



Appeal Decision

Site visit made on 29 July 2024

by E Catcheside BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th September 2024

Appeal Ref: APP/N1920/W/23/3331822

13 Goodyers Avenue, Radlett, Hertfordshire WD7 8AY

- 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 subject to which a previous planning permission was granted.
- The appeal is made by Mr William McGowan (William McGowan Lettings Ltd) against the decision of Hertsmere Borough Council.
- The application Ref is 23/0766/VOC.
- The application sought planning permission for "*Construction of two detached 4-bedroom houses. (Approval of reserved matters pursuant to outline permission granted under TP/2000/0488). (Amended plans received 13/2/01)*" without complying with a condition attached to reserved matters permission Ref TP/2000/1298, dated 15 March 2001.
- The condition in dispute is No 16 which states that: *Notwithstanding the provisions of Part 1, Classes A, B and C to Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order) no extensions to the dwellinghouse(s) hereby permitted shall be erected and no roof alterations shall be carried out without express planning permission first being obtained.*
- The reasons given for the condition is: *To enable the local planning authority to retain control over these matters in the interests of visual and residential amenity (HLP Policies D19 and H10).*

Decision

1. The appeal is allowed and planning permission is granted for the demolition of an existing house and the erection of two new dwellings at 13 Goodyers Avenue, Radlett, Hertfordshire WD7 8AY in accordance with the terms of the application, Ref 23/0766/VOC, subject to the conditions in the attached schedule.

Preliminary Matters

2. The appeal relates to a proposal to vary a condition on a reserved matters approval, and this is reflected in the banner heading. A Section 73 application seeks permission for development to be carried out without complying with a condition imposed on a planning permission. Therefore, it is not possible to grant a new approval of reserved matters under a Section 73 application. If the appeal were to be allowed, the result would be the grant of a new planning permission, and this is reflected in my formal decision above. The parties have been invited to comment on this matter, and I have taken the comments received into account. For consistency, my formal decision uses the description of the development from the original outline planning permission.

3. Although the site address in the banner heading refers only to 13 Goodyers Avenue, the appeal relates to the entirety of the site area covered by the original outline permission, which includes both 13 and 13A Goodyers Avenue. At my initial site visit on 29 July 2024, access was not provided to 13A Goodyers Avenue. I therefore undertook a supplementary site visit, to No 13A, on 3rd September 2024. I have taken account of the observations I made on both site visits in my consideration of the appeal.

Background and Main Issue

4. Outline planning permission was granted at appeal¹ on 27 September 2000 for the demolition of an existing house and the erection of two new dwellings.
5. On 15 March 2001, the Council granted reserved matters permission TP/2000/1298. Condition 16 of the reserved matters decision removed permitted development rights (PD rights) under Classes A, B and C of Part 1 of Schedule 2 the Town and Country Planning (General Permitted Development) Order 1995, now superseded by the Town and Country Planning (General Permitted Development) Order 2015, as amended (the GPDO). The two dwellings, Nos 13 and 13A, have been constructed and are occupied.
6. Classes A, B, and C of Part 1 of Schedule 2 of the GPDO (Class A, B and C) allow for extensions or alterations to a dwellinghouse, including additions or changes to its roof, without the need to seek planning permission from the local planning authority, subject to specific limitations and conditions.
7. Condition 16 was originally imposed to enable the local planning authority to retain control over the matters in the interests of visual and residential amenity. The reasons for refusal refer to harm to local character in respect of Class A and Class B development; and harm to living conditions in respect of development permitted under Class A. The Council has stated that it does not have any objection to the reinstatement of PD rights granted under Class C.
8. The main issue, therefore, is whether Condition 16 is necessary or reasonable, with particular regard to (a) the character and appearance of the area and (b) the living conditions of the occupants of 11 Goodyers Avenue, with reference to outlook, daylight, and sunlight.

Reasons

(a) Character and appearance

9. Goodyers Avenue comprises a mix of property types and sizes. However, those nearest to the appeal site are similar to the host dwellings, in that they predominantly comprise large, detached dwellings on generously sized plots. There is little consistency in the design and appearance of dwellings on the street, including in their roof forms and height. This architectural variety is a distinctive feature of the area.
10. Paragraph 54 of the National Planning Policy Framework (the Framework) states that planning conditions should not be used to restrict national PD rights unless there is clear justification to do so. The Planning Practice Guidance reiterates that conditions restricting the future use of PD rights may not pass the test of reasonableness or necessity.

