

19th MARCH 2019 PLANNING COMMITTEE

6o	18/1163	Reg'd:	30.10.18	Expires:	25.12.18	Ward:	BWB
Nei.	28.11.18	BVPI Con. Target	Householder	Number of Weeks on Cttee' Day:	8/21	On Target?	No
Exp:							
LOCATION: 37 Eden Grove Road, Byfleet, West Byfleet, Surrey, KT14 7PH							
PROPOSAL: Retrospective consent for a raised platform along with a log cabin and shed in the rear garden. (Amended description)							
TYPE: HOUSEHOLDER							
APPLICANT: Mr Habibullah Zargarzada				OFFICER: Barry Curran			

REASON FOR REFERAL TO COMMITTEE

The decision on whether to take enforcement action falls outside the scope of delegated powers.

SUMMARY OF PROPOSED DEVELOPMENT

The application seeks retrospective consent for a raised platform and a detached log cabin and shed.

PLANNING STATUS

- Urban Area
- Flood Zone 2
- Byfleet Neighbourhood Area
- Thames Basin Heaths SPA Zone B

RECOMMENDATION

That planning permission be REFUSED and authorise formal enforcement proceedings.

SITE DESCRIPTION

The application is located on the southern side of Eden Grove Road within Flood Zone 2 and forms the eastern dwelling on a two storey semi-detached pair. The rear amenity space is enclosed by 1.8 metre high close timber board fencing separating similar style properties to the East and West and allotment gardens to the rear. A raised concrete platform measuring approximately 0.6 metres above ground level is located towards the terminus of the rear amenity space.

PLANNING HISTORY

No recent relevant planning history

PROPOSED DEVELOPMENT

The application seeks retrospective consent for a raised platform and a detached log cabin and shed.

CONSULTATIONS

Drainage Officer: Objects on drainage and flood risk grounds as the application site is located in Flood Zone 2 and no Flood Risk Assessment has been submitted (04.03.19)

REPRESENTATIONS

There has been 1 third party letter of objection received in relation to the development. The concerns raised in this letter are summarised as follows;

- Loss of privacy from the raised platform

RELEVANT PLANNING POLICIES

National Planning Policy Framework

Section 12 – Achieving well-designed places

Section 14 – Meeting the challenge of climate change, flooding and coastal change

Core Strategy Publication Document 2012

CS9 – Flooding and water management

CS21 – Design

Supplementary Planning Guidance

Supplementary Planning Document ‘Design’ 2015

Supplementary Planning Document ‘Outlook, Amenity, Privacy and Daylight’ 2008

PLANNING ISSUES

1. The planning issues that need to be addressed in the determination of this application are; principle of development, whether the detached sheds are detrimental to the character of the area, whether the development cause detrimental harm to neighbour amenities and impact on flooding.

Principle of Development

2. It is proposed to retain a raised platform along with a pair of detached outbuildings at the terminus of the rear amenity space. Before we can assess the planning merits of the detached sheds, the lawfulness of the raised platform or otherwise needs to be established. Article 3, Schedule 2, Part 1, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) states that development is not permitted by Class A if;

“(k) it would consist of or include –

(i) the construction or provision of a verandah, balcony or raised platform”.

3. A ‘raised platform’ is defined within the Permitted Development Rights for Householders – Technical Guidance April 2017 as “*a platform with a height greater than 0.3 metres*”. As the platform stands at 0.6 metres in height it falls outside the remit of Permitted Development. It has to be determined, therefore, whether the existing platform was substantially completed more than four years

19th MARCH 2019 PLANNING COMMITTEE

before the date of the application (30.10.2018) under the provisions of Section 191 of the Town and Country Planning Act 1990 (as amended).

