



Appeal Decision

Site visit made on 27 March 2024

by B Phillips BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 July 2024

Appeal Ref: APP/Y3615/W/23/3330168

16 Curlew Gardens, Guildford GU4 7DY

- 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 the approval of reserved matters or details pursuant to a previous planning permission.
 - The appeal is made by Mr Tim Parker against the decision of Guildford Borough Council.
 - The application Ref is 23/P/00498.
 - The application sought planning permission for the removal of condition 6 of planning permission 79/P/00139, approved on 22/06/1979, to allow permitted development rights (enlargements and other alterations) to be reinstated to the properties approved by the original permission.
 - The condition in dispute is No 6 which states that: *Notwithstanding the provisions of Article 3 and Class 1 of the Schedule 1 to the town and country planning (General Development) Order 1973, no further enlargement or other alteration to the dwellings hereby approved shall be carried out without the prior approval of the Local Planning Authority*
 - The reason given for the condition is: *To accord with the planning policy applicable to the area.*
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 81 dwellings with double garages together with estate streets at land between Park Lane and Marrow Street, Guildford (north and east of Rectory Close and north of Fieldside (amended 3 April 1979), approval of reserved matters pursuant to Condition (1) of planning permission reference 76P 0454 dated 31 May 1979 in accordance with the application Ref 23/P/00498 and plans number 16C-GU47DY-PD-Site Plan P01 and 100/52/C, without compliance with conditions number 1-13 and 15-27 previously imposed on outline planning permission Ref 76/P/0454 dated 31 May 1979 and 1-16 and 18-19 previously imposed on reserved matters approval Ref 79/P/00139 dated 22 June 1979 and subject to the following conditions:
 - 1) 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 fences, gates or walls shall be erected within the curtilage of any dwellinghouse forward of any wall of that dwellinghouse which fronts onto a road.
 - 2) The space provided for the parking and turning of vehicles indicated on drawing No 100/52/C dated April 1979 shall be retained as such and not used for any other purpose.

Applications for costs

2. An application for costs was made by Mr Tim Parker against Guildford Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The Government published in December 2023 a revised version of the National Planning Policy Framework (the Framework). I am satisfied that no party would be prejudiced by making reference to the Framework in this decision.

Background and Main Issue

4. Planning permission was granted for the residential development of erection of 81 dwellings in 1979¹ (the 'development area'). This was the reserved matters of a previous outline consent² for a far larger site. The reserved matters consent was subject to a number of conditions, including No 6, which removed permitted development rights for the entire reserved matters area of 81 properties. This appeal follows the Council's decision to refuse an application to remove this condition and relates solely to the land shown in red on submitted plan 16C-GU47DY-PD-SITE-PLAN P01.
5. The reason given for the condition '*To accord with the planning policy applicable to the area*', however the Council set out that they believe the condition is necessary in order to preserve the character and appearance of the development area and to protect the living conditions of the occupiers of neighbouring properties.
6. The appellant considers that there are no justifiable reasons why the Council should have imposed and seek to retain a condition restricting these permitted development rights.
7. The main issues in this case therefore are whether or not the condition is reasonable and necessary in order to preserve the character and appearance of the area and to protect the living conditions of neighbours.

Reasons

8. Paragraph 54 of the Framework states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification for doing so. The Planning Practice Guidance (PPG) advises that conditions restricting the future use of permitted development rights should only be used in exceptional circumstances. Moreover, it states that 'area-wide or blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity'³.
9. Notwithstanding the vague reason given for the imposition of the condition, it introduces a blanket ban on all permitted development rights, and 'other alterations'. The introduction to the permitted development rights technical guidance⁴ documents set out Government's intention with regards to permitted

¹ Application reference 79/P/0139

² Application reference 76/P/0454

³ Reference ID: 21a-017-20190723

⁴ Permitted Development Rights for Householders : technical guidance (2019)

development rights, which is to allow householders to *'improve and extend their homes without the need to apply for planning permission where that would be out of proportion with the impact of works carried out.'*

10. As such, it is reasonable to conclude that the Government's opinion is that permitted development extensions would not harm the living conditions of neighbouring occupiers, including in relation to daylight and sunlight and privacy. Should any permitted development not comply with restrictions in relation to matters such as position or obscure glazing, there is no reason before me that the Council could not look into the matter in order to protect the living conditions of neighbouring residents.
11. There is a wide range of properties within the development area, some large, detached dwellings and some smaller terraced units, even within the same street. These smaller terraced dwellings, such as the appeal property, are naturally in close proximity to each other, however, the size of properties and their gardens have consequences for the size of development allowed under permitted development rights, including outbuildings. This also does not justify taking permitted development right away from the larger detached properties found on Partridge Way for example.
12. I am satisfied therefore that extensions under these classes would not harm the living conditions of the occupiers of any of the properties within the development area.
13. I observed that there is a substantial variety to the scale and design of properties within the development area. Whilst there is consistency in terms of a set back from the highway with open frontages, the area includes terraces, semi-detached units and large detached dwellings, again, sometimes within the same street. For example, in Curlew Gardens, front gables, hipped roofs and both detached and integral garages are evident. Differing materials are also visible, including different brick and roof tile finishes, and some examples of tile hung cladding. There are properties with porches of varying design, and whilst no dormers are visible, the appeal site has had planning permission for front and rear dormers approved⁵.
14. There is little to differentiate the development area in this respect from the adjacent streets. As such, in this varied context, permitted development extensions, including porches and rear dormers and 'other alterations' such as changes to materials, would not lead to the loss of any consistent design elements such as unbroken rooflines or open porches, nor harm the character and appearance of the development area. Control by the Council over such matters is therefore unnecessary.
15. The potential scale of permitted development extensions/alterations would therefore be proportionate and would not harm the varied character and appearance of the development area, nor lead to a loss of the varied mix of dwellings within the area. Condition 14 of the original outline permission restricts additional boundary enclosures, and this would retain the open frontages, characteristic of the surroundings.

