



Appeal Decision

Site visit made on 6 June 2024

by Hannah Guest BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 July 2024

Appeal Ref: APP/K3605/W/24/3338168

Two Oaks, Castlevue Road, Weybridge, Surrey KT13 9AA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions imposed on a grant of prior approval required under Article 3(1) and Schedule 2, Part 20, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Castle View Estate Ltd against the decision of Elmbridge Borough Council.
 - The application Ref is 2023/3001.
 - The application sought planning permission for additional storeys above existing block of flats to create 12 dwellings without complying with a condition attached to the approval of Ref 2021/0395, dated 26 May 2021.
 - The condition in dispute is condition No. 1 which states that the development shall be completed within a period of 3 years starting with the date of this decision.
 - The reason given for the condition is: in order to comply with the provisions of paragraph A.2(2) of Class A, Part 20, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.
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Decision

1. The appeal is allowed and planning permission is granted for additional storeys above existing block of flats to create 12 dwellings at Two Oaks, Castlevue Road, Weybridge, Surrey KT13 9AA in accordance with application Ref 2023/3001 without compliance with condition number 1 previously imposed on the approval of Ref 2021/0395, dated 26 May 2021, but subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs was made by the appellant against the Council. This will be the subject of a separate decision.

Procedural Matters

3. I saw on my visit that the permitted development has not yet been completed. At the time of my visit, it was more than three years since prior approval was granted by the Council and works were ongoing. Thus, a breach of condition No.1 has now occurred. Nonetheless, the Council determined the application under Section 73 before this breach occurred, and I will determine the appeal on the same basis.

Background and Main Issue

4. The planning permission subject of this appeal was initially granted under the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO) subject to the prior approval process. Prior approval was granted for additional storeys above an existing block of flats to create 12 dwellings, which included a condition requiring the development to be completed within a period of 3 years from the date of the approval. This condition is also set out at paragraph A.2(2) of Class A, Part 16, Schedule 2 of the GPDO. The development as authorised by the prior approval was conditioned to be completed by 25 May 2024. The appeal seeks to vary this condition so that the development would be required to be completed by 25 May 2027. This would provide an additional three years to finish the construction works.
5. Although the conditions relating to the planning permission were imposed under the prior approval process, it has been established in the courts¹ that the power to remove or vary these conditions is afforded under Section 73 of the Town and Country Planning Act 1990 (the Act). This includes the power to remove or vary conditions imposed by the GPDO itself, and in this case to vary the time limit imposed by condition No. 1 of the approval of Ref 2021/0395.
6. Given this, the Council is not seeking to defend its first reason for refusal. However, it contends that the condition is still necessary to avoid delaying the delivery of housing units, which it considers to be fundamental to the purpose of this specific permitted development right. The appellant does not dispute that a completion condition is necessary in this case and agrees that delivering the approved development as soon as possible would boost the supply of housing. The matter in dispute was the amount of additional time given to complete the approved development.
7. Nonetheless, during the appeal process, common ground² has been reached between the parties on an appropriate period, this being 1st December 2024. Based on this significantly shorter extension of time, the Council would no longer object to the variation of condition No. 1. However, interested parties are concerned by the principle of any extension of time beyond the 26 May 2024. This is because they are worried an extension of time would prolong the noise and disturbance arising from the construction works, which would have a detrimental effect on their living conditions.
8. While an extension of time until 1st December 2024 is appreciably different from the three-year extension of time applied for, the principle of the variation to Condition No. 1 is the same. I have a good understanding of the interested parties' concerns with regards to affording the development additional time to be completed. Therefore, given the appropriate period agreed between the main parties is significantly shorter than that applied for, I do not consider that any party's interests would be prejudiced if I determine the appeal on this basis.

¹ Pressland v Hammersmith and Fulham LBC [2016] EWHC 1763 (Admin)

² Statement of Common Ground, Appeal in respect of Two Oaks Castlevue Road Weybridge Surrey KT13 9AA, LPA Ref: 2023/3001, PINS Ref: APP/K3605/W/24/3338168, dated May 2024.

9. In this context, the main issue in this appeal is whether the condition is necessary and reasonable to protect the living conditions of existing residents, with particular regard to noise and disturbance arising from the ongoing construction works.