4. The applicant is responsible for providing sufficient information to support development which can be considered lawful. In the case of applications for existing development, if a Local Planning Authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason not to assume the lawfulness of the development, provided the applicant's evidence alone is sufficiently precise and unambiguous.
5. An enforcement case has been opened on this raised platform under ENF/2018/00058. Evidence submitted/gathered as part of this enforcement case includes dated photographic evidence of the raised platform and other garden structures from October 2015 (latest sale date of No.37 Eden Grove Road). This photographic evidence was part of the property listing on the website *Rightmove.co.uk*. From this evidence, it is not clear nor can an assumption be made with regards to dimensions of the raised platform or whether the platform shown in these photographs is still in situ or whether it has been replaced. No further evidence has been submitted in support of the retention of the raised platform. In this case, it is not for the Local Planning Authority to disprove the case submitted but rather the onus is upon the applicant to provide sufficient information to substantiate their case, in sufficiently precise and unambiguous terms. The applicant has failed to demonstrate that the raised platform, as currently exists, has been in situ for a period of more than 4 years. Therefore, on the evidence presented as part of this application, it is considered that the raised platform is unlawful.
6. Taking the above into account, it should be noted that the two outbuildings as positioned atop the raised platform, part of which is deemed to be unlawful, would, too, fail to adhere to the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) Article 3, Schedule 2, Part 1, Class E E.1 (e)(ii) as both are positioned within 2 metres of the boundary and exceed 2.5 metres in height and, with regards to the larger of the two structures, E.1 (f) as the eaves level would measure 2.75 metres in height ('Height' as defined with the Permitted Development Rights for Householders – Technical Guidance April 2017 "*references to height (for example, the heights of the eaves on a house extension) is the height measured from ground level...*" and therefore fails to accord with Class E E.1 (f) of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
7. The smaller of the two outbuildings, whilst sited atop the platform which is considered to be unlawful, adheres to criteria laid out by Class E of the GPDO 2015 (as amended) but nevertheless is positioned atop an unlawful structure. Should this outbuilding be repositioned within the rear amenity space, on ground level and adhere to the criterial laid out by Class E than it would appear to be a lawful ancillary structure. This may also be the case for the larger outbuilding dependent on its positioning within the rear amenity space.
8. As such, as demonstrated above, the raised platform appears to be unlawful within the rear amenity space of the application site where insufficient evidence has been presented to substantiate, in sufficiently precise and unambiguous terms, that it has been in situ and substantially complete for more than 4 years. As a result, both outbuildings exceed the limitation as set out by Article 3,

Schedule 2, Part 1, Class E of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). Considering the paragraph above, there is, therefore, not considered to be a ‘fall-back’ position in this instance.

Impact on Character

9. It is proposed to retain a raised platform along with two single storey, timber built structures with a pitched roof form all of which has been completed. The raised platform and outbuildings are located towards the terminus of the rear amenity space of a property and have been erected without prior consent atop the raised platform. The outbuildings incorporate a simple design and appear as typical detached structures one would expect to see in back gardens. It should be noted that the additions, in themselves, may fall within Part 2 Class E of the General Permitted Development Order 2015 (as amended) (and subject to their positioning) but considering their positioning atop a raised platform would exceed the height limitation above ground level and therefore need to be assessed against relevant planning considerations.
10. With regards to the impact of the raised platform on the character of the area, it is noted that the rear amenity space is bound by 1.8 metres high close timber board fencing and by detached structures on neighbouring sites restricting views of the platform itself. Having regard for this, the raised platform, measuring the width of the site at approximately 7.5 metres with a depth of approximately 8 metres and standing at a height of 0.6 metres is not readily apparent from within the public domain and therefore has no significant impact upon the character of the area.
11. The larger of the two outbuildings measures 3.6 metres in width, 3.8 metres in depth and stands at a maximum height of 3.4 metres above ground level incorporating a dual pitched roof design. The smaller of the outbuildings adopts a similar form albeit with a smaller footprint of 3 metres in depth, 2.8 metres in width and standing at 3 metres above ground level. Both structures are considered to be consistent with the kinds of structures typical of the residential properties in the area with similar style sheds and outbuildings a common sight in rear residential gardens along Eden Grove Road. It is acknowledged that while the outbuildings stand at a height which is not considered common in the area, their location, almost abutting the rear boundary, allows for a range of heights within reason, without appearing out-of-character or detrimental to the residential character of the area.
12. Consequently, it is considered that the structures remain subservient to the main dwelling and form typical paraphernalia one would expect to in a residential property. Overall the proposals are therefore considered to have an acceptable impact on the character of the surrounding area.

