



Appeal Decision

Site visit made on 5 September 2016

by Zoe Raygen Dip URP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 3rd October 2016

Appeal Ref: APP/K2420/W/16/3152465

San Giovanni, Mill Lane, Sheepy Parva, Leicestershire CV9 3RL

- 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 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by San Giovanni against the decision of Hinckley & Bosworth Borough Council.
 - The application Ref 16/00117/CONDIT, dated 8 February 2016, was refused by notice dated 4 April 2016.
 - The application sought planning permission for extensions and alterations to premises without complying with a condition attached to planning permission Ref 14/00099/FUL, dated 4 April 2014.
 - The condition in dispute is No 4 which states that: *Notwithstanding the submitted details no development shall commence until a plan showing the exact panels to be obscurely glazed and specifications of the glazing are first submitted to and approved in writing by the Local Planning Authority and the scheme shall be implemented in accordance with those approved details. All windows in the east elevation shall be fixed shut and retained this way thereafter.*
 - The reason given for the condition is: *To ensure that the development is not detrimental to the privacy and amenity of neighbouring properties to accord with Policy BE1 (criterion i) of the adopted Hinckley and Bosworth Local Plan 2001.*
-

Decision

1. I allow the appeal and grant planning permission for extensions and alterations to premises at San Giovanni, Mill Lane, Sheepy Parva, Leicestershire CV9 3RL in accordance with the application Ref 16/00117/CONDIT dated 8 February 2016, without compliance with condition number 4 previously imposed on planning permission Ref, 14/00099/FUL dated 4 April 2014 but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect and subject to the new condition 1 as detailed in the attached schedule.

Preliminary matter

2. Since the appeal was submitted the Council has adopted the Hinckley and Bosworth Council Site Allocations and Development Management Policies DPD 2016 (the DPD). The Council confirms that this document replaces all Policies within the Hinckley and Bosworth Local Plan 2001. They have directed me to Policies DM1 and DM10 of the DPD in respect of this appeal.
-

Background and Main Issue

3. The condition in dispute requires that a plan showing the exact panels to be obscurely glazed is submitted and approved in writing by the local planning authority. The Council advise that following the granting of planning permission reference 14/00099/FUL, the applicant provided the local planning authority with details of the type of glazing to be used on the premises.
4. I requested details of the plan that was submitted to discharge condition 4. This was supplied by the Council (plan 460B). The Council formally discharged condition 4 on the 10 December 2014 in accordance with plan 460B and that the obscure glazing should be GL51 7AP. However, the first floor window and two small ground floor windows in the existing elevation facing Mill Lane have not been obscure glazed in accordance with the plan, as required by the condition, in order to protect the living conditions of neighbouring residents.
5. The main issue therefore is the effect that removing the condition would have on the living conditions of occupiers of 1, 2, 3 and 4 Sheepy Mill with particular regard to privacy, noise and disturbance.

Reasons

6. I saw on site that the first floor window is false as it is located behind the platform lift structure and the coats cupboard. There is no possibility therefore of a view from this window towards the windows in the properties at Sheepy Mill.
7. I observed that the ground floor windows serve a seating area, as indicated on drawing 250D. The windows at Nos 1-4 facing San Giovanni mostly had blinds, but these were opened so I had the opportunity to view the windows without obstruction. While looking from the windows in San Giovanni I could see the windows of the properties at Sheepy Mill, but could not see details of the rooms they served.
8. The windows facing San Giovanni at Nos 1-4 serve the main living room and a bedroom. However, the living room has two further windows one of which in the upper three flats is in the form of a French door with a Juliette balcony. These windows take advantage of the open views over the countryside. The windows directly facing San Giovanni have a recess which restricts the view from the restaurant into them.
9. I am also mindful that the windows at San Giovanni, at the time of planning permission ref 14/00099/FUL, were existing and already served a seating area within the bar space. Although the bar has moved nearer to the part of the restaurant where the windows are, I am not convinced that there would be a significant difference in the use of the area. Given that the windows have limited views towards those in the properties in Sheepy Mill I do not consider it reasonable or necessary for these two windows to be obscure glazed.
10. The plan that was approved by the Council when discharging condition 4 also shows windows at first floor level of the extension to be obscure glazed. This work has been completed on site. I am not aware if this is to the required standard, but I saw that the properties at Sheepy Mill could not be seen through the glazing.
11. These are large areas of glazing, at first floor, closer to Nos 1-4 than the two ground floor windows. Furthermore, they are new windows over and above those existing. I do consider it necessary and reasonable therefore for these to continue

