



Appeal Decision

Site visit made on 14 March 2025

by **G Sylvester BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 16th April 2025

Appeal Ref: APP/K3605/W/24/3351591

43 Oatlands Chase, Weybridge, Surrey KT13 9RP

- 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 Steven Errington against the decision of Elmbridge Borough Council.
 - The application Ref is 2024/1424.
 - The application sought planning permission for the Retrospective Variation of Condition 2 (Approved Plans) of planning permission 2021/1701 (Terrace of 3 two-storey houses) to amend the ridge height of the houses without complying with a condition attached to planning permission Ref 2024/0378 dated 8 May 2024.
 - The condition in dispute is No 21 which states that: *"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, B and C of Schedule 2 to the said Order shall be carried out within the curtilage of any dwellinghouse, unless planning permission is first granted by the Borough Council"*.
 - The reason given for the condition is: *"To protect the amenities of occupiers and adjoining residential properties in accordance with Policy DM2 of the Development Management plan 2015 and to ensure flood risk is not increased through loss of flood storage capacity or impediment of flood flows and to comply with policy CS26 of the Elmbridge Core Strategy and the Flood Risk Supplementary Planning Document."*
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Decision

1. The appeal is allowed and planning permission is granted for a terrace of 3 two-storey houses with associated access road, parking, bin store and cycle store following demolition of existing detached garage, at 43 Oatlands Chase, Weybridge, Surrey KT13 9RP, in accordance with the application Ref 2024/1424, without compliance with condition number 21, previously imposed on planning permission Ref 2024/0378 dated 8 May 2024, and subject to the conditions in the attached Schedule of Conditions.

Procedural Matters

2. The Council granted planning permission for a terrace of 3 two-storey houses with associated access road, parking, bin store and cycle store following demolition of existing detached garage, Ref. 2020/1524. Subsequent approvals have been granted by the Council to amend the development, most recently to increase the ridge height of the terrace of dwellings. Except for a dormer on the rear roof slope of the terrace, which at the time of my site visit appeared to be under construction, the dwellings on the appeal site appear to be substantially complete and match those shown on the drawings that are before me in this appeal. I have therefore determined the appeal based on the submitted drawings.

Background and Main Issues

3. Paragraph 55 of the National Planning Policy Framework (“the Framework”) states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. Framework Paragraph 57 states that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
4. The Council's decision notice states that the disputed condition is necessary to control enlargements to appeal dwellinghouses in the interests of maintaining the amenity space of each dwellinghouse and controlling flood risk. The Council Officer's report and Statement of Case, also explain that the disputed condition is necessary to maintain the approved dwellings as 3-bedroom ‘smaller’ homes to meet housing needs, and to avoid potentially harmful overlooking from the provision of high-level windows.
5. Therefore, based on the evidence before me, the main issues in this appeal are whether the disputed condition is necessary and reasonable in the interests of:
 - Meeting a local housing need for smaller homes.
 - Safeguarding the living conditions of nearby residents with particular regard to privacy.
 - Safeguarding the living conditions of existing occupiers of the appeal development with particular regard to external garden space.
 - Avoiding an increase in flood risk.

Reasons

Smaller homes

6. Policy DM10 of the Elmbridge Local Plan Development Management Plan, April 2015 (“the ELP”) states that housing developments on sites of 0.3 hectares or more should promote house types and sizes that make most efficient use of land and meet the most up to date measure of local housing need, whilst reflecting the character of the area.
7. The Council's Statement of Case indicates that its Strategic Housing Market Assessment (SHMA) identifies that the greatest housing need is for smaller homes. The Council uses bedrooms as a proxy for the size of a dwelling and it defines smaller homes as accommodating 3 bedrooms or fewer.
8. As the appeal dwellings are conventional houses with ground floor living space and 3 bedrooms on the first floor, they are smaller dwellings under the Council's definition. There is no evidence before me to suggest that the appeal site, which is situated behind a large dwelling and accessed by a relatively long driveway, covers less than 0.3 hectares in area.
9. The appellant has not disputed the Council's evidence on the relevance of ELP Policy DM10, the SHMA, or the need for smaller homes to meet housing needs, and no alternative evidence to the contrary has been advanced. On the evidence before me the appeal development of 3 bedroom houses would therefore be expected to contribute positively towards meeting the local need for smaller homes

in the Borough, which are likely to be comparatively more affordable than larger homes.

