



Appeal Decision

Site visit made on 24 May 2024

by N Perrins BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th July 2024

Appeal Ref: APP/K3605/W/23/3332532

Site to the rear of 136 Beauchamp Road, West Molesey KT8 2PH

- 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 (as amended) for the development of land without complying with a condition subject to which a previous planning permission was granted.
 - The appeal is made by Mr Tico Quni against the decision of Elmbridge Borough Council.
 - The application Ref is 2022/3210, dated 21 October 2022, was refused by notice dated 17 July 2023.
 - The application sought planning permission for a detached single-storey house with basement and bin store following demolition of existing garage, at the site to the rear of 136 Beauchamp Road, West Molesey KT8 2PH without complying with condition 2 attached to planning permission Ref 2019/1703, dated 28 August 2019.
 - The condition in dispute is No 2, which states: The development hereby permitted shall be carried out in strict accordance with the following list of approved plans: 810_01_001 Rev A, 810_02_101 Rev P6, 810_03_101 Rev P6, 810_03_102 Rev P6A, 810_03_103 Rev P6, 810_04_001 Rev P6A, 810_05_101 Rev P6A and 810_05_102 Rev P6 received on 03/07/2019.
 - The reason given for the condition is to ensure that the development is carried out in a satisfactory manner.
-

Decision

1. The appeal is allowed and planning permission is granted to amend condition 2 of planning approval Ref 2019/1703 dated 28 August 2019 for a detached single-storey house with basement and bin store following demolition of existing garage at the site to the rear of 136 Beauchamp Road, West Molesey KT8 2PH, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. Planning permission Ref 2019/1703 was granted for a detached single-storey house with basement and bin store following demolition of the existing garage. Condition 2 of planning permission Ref 2019/1703 set out the approved plans, which included a central courtyard area at basement level. The central courtyard provided daylight and sunlight to the dwelling, as well as an outlook to the subterranean living space including bedrooms that were accessed from it on either side.
3. Planning application Ref 2022/3210 was submitted seeking to vary condition 2 of decision Ref: 2019/1703 to substitute amended plans to change the layout of the basement dwelling to replace the courtyard with a dining room with a glazed lightwell above and create lightwells on each end with spiral staircases.

The access arrangements would also be altered to accommodate to proposed changes.

4. The development is under construction and, therefore, this appeal is being considered for retrospective development under S.73A of the Town and Country Planning Act 1990 (amended). I have assessed the appeal on that basis.
5. The appellant submitted a Daylight and Sunlight Assessments Report (SDAR) as part of their grounds of appeal. The Council queried the robustness of this assessment in their statement, highlighting potential flaws with the levels of daylight and sunlight that would enter the appeal proposal. Further clarification was provided by the appellant that confirmed the SDAR was based on a proposed layout plan that included additional skylights over the bedrooms that were not included on the plans submitted with the application. Accordingly, the appellant submitted a revised ground floor layout plan¹ that included the additional skylights requesting it to be considered in this appeal.
6. I have considered the proposed new plan against the Wheatcroft principles established in *Bernard Wheatcroft Ltd V SSE* [1982] JPL 37, which set out the tests that should be applied in deciding whether or not to accept amended plans as part of an appeal. The key test for application of the Wheatcroft principles is whether the development is so changed that to grant it would be to deprive those who should have been consulted on the changed development of the opportunity of such consultation. I have also had regard to the judgment in *Holborn Studios Ltd v London Borough of Hackney* [2017] that related to failure to consult on amended plans during the course of a planning application. In this case and having due regard to the relevant case law, I am satisfied that the amendment would not have any material impact on any party other than future occupants of the dwelling. I am, therefore, satisfied that no one would be prejudiced by the amended plan being considered as part of this appeal, and without a further consultation being undertaken. I, therefore, accept the submission of the amended ground floor plan.

Main Issue

7. The main issue is the effect of non-compliance with condition 2, having regard to the living conditions of future occupiers of the development.

Reasons

8. The appeal site is located to the rear of 136 Beauchamp Road that previously contained a detached garage. The development approved under Ref 2019/1703 is under construction, but not yet finished and has subsequently deviated from the original design. The basement dwelling structure and internal layout is substantially complete as per the details shown on the proposed amended plans.
9. The Council contended in refusing the application that the change from the central courtyard to the two smaller courtyards on either end would have significant potential to harm the living conditions of future occupiers both in terms of daylight and sunlight and outlook from the bedrooms.

