and include substantial changes to the proposed two-storey side extension, including in terms of how it would integrate with the dwelling's roof.
 7. I note that the new set of plans were submitted to the Council in October 2023, however, the appellant had already lodged their appeal by that point. The Planning Inspectorate's guidance⁵ makes clear that if an applicant thinks that amending their application proposals will overcome the local authority's reason for refusal, they should normally make a fresh planning application. Furthermore, the appeal process should not be used to evolve a scheme given the importance of the Inspector considering essentially what was before the local planning authority, and on which interested people's views were sought.
 8. I have considered the new set of amended drawings under the principles established by the Courts in Wheatcroft. I find that the amendments to the plans originally submitted with the appeal are of such significance as to fundamentally alter the scheme and justify further public consultation. The opportunity would need to be given for interested parties to respond, and then for parties to comment on any representations received. I have therefore proceeded to base my decision on the plans submitted to the Council during the application process.
 9. Section 79(1) of the Act allows the Secretary of State to deal with an appeal as if it had been made to him in the first instance. S79(6) confirms that if during the determination of an appeal in respect of an application for planning permission, the Secretary of State forms the opinion that planning permission for the development could not have been granted by the local planning authority, he may decline to determine the appeal.
 10. The application, due to the inconsistency of the plans submitted with it, was not accompanied by the plans, drawings and information necessary to describe the development. Consequently, the application submissions failed to meet Regulation 7 of the Order and was not validly made.

Conclusion

11. For the reasons given above, I decline to determine the appeal and propose to take no further action.

S D Castle

INSPECTOR

⁴ Amended Plans submitted to PINS 29 May 2024

⁵ Procedural Guide – Planning Appeals – England