Reasons

10. From the evidence before me, it appears that the management of the build has been challenging for everyone involved. The appellant took a long time to submit a report for the management of the construction of the development to discharge the pre-commencement condition. There have been local tensions, specifically in terms of the erection of scaffolding and the parking of construction vehicles. Consequently, issues have arisen that the developer was not anticipating, and this has led to the construction works taking longer than expected.
11. I sympathise with those who live nearby, especially the existing residents of the appeal property. Construction works will unavoidably cause some degree of noise and disturbance, which can normally be tolerated in the knowledge that the noise and disturbance will only last for a set period of time. Nonetheless, in this case, there is no substantive evidence before me to suggest that the delay has been unnecessary or that the appellant is purposefully prolonging the build.
12. On my visit, it was not clear how close the external works were to completion. There was still a large amount of scaffolding erected around the appeal property, which at the upper levels was covered in sheeting. From my observations, the scaffolding did not appear to be obstructing access to the ground floor garages and most of the existing windows could still be opened, if needed. While all the parking spaces on Castlevue Road appeared to be in use, I did not see any inconsiderate parking of construction vehicles. Overall, the building site appeared well organised, albeit somewhat untidy. However, I understand that my observations were made at a specific point in time and therefore may not represent previous conditions.
13. I appreciate that allowing the construction to continue, by varying the condition to extend the completion date, would prolong noise and disturbance to existing residents. This would likely have a tangible detrimental effect on their living conditions, particularly given that the construction works have been ongoing for some time now. Nevertheless, the construction is well underway, and I am mindful that dismissing the appeal would be unlikely to result in the noise and disturbance ceasing immediately. To the contrary, if the appellant was to apply for full planning permission, it could result in prolonging the construction works. At the very least, if enforced, the building would need to be returned to its former state.
14. Accordingly, for the reasons above, in my view, a short extension in the completion deadline, as agreed by the Council and appellant in the Statement of Common Ground, in this case, would be expedient and in the public interest.

Other Matters

15. Interested parties have raised other concerns regarding the approved upwards extension, which do not relate to the variation of condition No.1 that is subject to this appeal. The Planning Practice Guidance states that under Section 73 the Local Planning Authority must only consider the disputed conditions that are

subject of the application. It is not a complete re-consideration of the application. I have therefore determined the appeal on the same basis.

Conditions

16. The Planning Practice Guidance states that decision notices for the grant of planning permission under section 73 should restate the conditions imposed on earlier permissions that continue to have effect. I have limited information before me about the status of the other conditions imposed on the original approval. I shall therefore impose all those that I consider remain relevant. In the event that some have been discharged, that is a matter which can be addressed by the parties.
17. Notwithstanding this, the development has commenced so I have amended the condition relating to a method of construction/transport management plan to reflect this.
18. In imposing conditions, I have had regard to the approach in the Framework and the Planning Practice Guidance. I have accordingly modified the wording or form of certain conditions without altering their fundamental aims.

Conclusion

19. For the reasons above, I conclude that that the appeal should be allowed. I therefore grant a new stand-alone planning permission with a variation to the disputed condition and retaining those non-disputed conditions from the previous approval³ that appear to still be relevant.

Hannah Guest

INSPECTOR

³ Reference: 2021/0395

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be completed by 1 December 2024.
- 2) The development hereby permitted shall be carried out in accordance with the information provided under application 2021/0395.
- 3) The development hereby permitted shall be carried out in accordance with the Construction Management Logistics Plan, Project No: 21.1300, prepared by Oaten Architects Ltd on behalf of View Castle Estates Ltd for Two Oaks Castle View Road, Weighbridge, Surrey, KT13 9AA, issued on 10/07/23; and associated plans: 12.1300 / 600 REV A and 12.1300 / 601 REV A, both dated Feb 22.
- 4) The developer shall notify the Local Planning Authority of the completion of the development as soon as reasonably practicable after completion. The notification must be in writing and shall include the name of the developer; the address or location of the development; and the date of completion.
- 5) Each new dwellinghouse created by the development hereby permitted/approved is to remain in use as a dwellinghouse within the meaning of Class C3 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) and for no other purpose, except to the extent that the other purpose is ancillary to the primary use as a dwellinghouse.
- 6) The design and structure of the development hereby permitted shall be of such a standard (BS 8233:2014) that it protects residents within it from existing external noise so that they are not exposed to levels indoors of more than 35 dB LAeq 16 hrs daytime and of more than 30 dB LAeq 8 hrs in bedrooms at night.
- 7) Prior to first occupation of the development hereby permitted, the applicant shall carry out a post completion internal noise assessment, and submit this in writing to the Local Planning Authority, to show that the development complies with the requirements of BS 8233:2014 in that it protects residents within it from existing external noise so that they are not exposed to levels indoors of more than 35 dB LAeq 16 hrs daytime and of more than 30 dB LAeq 8 hrs in bedrooms at night. If the development does not comply with the aforementioned standards, the developer will be required to provide mitigation measures to ensure compliance for the lifetime of the development.
- 8) Prior to first occupation of the development hereby permitted bicycle storage shall have been provided in accordance with approved plan 1412_PRBS approved pursuant to application 2021/0395. Thereafter the bicycle storage shall be retained and maintained, available at all times for the parking of bicycles.
- 9) Prior to first occupation of the development hereby permitted 12 fast charge sockets (current minimum requirements – 7kw Mode 3 with Type 2 connector – 230v AC 32 Amp single phase dedicated supply) shall have been provided on site. Thereafter the charging sockets shall be retained and maintained, available at all times for the charging of electric vehicles.