10. The Council contends that exercising the removed permitted development rights in the disputed condition would allow extra bedrooms to be added in the roof spaces of the dwellings so that they would no longer be smaller homes. This is because planning permission Ref 2024/0378, approved an increase in the roof ridge height of the terrace of dwellings, which the evidence suggests has consequentially increased the internal headroom within their roof spaces making them capable of accommodating bedrooms. Therefore, the Council removed permitted development rights on the appeal planning permission and not the earlier planning permissions for 3 dwellings which had lower roof ridge heights.
11. Whilst those earlier planning permissions appear to have retained national permitted development rights for alterations and enlargements, I am not aware that their roof spaces would have been of a sufficient height to accommodate additional bedrooms. There is no substantive evidence to demonstrate whether any of those earlier permissions are capable of being implemented and therefore I am not convinced that they would amount to fallback schemes. As such those earlier permissions are of limited relevance and weight to my considerations under this main issue.
12. Based on the Council's evidence, I find that the addition of bedrooms in the roof spaces of the appeal dwellings through development in Classes B and C of Part 1 of Schedule 2 of the GPDO¹ would result in them falling outside of the Council's definition of a smaller home. As such, removing the disputed condition in respect of Classes B and C would be likely to have a detrimental effect on the availability of the appeal development's smaller homes to meet identified housing needs, contrary to ELP Policy DM10, the requirements of which are set out above. No substantive evidence has been advanced to the contrary. Whilst ground floor rooms could be used for sleeping this would not, in my view, be a conventional arrangement in a 2 storey dwellinghouse of the scale and layout in this appeal. Bedrooms within houses are conventionally found at upper floor levels.
13. The disputed condition is therefore reasonable and necessary insofar as it would control the addition of bedrooms within the roof spaces of the appeal dwellings to accord with ELP Policy DM10. It therefore amounts to the clear justification needed to restrict the national permitted development rights under Classes B and C of Part 1 of Schedule 2 of the GPDO. Alterations and enlargements to the roofs of the dwellings would therefore need to be assessed through the planning application process and determined on their individual merits and against relevant policies.
14. There is limited evidence to demonstrate that exercising the removed permitted development rights under Class A of Part 1 of Schedule 2 of the GPDO would result in anything other than modest rear extensions, including across part of the rear gardens of the appeal dwellings. There is no substantive evidence from the Council to indicate that such extensions would enable the creation of additional bedrooms in a conventional manner at upper floor levels, and it is notable that Class A rights were not removed from the previous planning permission. Therefore, on this main issue I find no clear justification that it would be necessary

¹ Town and Country Planning (General Permitted Development) Order 2015 as amended.

to restrict permitted development rights under Class A of Part 1 of Schedule 2 of the GPDO.

Living conditions of nearby residents.

15. The appeal terrace has several relatively wide first floor windows in its front and rear elevations from which views across nearby properties could be obtained. A degree of mutual overlooking is therefore a characteristic of this residential area. Given the relationship between the appeal dwellings and the nearby residential properties, which tend to occupy spacious grounds, I am satisfied that the views that could be obtained from roof level windows constructed under the removed permitted development rights would not be markedly different to those obtained from the first floor windows in the dwellings as approved. As such, they would not result in a harmful increase in overlooking and loss of privacy for nearby occupiers.
16. For these reasons the disputed condition is not reasonable or necessary in the interests of safeguarding the living conditions of nearby residents with particular regard to privacy. I therefore find no conflict with ELP Policies DM2 and DM10 insofar as they require development to protect the amenity of nearby occupiers.

Living conditions of existing occupiers

17. The permitted development rights which have been removed would, in the main, permit further extensions to the rear of the dwellings and onto their gardens. The appeal dwellings are modestly sized 3-bedroom properties, served by good sized gardens of practical shapes that would be sufficient to establish a seating area, provide play space and accommodate domestic activities like the drying of washing.
18. I am not aware that the disputed condition was necessary to ensure compliance with any minimum garden sizes. I am also aware that the GPDO restricts the area of ground within the curtilage of a dwellinghouse that can be covered by extensions. I have no substantive evidence before me to show that the removed permitted development rights, if fully exercised, would reduce the garden sizes of the appeal dwellings to the extent that they would be unduly cramped and result in unacceptable living conditions for the occupants.
19. Accordingly, I find that the disputed condition is not reasonable or necessary in the interests of safeguarding the living conditions of existing occupiers. I therefore find no conflict with ELP Policies DM2 and DM10 insofar as they require occupiers to be provided with appropriate living conditions.