Impact on Neighbour Amenities

13. The raised platform and outbuildings are sited at the terminus of the rear amenity space which backs onto allotment gardens with neighbouring properties to the East and West containing a similar site layout to the application property.
14. Policy CS21 of the Woking Core Strategy 2012, requires development proposals to *‘achieve a satisfactory relationship to adjoining properties avoiding*

significant harmful impact in terms of loss of privacy, daylight or sunlight, or an overbearing effect due to bulk, proximity or outlook'. One of the planning principles in Section 12 of the National Planning Policy Framework is to seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.

15. As addressed in the '*Principal of Development*' section of this report, the raised platform appears to be unlawful within the rear amenity space of the application site where insufficient evidence has been presented to substantiate, in sufficiently precise and unambiguous terms, that it has been in situ and substantially complete for more than 4 years.
16. Boundary treatments along the eastern and western side boundaries consist of 1.8 metre high close timber board fencing with trellis atop the western boundary increasing its height to 2 metres. The Council's Supplementary Planning Document 'Outlook, Amenity, Privacy & Daylight' 2008 seeks to protect the amenities of neighbouring occupiers and to avoid loss of light, overlooking or overbearing impacts resulting from development proposals. The raised platform, to be retained, stands at 0.6 metres in height and provides a large, clear and unobstructed viewing platform at the terminus of the rear amenity space overlooking the principal amenity spaces of both neighbouring properties at No.35 and No.39 Eden Grove Road. Furthermore, considering the modest depths of the rear amenity spaces of properties along the southern side of Eden Grove Road, views into habitable room windows are obtainable from this platform with a separation of just 12.5 metres from the platform to the rear elevations of both neighbouring properties.
17. Due to the elevated nature of the raised platform, significant overlooking would occur on the amenity spaces of both neighbouring properties to the East and West. It is not considered that increasing the height of the boundary treatments along both side boundaries would mitigate this overlooking and furthermore, boundary treatments in excess of 2 metres in height in this location would require planning permission and may cause significant harm in terms of overbearing impact on neighbouring amenity spaces.
18. The location of the outbuildings in relation to the rear elevations of the neighbouring dwelling along Eden Grove Road are noted to be at the end of rear gardens approximately 12.5 metres from the rear elevations of No.35 and No.39 Eden Grove Road and between 8-10 metres from the principal rear amenity space where the primary perspective is of a pitched roof. Further to this, both outbuildings are flanked by similar detached sheds/outbuildings within both neighbouring properties. Considering the single storey nature of the buildings and their positioning along with the characteristics of the site described above, the structures themselves are not considered to cause a level of overbearing but their intended use and intensification of the platform would contribute to the level of harm.
19. From the above, it is clear that the existing raised platform provides a podium towards the rear of the application site which allows for clear unobstructed views into the rear amenity spaces of neighbouring properties. The erection and use of the outbuildings in isolation, however, are not considered to contribute to a level of overlooking above or beyond that which occurs from the raised platform.

19th MARCH 2019 PLANNING COMMITTEE

20. As such, the raised patio would cause detrimental harm to the privacy levels of the occupiers of both No.35 and No.39 Eden Grove Road. As such, the development fails to satisfy the provisions outlined in the National Planning Policy Framework, Policy CS21 of the Woking Core Strategy 2012 and the guidance contained within the Supplementary Planning Documents 'Outlook, Amenity, Privacy and Daylight' 2008 and 'Design' 2015.

