
Appeal Decision

Site visit made on 21 September 2016

by Michael Moffoot DipTP MRTPI DipMgt MCMI

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

Decision date: 10 October 2016

Appeal Ref: APP/J3720/W/16/3153293

7 Old Town Square, Stratford-upon-Avon CV37 6DY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with a condition subject to which a previous planning permission was granted.
 - The appeal is made by Mr Irving David against the decision of Stratford-on-Avon District Council.
 - The application Ref: 16/01346/VARY, dated 22 April 2016, was refused by notice dated 20 June 2016.
 - The application form describes the proposal as 'Variation of condition 3 of planning permission 03/01419/REM, to change obscure glazing of two windows in no. 7 Old Town Square to clear glazing on first floor landing window and the top pane of kitchen window with the bottom two panes remaining obscured. The top pane of the kitchen window will also be opening'.
 - The condition in dispute is No 3 which states: *The rear first and second floor windows to the kitchens of units 8 and 9 shall be non-opening and fitted with obscure glazing and thereafter maintained in this condition at all times. The rear first and second floor windows of the stairwell to units 8 and 9 shall be fitted with obscure glazing and thereafter maintained in this condition at all times.*
 - The reason given for the condition is: *To prevent overlooking and loss of privacy to neighbouring premises.*
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Decision

1. The appeal is allowed and planning permission is granted for variation of condition 3 of planning permission 03/01419/REM insofar as it relates solely to the provision of clear glazing to the bottom two panes of the rear kitchen window in No 7 Old Town Square, Stratford-upon-Avon CV37 6DY.

Preliminary Matter

2. Following the Council's determination of the planning application at appeal the *Stratford-on-Avon District Local Plan Review 1996-2001* cited in the reason for refusal was superseded by the *Stratford-on-Avon District Core Strategy 2011-2031*¹. As Policy CS.9 of the Core Strategy is referred to by the main parties I shall take it into account in my consideration of the appeal proposal.

Background and Main Issue

3. The original approval of reserved matters² for the housing at Old Town Square, which includes the appeal site, contained a condition (No 3) which required

¹ adopted 11 July 2016

² 03/01419/REM

various rear windows in the subject building to be non-opening and obscure glazed. Permission was subsequently granted³ to vary the condition by, amongst other things, authorising clear glass in the top panel of the rear kitchen window to No 7⁴. Further, a condition was imposed requiring reinstatement of obscure glass in the lower panes of the window. The condition has been complied with but the appellant now wishes to replace the panes with clear glazing.

4. Accordingly, the main issue in this case is whether the condition is necessary and reasonable in the interests of protecting the living conditions of nearby residents, with particular reference to privacy.

Reasons

5. The subject window is one of two openings that serve the kitchen to the apartment. The window is set at a slight angle to the rear of Nos 55 and 56 Old Town Mews, which includes two first floor bedroom windows to each property and a number of ground floor openings.
6. The Council's Planning Advice Note *Extending your home: A planning guide for householders* includes guidelines for separation distances between proposed extensions and neighbouring properties to ensure that the occupiers are not unreasonably affected by, amongst other things, overlooking. In the case of three storey proposals a minimum separation distance of 27 metres is normally sought. As it is not an adopted Supplementary Planning Document and pre-dates the *National Planning Policy Framework* ('the Framework') it can be accorded only limited weight. Nevertheless, I consider it provides a reasonable basis on which to consider the appeal proposal.
7. The window in question is a good deal closer to the rear of Nos 55 and 56 than the guidelines normally seek and is at a higher level than the ground and first floor windows to the two dwellings. However, foliage within their rear gardens prevents undue overlooking of ground floor openings in the dwellings from the appellant's kitchen and also filters views into the first floor windows to some extent. The clear glazed rear bedroom window to the appellant's apartment has a similar proximity and elevation to these properties and has a very limited impact on the neighbours' privacy. Furthermore, a similar relationship is evident between the clear glazed side kitchen window of the apartment and first floor bedroom windows to Nos 49 and 50 Old Town Mews, albeit at a slightly more oblique angle.
8. In these circumstances the provision of clear glazing to the kitchen window would not increase overlooking of the rear windows to Nos 55 and 56 Old Town Mews to the extent that the occupiers' privacy would be materially harmed. As such, I find no conflict with the relevant part of Policy CS.9 of the Core Strategy which seeks to protect the amenity of neighbouring occupiers, consistent with similar objectives in the Framework. Accordingly the disputed condition is neither necessary nor reasonable in respect of the subject window and the appeal succeeds.

Michael Moffoot

Inspector

³ 08/01686/VARY

⁴ referred to as unit 9 in 03/01419/REM