Flood risk

20. The permitted development rights which have been removed would, in the main, permit further extensions beyond the rear walls of the original dwellinghouses, thus covering parts of their gardens. ECS Policy CS26 states that permitted development rights will be removed from new developments in Flood Zone 3, where it could result in a loss of flood storage capacity or impede flood flow. However, the evidence before me does not show the appeal site to be within Flood Zone 3 and therefore ECS Policy CS26 does not indicate that the disputed condition is necessary.
21. The Council Officer's Report lists surface water flooding of medium and high flood risk as a constraint to the development. However, the evidence before me does

not demonstrate that exercising the removed permitted development rights would increase the risk of flooding to nearby land and buildings. For these reasons, I find that the disputed condition is not reasonable or necessary in the interests of avoiding an increase in flood risk and I find no conflict with ECS Policy CS26.

Other Matters

22. The Council makes a passing reference to the character of the area in its evidence. I saw that the area of the appeal site is generally characterised by large residential buildings. In this context I am satisfied that the enlargements to the appeal dwellinghouses that could be carried out under the permitted development rights in the disputed condition would not be likely to result in a development that would be out of scale with nearby buildings or detrimental to the character of the area. No substantive evidence to the contrary has been advanced by the main parties.

Conditions

23. The guidance in the Planning Practice Guidance 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. The Council has provided a list of conditions that it considers remain relevant and the appellant had no comments to make on them. I have imposed the conditions that I consider remain relevant and if some conditions have in fact been satisfied, that is a matter which can be addressed by the parties.
24. Where necessary I have amended the wording of the suggested conditions to ensure compliance with the tests. I have for certainty as to the planning permission granted, imposed a condition specifying the approved drawings. As the dwellings appear to be substantially complete it is unnecessary to require them to be built from the approved materials.

Conclusion

25. For the reasons given above and based on the evidence before me, the disputed condition is reasonable and necessary insofar as it would restrict enlargements and alterations to the roofs of the dwellings under Classes B and C of Part 1 of Schedule 2 of the GPDO. I therefore conclude that the appeal should be allowed with the variation of the disputed condition and the retention of those non-disputed conditions from the previous planning permissions that appear still to be relevant.

G Sylvester

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall be carried out in accordance with drawings; 202; PWP/801,24; DPA-9005-05 Rev A; and the floor plans on drawing 204.
- 2) The development hereby approved shall not be occupied until the mitigation of impacts on biodiversity including protected species, and enhancement measures have been carried out in accordance with the Conclusions and Recommendations Section of the Ecological Report produced by AA Environmental Ltd dated 18th June 2020 and received on 7th July 2020.
- 3) The development hereby approved shall not be occupied unless and until each of the dwellings 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) and thereafter retained and maintained.
- 4) All existing trees, hedges or hedgerows shall be retained, unless shown on the approved drawings as being removed, and paragraphs (a) and (b) below shall have effect until the expiration of 5 years from the first occupation of the approved development.
 - a) no retained tree, hedge or hedgerow shall be cut down, uprooted or destroyed, nor shall any retained tree be pruned other than in accordance with the approved plans and particulars. Any pruning shall be carried out in accordance with British Standard 3998: 2010 (tree work) and in accordance with any approved supplied arboricultural information.
 - b) if any retained tree, hedge or hedgerow is removed, uprooted or destroyed or dies, another tree, hedge or hedgerow of similar size and species shall be planted at the same place, in the next available planting season or sooner.
- 5) The development hereby approved shall not be occupied until all flood mitigation measures have been carried out in accordance with the details set out in the Proposed Site Plan received on 23.11.2020, and approved under planning permission 2020/1524, and the Flood Risk Assessment prepared by Iconic Architectural Design received on 10.05.2021, and approved under planning permission 2021/1701.
- 6) The development hereby approved shall not be first occupied unless and until space has been laid out in accordance with the approved plans for the storage of refuse within the development site. The storage facilities shall thereafter be retained and maintained.
- 7) The development hereby approved shall not be first occupied unless and until the secure, covered and lit parking of bicycles within the development site facilities have been provided in accordance with the approved plans. Therefore, the approved cycle parking facility shall be retained and maintained.

- 8) Details of any external lighting shall be submitted to and approved in writing by the Local Planning Authority before first occupation of any building. The development shall be carried out in accordance with the approved details.
- 9) Prior to the first occupation of the development hereby permitted the first floor side windows of the development hereby permitted shall be glazed with obscure glass that accords with level three obscurity as shown on the Pilkington textured glass privacy levels and only openable above a height of 1.7m above the internal floor level of the room to which it serves. The windows shall be permanently retained in that condition thereafter.
- 10) 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 development permitted by virtue of Classes B and C of Part 1 of Schedule 2 to the Order shall be undertaken.

End of schedule