



Appeal Decision

Site visit made on 18 October 2024

by C Rafferty LLB(Hons), Solicitor

an Inspector appointed by the Secretary of State

Decision date: 25 NOVEMBER 2024

Appeal Ref: APP/K3605/D/24/3340496

2 Lambourne Drive, Cobham, Surrey, KT11 3LB

- 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 73A 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 Laurence Hibble against Elmbridge Borough Council.
 - The application Ref is 2023/2491.
 - The application sought planning permission for single storey rear extension and increase in height of garage roof to accommodate room over with front dormer windows without complying with a condition attached to planning permission Ref 2011/0268 dated 31 March 2011.
 - The condition in dispute is No. 4 which states that: Within a period of 21 days from the date of this permission, details of a 1.8m high obscure/opaque screen within the landing space of the staircase (adjacent to neighbouring property no. 3) shall be submitted to and approved in writing by the Borough Council. The screen shall be carried out in accordance with the approved details and retained thereafter.
 - The reason given for the condition is: to preserve the amenities of neighbouring residents in accordance with Saved Policy ENV5 of the Replacement Elmbridge Local Plan 2000.
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Decision

1. The appeal is allowed and planning permission is granted for single storey rear extension and increase in height of garage roof to accommodate room over with front dormer windows at 2 Lambourne Drive, Cobham, Surrey KT11 3LB in accordance with the application Ref 2023/2491 without compliance with condition numbers 2 and 4 previously imposed on planning permission Ref 2011/0268 dated 31 March 2011 and subject to the following conditions:
 - 2) The development hereby permitted shall be carried out in strict accordance with the following list of approved plans 1094-30-04, 05, and 06 received on 28 February 2011, except insofar as they relate to the garage right flank elevation and garage rear view which shall be carried out in strict accordance with the plans entitled 'S73 Application 2 Lambourne Drive' submitted with application 2023/2491.

Main Issue

2. The main issue is whether the disputed condition is reasonable and necessary in the interests of the living conditions of occupiers at No. 3 Lambourne Drive, with particular regard to privacy.

Reasons

3. The appeal site comprises a detached dwelling with sizeable rear garden,

flanked to the north-west by the detached dwelling and rear garden of No. 3 Lambourne Drive. Approved plans for planning permission 2011/0268 show an external door on the first floor rear elevation of the garage at the appeal site, with an associated external landing space and staircase leading to the rear garden. Condition no. 4 was attached to this planning permission requiring the installation of a screen within the approved landing space to preserve the amenities of the occupiers of No. 3. While planning permission 2011/0268 has been implemented, the external door, landing space, and staircase are not present and a full-length window has been installed in their place.

4. I observed both the rear garden of the appeal site and the habitable room served by the upper floor window that is the subject of this appeal. It is a sizeable window positioned near the boundary shared with the property at No. 3. However, its main outlook is towards the rear garden of the appeal site, flanked to the north-west by dense boundary planting which serves to largely screen the rear garden at No. 3. Although the Council raises concerns that the boundary planting would be removed, there is nothing substantial before me to suggest that this would be the case.
5. I observed that some views of the neighbouring rear garden at No. 3 remain possible from the window in question when looking towards the north-west. However, due to the projecting and sloping nature of the dormer feature within which the window is placed, such views are extremely limited from within the associated habitable room and are neither clear nor direct. As such, the window does not result in a level of overlooking, or perception of overlooking, of the neighbouring rear garden at No. 3 to an extent that would be uncommon within a residential setting, or that would unduly impact the use and enjoyment of this garden by the residents of No. 3.
6. I therefore find the proposal would not conflict with Policy DM2 of the Elmbridge Local Plan Development Management Plan 2015 or the Elmbridge Design and Character SPD insofar as they seek to ensure that, to protect the amenity of adjoining occupiers, development should be designed to provide privacy. Policies CS10 and CS17 of the Elmbridge Core Strategy 2011 are also referenced in the Decision Notice and, on the information before me, I find no conflict between the proposal and these policies.
7. My findings above, combined with the fact that the external door, landing space, and staircase approved under planning permission 2011/0268 are not in place, lead me to find that condition no. 4 attached to planning permission 2011/0268 is neither reasonable nor necessary in the interests of the living conditions of occupiers at No. 3 Lambourne Drive, with particular regard to privacy.

Other Matters

8. As this appeal will result in a new planning permission, it is necessary for me to also amend condition no. 2 of planning permission 2011/0268. This is in the interests of certainty and to ensure that the development is carried out in accordance with the updated plans showing the window in the first-floor rear elevation of the garage.

Conclusion

9. For the reasons given above, I conclude that the appeal should be allowed and

the planning permission varied as set out in the formal decision.

C Rafferty

INSPECTOR