¹ Proposed Ground Floor Plan Drawing No. Ref A101 Rev P1

10. The submitted SDAR is stated as having been prepared in accordance with the requirements of the relevant British standards², which is not disputed by the Council. The SDAR identifies that the habitable rooms would be served by suitable daylight sufficient to comply with the British standards. As stated above the Council queried the accuracy of the assessment with particular reference to whether the impact of enclosed areas adjacent to the westernmost bedroom and living room had been properly taken into account. Whilst there was a query over parts of those two rooms, I am satisfied that the assessment demonstrates that the rest of the development would be acceptable in terms of daylight and sunlight levels.
11. Moreover, I observed on my site inspection that the two courtyard lightwells are providing light into the property's habitable rooms. At the time of my inspection, the levels of daylight and sunlight from these lightwells were adequate to provide acceptable living conditions. The appellant has also confirmed during the appeal that the SDAR was based on an additional skylight being installed over each bedroom, which are shown on the amended plan that I have accepted to be considered in this appeal.
12. Based on my own observations, the conclusions of the SDAR as amended and the revised ground floor plan which shows two additional skylights, I am satisfied that the proposed changes would not result in material harm to the living conditions of future occupiers in respect of levels of daylight and sunlight.
13. I note the Council also contend that the outlook of future occupiers would be reduced with particular reference to the westernmost bedroom. I acknowledge that this room would look out mainly onto an enclosed space. However, the development is a subterranean dwelling where future occupiers will expect to live less conventionally than if in a traditional ground level property.
14. Moreover, the outlook from the bedrooms on the originally approved layout would have looked out to a courtyard but would have been detached from the main living space. The proposed changes would instead create a more traditional living space with the habitable rooms connected to each other as a continuous living space. I find that this would be a significant benefit to future occupiers in terms of their overall living conditions, compared to the original layout. The outlook for the westernmost bedroom, whilst unconventional, would be appropriate when considered together with the benefits that would arise from the continuous living space, and given its subterranean form.
15. To conclude, I find that the proposed amendments to the original design would not materially harm the living conditions of future occupiers and the development is in accordance with Policies DM2 and DM10 of the Elmbridge Local Plan Development Management Plan (2015), which require development to protect the amenity of potential occupiers and users and designed to offer an appropriate outlook and provide adequate daylight, sunlight and privacy.

Other Matters

16. I note representations to the planning application raised a number of additional concerns with the development, albeit these did not form part of the Council's reasons for refusal. Having had regard to all the information before I have no reason to disagree with the Council's assessment of the other issues raised.

² BRE (BR209 2022)

Conditions

17. The Planning Practice Guidance makes clear that decision notices for the grant of planning permission under Section 73 should set out all the conditions imposed on the new permission, and restate the conditions imposed on earlier permissions that continue to have effect³. I have considered the conditions attached to the original planning permission and the schedule of draft conditions proposed by the Council in this vein, as well as had regard to Paragraph 56 of the Framework.
18. As the development has been commenced, it is not necessary to attach a time limit condition for the commencement of development. I, therefore, do not attach condition 1 as suggested by the Council.
19. I have imposed a condition consistent with the Council's suggested condition 2 specifying the approved plans, which includes the amendments subject of this appeal, including the amended ground floor plan, in order to provide certainty over what has been granted planning permission by this decision.
20. I have also attached the Council's suggested conditions for materials, permitted development limitations, an electric vehicle charging scheme, closure of the existing access and cycle parking, which all replicate those on the original permission. These are all necessary to ensure the various elements specified within are secured prior to occupation to safeguard the character and amenities of the area, highway safety and to meet sustainability objectives.
21. I have also attached a condition for a construction management plan to be submitted and agreed by the local planning authority as suggested by the Council. I have, however, changed the wording from that proposed by the Council for this to be submitted within 2 months of this decision, as opposed to prior to commencement given that this would no longer be possible.

Conclusion

22. For the reasons given above, the development is consistent with the policies of the development plan as a whole, and there are no material considerations that would lead me to a different conclusion. The appeal is allowed and the planning permission is varied subject to conditions.

N Perrins

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall be carried out in strict accordance with the following list of approved plans: (i) Location and Site Plans Drawing No. A-106, (ii) Proposed Basement Plan Drawing No. A-100, (iii) Proposed Ground Floor Plan Drawing No. Ref A101 Rev P1, (iv) Proposed North Elevation and Section B-B Drawing No. A-105, (v) Proposed Roof Plan Drawing No. A-102, (vi) Proposed Section A-A Drawing No. A-104

³ Paragraph: 040 Reference ID:21a-040-20190723

2. The development shall not be erected other than in the following materials, stock brick, ppc aluminium framed double glazed casement windows, composite front door and fibreglass reinforced plastic flat roof.
3. Notwithstanding the provisions of the Town & Country Planning General Permitted Development Order 2015 (or any Order revoking or re-enacting that Order) no development falling within Part 1 Classes A to E of Schedule 2 to the said Order shall be carried out within the curtilage of the dwellinghouse, unless planning permission is first granted by the Borough Council.
4. Within two months of this decision a Construction Transport Management Plan, to include details of:
 - (a) parking for vehicles of site personnel, operatives and visitors
 - (b) loading and unloading of plant and materials
 - (c) storage of plant and materials
 - (d) measures to prevent the deposit of materials on the highway
 - (e) before and after construction condition surveys of the highway and a commitment to fund the repair of any damage caused
 - (f) on-site turning for construction vehiclesShall be submitted to for approval in writing by the Local Planning Authority. Only the approved details shall be implemented during the construction of the development.
5. The development hereby approved shall not be occupied unless and until the proposed dwelling is provided with a fast charge socket (current minimum requirements - 7 kw Mode 3 with Type 2 connector - 230v AC 32 Amp single phase dedicated supply) in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority and thereafter retained and maintained to the satisfaction of the Local Planning Authority.
6. The development hereby approved shall not be first occupied unless and until the existing access (to the north of the retained) from the site to Ray Road has been permanently closed and any kerbs, verge and footway, fully reinstated.
7. The development hereby approved shall not be first occupied unless and until space has been laid out within the site in accordance with the approved plans for cycles to be parked. Thereafter the parking area shall be retained and maintained for their designated purpose.