Impact on Flooding

21. The application site is located within Flood Zone 2. Paragraph 163 of the National Planning Policy Framework states that developments should only be allowed in areas at risk of flooding where it can be demonstrated that the proposal is appropriately flood resistant and resilient in light of appropriate assessments. It goes on to state that "*when determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere*". Raising the land in the rear amenity space leads to the loss of flood storage and therefore would increase the flood risk to the site and indeed surrounding sites. Policy CS9 expands on this provision and calls for a Flood Risk Assessment "*for development proposals within or adjacent to areas at risk of surface water flooding*".
22. The Council's Drainage and Flood Risk Officer has been consulted and objects to the proposal due to the resulting loss of flood storage and lack of any supporting information. As such, the proposed development has failed to demonstrate that as a result of the development, the flood risk does not increase flood risk elsewhere. The proposed scheme is, therefore, contrary to provisions within Section 14 of the National Planning Policy Framework and Policy CS9 of the Woking Core Strategy 2012.

Conclusion

23. Considering the points discussed above, it is considered that the submitted evidence is not sufficiently precise and unambiguous for the Local Planning Authority to conclude, on the balance of probability, that the raised platform was substantially complete more than four years before the date of the application (registered on 30th October 2018). Having been assessed against their impact on the character of the area, both detached outbuildings were, on balance, not found to carry a level of significant weight, in terms of impact on character, which, by itself, could be substantiated as a refusal. The raised platform, however, was found to have significant detrimental harm on neighbouring properties at No.35 and No.39 Eden Grove Road with clear views over the rear amenity areas resulting in the loss of privacy, detrimentally impacting on occupiers of these properties.
24. Furthermore, no information has been submitted to demonstrate that as result of the development the flood risk does not increase flood risk elsewhere on site or on neighbouring sites. This would lead to potential increased levels of flooding in and around the site much to the detriment of the application site as well as neighbouring properties.
25. The development is therefore contrary to Sections 12 and 14 of the National Planning Policy Framework, Policies CS9 and CS21 of the Woking Core Strategy 2012, Supplementary Planning Documents 'Outlook, Amenity, Privacy and Daylight' 2008 and 'Design' 2015 and is accordingly recommended for

19th MARCH 2019 PLANNING COMMITTEE

refusal. It is further recommended that enforcement action to secure the removal of the raised platform and in turn the outbuildings positioned atop it be taken.

BACKGROUND PAPERS

1. Site visit photographs
2. 1 third party letter of objection
3. Response from Council's Drainage Officer (04.03.19)

RECOMMENDATION

It is recommended that planning permission be REFUSED for the following reason:-

1. The raised platform, by reason of its height above ground level and positioning, results in a viewing podium where clear unobstructed views of the private amenity space of neighbouring properties to the East and West is attainable. The development is, therefore, an unneighbourly form of development contrary to provisions outlined in Section 12 of the National Planning Policy Framework, Policy CS21 of the Woking Core Strategy 2012 and guidance outlined in the Council's Supplementary Planning Document Outlook, Amenity, Privacy and Daylight' 2008.
2. Taking into account the location of the application site within Flood Zone 2 and in the absence of any supporting information, the proposed development has failed to demonstrate that as a result of the development the flood risk does not increase flood risk elsewhere. The proposed scheme is, therefore, contrary to provisions within Section 14 of the National Planning Policy Framework and Policy CS9 of the Woking Core Strategy 2012.

It is further recommended that:-

That the Head of Legal Services be instructed to issue an Enforcement Notice under Section 172 of The Town & Country Planning Act 1990 (as amended) in respect of the above land requiring the remedy of the breach of planning control to be achieved through:

1. Enforcement action be authorised to remedy the breach of planning control within three months of the date of the Enforcement Notice takes effect by removing the raised platform.

Informatics:

1. The plans relating to the development hereby refused are numbered / titled:

Drawing No. PL/02 (Received 29.10.18)
Drawing No. PL/01 (Received 29.10.18)
Drawing No. PL/03 (Received 29.10.18)