to be obscure glazed. The condition as drafted does not allow for the retention of the obscure glazing and therefore I intend to impose an amended condition to take this into account.

12. Residents of Nos 1-4 consider that the ground floor windows of the new extension should also be obscure glazed as shown on plans submitted with application ref 15/0657/FUL for a new wall and air conditioning units. I have not had sight of these plans and they relate to a different planning application. Plan 460B used to discharge Condition 4 does not show the ground floor windows of the extension being obscure glazed.
13. Condition 4 also requires that all windows on the east elevation of the property should be fixed shut and retained that way hereafter. I have seen nothing to suggest that this part of the condition is in dispute. Given the proximity of the San Giovanni to Nos 1-4 I consider this to be necessary to prevent any noise or disturbance to the occupiers of the residential properties.
14. For the reasons above I conclude that removing condition 4 in its entirety would have a harmful effect on the living conditions of the residents of 1, 2, 3 and 4 Sheepy Mill with regard to noise and disturbance which would be contrary to Policy DM10 of the DPD. This requires that development does not have a significant adverse effect on the privacy and amenity of nearby residents. However, I have also found that the requirement to fully implement the scheme of obscure glazing as approved is not necessary in the interests of the privacy of the residents 1,2,3 and 4 Sheepy Mill. Nonetheless, the removal of the existing obscure glazing to the windows on the first floor of the new extension would be harmful to the privacy of the residents of 1,2,3 and 4 Sheepy Mill and therefore contrary to the requirements of Policy DM10. Therefore I intend redrafting the condition to take account of this requirement.

Other matters

15. Residents also refer to the light which comes from the bar area. However, the relocated bar area is also within the existing building and the interior lighting would not be subject to control under planning regulation.

Conclusion

16. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be allowed and a second planning permission is granted substituting a new condition for the disputed one together with a slightly amended Condition 2 to take account of this decision.
17. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. As I have no further information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.

Zoe Raygen

INSPECTOR

Schedule of Conditions

- 1) The windows in the first floor of the extension hereby permitted shall be obscure glazed and once installed the obscured glazing shall be retained at all times. All windows in the east elevation shall be fixed shut and retained this way thereafter.
- 2) The development hereby permitted shall not be carried out otherwise than in complete accordance with the following amended details (with the exception of the obscure glazing to the existing building): Locations and Block Plan Drawing No. 100A; Proposed Floor Plan Drawing No. 250C and Proposed Elevations Drawing No. 450 A received by the Local Planning Authority on 24 March 2014.
- 3) No development shall commence until representative samples of the types and colours of materials to be used on the external elevations of the proposed extension shall be deposited with and approved in writing by the Local Planning Authority, and the scheme shall be implemented in accordance with those approved materials.
- 4) Prior to first use of the proposed extension a revised Flood Risk Assessment (FRA), including a Flood Warning and Evacuation Plan (FWEP) within the appendices, shall be submitted to and agreed in writing by the local planning authority. Thereafter the development shall be operated in accordance with the approved details.
- 5) No development shall commence until details of parking and turning facilities within the site shall be submitted to and approved in writing with the Local Planning Authority. The parking and turning areas shall be surfaced and marked out prior to the development being used, and shall thereafter be so maintained at all times.
- 6) Prior to the first use of the development hereby approved, details of secure cycle parking provision shall first be submitted to and approved in writing with the Local Planning Authority and once provided shall be maintained that way thereafter.
- 7) Prior to the first use of development hereby permitted, the eastern new amenities access shall be provided in accordance with the details shown on drawing No. 250A. The access drive once provided shall be so maintained at all times.