¹ Appeal decision ref. APP/N/1920/A/00/104686, dated 27 September 2000

11. The implementation of PD rights under Class A would enable the enlargement of the existing properties. However, Class A does not allow for extensions that extend beyond a wall which forms the principal elevation of the dwellings; and there would be few opportunities for side extensions, due to the limitations within Class A.
12. New additions could be constructed to the rear of the dwellings under Class A. However, whilst both host properties are already large, they are sited on generous plots; and the size limitations in the GPDO would ensure that any Class A additions would not be disproportionate to the existing dwellings. Moreover, the rear of the properties are sited some distance from Goodyers Avenue and are well-screened from public views by the host buildings and boundary treatments. Consequently, I have no reason to conclude that Class A development would detract from the character of the area.
13. The current version of the GPDO, which came into force after planning permission was granted at the site, allows for upward extensions under Class AA of Part 1, Schedule 2 of the GPDO (Class AA). The wording of Condition 16 does not explicitly refer to Class AA development. However, the condition restricts "extensions to the dwellinghouse(s)" and references "any Order revoking and re-enacting that Order" therefore Condition 16 would preclude Class AA development.
14. However, even if PD rights under Class AA were to be reinstated through this appeal, the appellant would have to apply to the Council for prior approval for certain criteria, which includes its external appearance. Therefore, should the Council have any concerns regarding an upward extension of the existing dwelling, this could be assessed via the prior approval application.
15. The size limitations within Class B would ensure that any roof additions or alterations would not be unduly large and would not exceed the highest part of the existing roof. Therefore, any roof addition would be subservient to the host property and would not be unacceptably large. Moreover, Class B does not permit verandas, balconies or raised platforms.
16. I have not been directed to any extensions or alterations that have been carried out in the local area under PD rights, including dormer roof structures. However, there is variety in the style, size, and height of existing buildings on Goodyers Avenue. On this basis, I have no reason to conclude that small-scale domestic enlargements or alterations that would be permitted under Classes A and B would appear unduly bulky or incongruent when viewed in context with the other dwellings on the street. The proposal would therefore accord with a key underlying principle of the Planning and Design Guide Part E: Guidelines for Residential Extensions and Alterations Supplementary Planning Document (November 2006) (SPD), which is that development maintains or improves the character of its surroundings.
17. There are already notable differences in the appearance of Nos 13 and 13A, including in their materials and roof design. Therefore, they are experienced from the street as individual dwellings, rather than as a pair. Consequently, I am satisfied that no undue harm would arise to local character should only one of the properties be enlarged or altered through PD rights.
18. Overall, I conclude that Condition 16 is not reasonable or necessary in the interests of protecting the character and appearance of the area. Therefore, in

respect of this main issue, the development without condition 16 would comply with Policy CS22 of the Hertsmere Local Plan Development Plan Document Core Strategy (Adopted January 2013) (CS), Policy SADM30 of the Hertsmere Local Plan Site Allocations and Development Management Policies Plan (Adopted November 2016) (DMP), Policy HD3 of 03 The Radlett Plan (RP), and the Framework. Taken together and amongst other things, these policies seek high quality design that reflects and responds positively to local character.