⁵ Application reference 22/P/01763

16. I find therefore that no exceptional circumstances have been put forward to justify the blanket removal of permitted development rights, including Classes A, B, C and D.
17. I conclude therefore that condition No 6 is not reasonable nor necessary either in terms of protecting the amenity of the occupiers of the dwellings within the development area, nor to protect the character and appearance of the development area. Its removal would not lead to conflict with Policies S1 and D1 of the Guildford Borough Local Plan: Strategy and Sites (2015-2034) (2019) and Policies D4 and D5 of Guildford Borough Local Plan: Development Management Policies (2023), which, amongst other matters, seek to protect the amenities of neighbouring occupiers and ensure high quality design that responds to distinctive local character.

Other Matters

18. The submission of the appeal by only one resident, and whether the proposal is in the public interest or not does not alter the assessment of the condition against the relevant tests. The extension of the boundary of appeal property to the rear is not a matter before me in regard to this appeal. No development to the appeal property is specifically proposed as part of this appeal, which solely relates to permitted development rights, as considered above. Any development such as dormers would require building regulations approval for matters such as weight loading, and the effect of development already permitted by the Council is also not a matter of consideration under this appeal.
19. I have had due regard to the references to physical and mental health in relation to the use of a neighbouring garden, however I am satisfied that it would not be proportionate in this regard to restrict permitted development rights on this basis.
20. In relation to the setting of the Clandon Park Estate, permitted development is not generally subject to the S66(1) duty as planning permission is granted by Article 3(1) of the General Permitted Development Order.
21. The appeal is sited within 400m to 5km of the Thames Basin Heaths Special Protection Area. The PPG⁶ sets out that special rules apply to permitted development rights where development could have a significant effect on a Habitats site, such as a SPA. Article 3(1) of the GPDO 2015 grants planning permission for the classes of development described as PD in Schedule 2 subject to Regulations 75-78 of the Conservation of Habitats and Species Regulations 2017. As such, development cannot be lawfully begun until a Regulation 77 application has been made and approved. This is separate to the considerations above, and does not prevent me from finding no harm with regards to the reintroduction of permitted development rights.

Conditions

22. The guidance in the PPG makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. A list of 12 suggested conditions from both the original outline permission and the reserved matters approval have been provided that the Council and/or the

⁶ Reference ID:13-019-20190722

appellants consider to be appropriate. I have considered these in light of the PPG and the tests set out in the Framework. For clarity and to ensure compliance with the tests, I have amended some of the suggested wording.

23. As set out above, I have considered the conditions only insofar as they relate to the reserved matters development area, as shown on submitted plan 16C-GU47DY-PD-SITE-PLAN P01.
24. Conditions relating to density and height (3 storeys) restriction on the outline permission and preventing any other access to Merrow Road or Merrow Street, are no longer necessary, given the completion of the development. This is also the case in relation to sightlines at junctions and the inclusion within the highway of any visibility splays. The retention of a condition requiring details of trees to be submitted during the reserved matters stage is also unnecessary.
25. A second condition (condition 13 on the outline permission) also seeks to remove permitted development rights from the properties within the development. Given my findings above, this condition is also unnecessary.
26. A condition requiring the retention of off street parking spaces is necessary in order to ensure highway safety. This is covered by condition 17 of the reserved matters, and as such conditions 3-5 of the original outline are not necessary in this instance.
27. As stated above, condition 14 of the outline application and condition 7 of the reserved matters restricts development within frontages of the dwellings, and this is necessary to maintain the characteristic open frontages of the site. I have amended the wording of the condition in the interest of clarity and to meet the tests. Two separate similar conditions are unnecessary. A condition on the reserved matters requiring the extension to Partridge Way to be completed prior to any other operations being completed and preventing subdivision of plots is unnecessary, given the completion of development.
28. From the evidence before me, I have no reason to believe that any other conditions originally imposed on both permissions remain extant or relevant for the red line area.
29. Finally, I have added a plans condition in order to clarify the extent of the development area.

Conclusion

30. For the reasons given above, I find that the disputed condition is unnecessary and unreasonable, and, having taken into account the development plan as a whole and any other material consideration, the appeal should be allowed.

B Phillips

INSPECTOR