(b) Living conditions

19. 13 Goodyers Avenue lies between 11 and 13A Goodyers Avenue, on land that slopes gradually upwards towards No 13A. The back wall of No 13 projects beyond the rear elevation of both of its neighbouring properties. Whilst there is some side space between the dwellings, the properties are sited reasonably close to one another.
20. The size restrictions for single-storey development permitted under Class A would ensure that the living conditions of neighbouring occupants were safeguarded. Moreover, single storey extensions of over 4 metres in depth would be subject to prior approval procedures, allowing the Council to consider the effect of any such proposals on the amenity of adjoining premises.
21. However, if a two-storey extension were to be implemented at No 13 to the maximum size allowed under Class A, the back wall of the extended dwelling would project significantly further than the rear façade of No 11. Consequently, if built near to the boundary between the dwellings, the view from No 11 would be dominated by the side wall of any such rear addition. It would therefore be an unduly prominent structure that detracts from the outlook from the neighbouring property.
22. Moreover, given the topography and the orientation of the dwellings, a large two-storey rear extension to No 13 would block direct sunlight and daylight from reaching the rear windows and garden of No 11, particularly during winter afternoons when the sun is lower in the sky. I have not been provided with a layout plan of No 11, or any technical evidence to ascertain the precise impacts of the loss of sunlight on its internal and external living environment. However, overshadowing would occur, and daylight would be restricted. Consequently, in the absence of any substantive evidence to the contrary, the environment within the neighbouring property would be gloomy and unpleasant for its occupiers. The proposal would therefore conflict with a key underlying principle of the SPD, which is to safeguard the amenity of neighbouring properties.
23. Overall, I have found that development permitted under Class A would cause unacceptable harm to the living conditions of the neighbouring occupants at No 11 through loss of outlook, sunlight, and daylight.
24. Consequently, it is both reasonable and necessary to impose a revised condition that removes the permitted development rights under Class A. The revised condition would be precise, relevant to planning and to the development permitted, in order to comply with Policies SP1 and CS22 of the CS, Policy SADM30 of the DMP, HD3 of the RP, and the Framework which, taken together and amongst other things, seek to secure high quality design that provides a healthy living environment and amenity for residents and existing users. I am also satisfied a revised condition would be enforceable.

Other Matters

25. The Council has previously refused planning applications for enlargements and alterations to No 13. I do not have sufficient information before me to establish whether or not those proposed developments would have fallen within the parameters of Classes B or C. However, the reinstatement of these PD rights would not cause unacceptable harm to the character and appearance of the area; and would not negate the need to secure planning permission for development that falls outside of the scope of Classes B and C.

Conditions

26. The Council has stated that it does not have records relating to the discharge of conditions on the planning permission for the site. However, it is satisfied that, given that the development was constructed some time ago, that it has been built in accordance with those conditions. Based on the evidence, I have no reason to take a different view. However, the Council has stated that conditions 10, 11, 12, 13, 14, 15, 17 and 18 from the reserved matters decision remain relevant, and it has requested that they are reimposed on any new planning permission issued.
27. I note that the appellant considers that all conditions should be removed, given the age of the properties and compliance with building regulations. However, the application sought the removal of Condition 16 only. Therefore, interested parties and consultees have not been provided with the opportunity to comment on the removal of the remaining conditions.
28. Consequently, in the interests of fairness, I have reimposed conditions 10, 11, 12, 13, 14, 15, and 18 from the reserved matters decision. Where appropriate, I have adjusted the wording of the conditions to improve precision and enforceability, and to bring them up to date where there have been changes in legislation since the reserved matters decision was issued.
29. However, it is not necessary to reimpose condition 17, which requires the development to be carried out in accordance with the approved plans. This is because the originally permitted development has already been carried out.
30. I have also reimposed a condition removing PD rights granted under Class A of Part 1, Schedule 2 of the GPDO in order to protect the living conditions of neighbouring residents from loss of outlook, daylight and sunlight.

Conclusion

31. For the reasons given above I conclude that the appeal should succeed in relation to the removal of PD rights under Classes B and C. However, the removal of PD rights in relation to Class A are justified and therefore remain. I therefore grant a new planning permission with the wording of the disputed condition amended and restating other conditions that are still subsisting and capable of taking effect.

E Catchside

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The first-floor window(s) on the flank elevation(s) shall, at all times, be obscure glazed and non-opening to a minimum height of 1.7 metres above internal floor level.
- 2) The garage(s) shall only be used for the accommodation of private motor vehicles and shall not be used for any business purposes whatsoever.
- 3) The roof of the development shall not be used as a terrace, balcony or roof garden.
- 4) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-acting that Order) no windows, doors or openings, other than those previously granted planning permission, shall be inserted in the flank elevations of the development without planning permission first being obtained.
- 5) The existing hedgerows around the boundaries of the site, as shown on the approved drawings, shall be retained at a minimum height of two metres.
- 6) The existing trees shown to be retained on the approved drawings shall not be lopped, topped or felled unless prior written approval has been obtained for the works.
- 7) Notwithstanding the provisions of Class F, Part 1 to Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-acting that Order), no hard surfaces incidental to the enjoyment of the dwellinghouses shall be constructed in any part of the front garden forward of the garage doors without planning permission first being obtained.
- 8) Notwithstanding the provisions of Class A, Part 1 to Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-acting that Order), no enlargement, improvement or other alteration of the dwellinghouses shall be carried out without planning permission first being obtained.

END OF CONDITIONS