
Appeal Decision

Site visit made on 6 September 2016

by David Walker MA MRTPI

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

Decision date: 13 October 2016

Appeal Ref: APP/D0121/D/16/3155350

53A Dial Hill Road, Clevedon, North Somerset BS21 7EW

- 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 conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr and Mrs Terry Macleod against the decision of North Somerset Council.
 - The application Ref 16/P/0706/MMA, dated 11 March 2016, was refused by notice dated 10 May 2016.
 - The application sought planning permission for erection of single and two storey extensions, raise level of roof, construction of dormer windows and balcony and erection of a conservatory without complying with a condition attached to planning permission Ref 14/P/0860/F, dated 11 July 2014.
 - The conditions in dispute is No 2 which states that:
The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Drawing no. 1413/P-100 Rev A: Location plan*
 - Drawing no. 1413/P-200 Rev A: Site massing plan*
 - Drawing no. 1413/P-500: Existing roof plan*
 - Drawing no. 1413/P-600: Existing front and rear elevations*
 - Drawing no. 1413/P-700: Existing side elevations*
 - Drawing no. 1413/P-800 & 900: Existing site photographs - external views*
 - All received 21 March 2014*
 - Drawing no. 1413/P-300 Rev A: Existing Ground Floor plan*
 - Drawing no. 1413/P-400 Rev A: Existing First Floor plan*
 - Drawing no. 1413/P-1000: Revision D: Proposed Ground Floor plan*
 - Drawing no. 1413/P- 1500: Proposed Layout plan*
 - All received 24 April 2014*
 - Drawing no. 1413/P-1100 Revision E: Proposed First Floor plan*
 - Received 18 June 2014*
 - Drawing no. 1413/P-1200 Revision E: Proposed roof plan*
 - Drawing no. 1413/P-1300 Revision E: Proposed East & West elevations*
 - Drawing no. 1413/P-1400 Revision F: Proposed North & South elevations*
 - All received 7 July 2014.*
 - The reason given for the condition is:
For the avoidance of doubt and in the interest of proper planning.
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Decision

1. The appeal is allowed and planning permission is granted for erection of single and two storey extensions, raise level of roof, construction of dormer windows and balcony and erection of a conservatory at 53A Dial Hill Road, Clevedon, North Somerset BS21 7EW in accordance with the application Ref
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16/P/0706/MMA dated 11 March 2016 subject to the conditions in the schedule at the attached Annex.

Application for costs

2. An application for costs was made by Mr and Mrs Terry Macleod against North Somerset Council. This application is the subject of a separate Decision.

Procedural Matters

3. The Council has described the proposal as an amendment to condition No 6 which prevents the insertion of additional windows, rooflights or dormers into the north and east elevations of the property. As the application sought the variation of condition No 2 to refer instead to amended plans I have determined the appeal on this basis, and I return to condition No 6 under my consideration of conditions, below.
4. The North Somerset Council Development Management Policies: Sites and Policies Plan, Part 1 (the DMP) was adopted on 19 July 2016. It supersedes the saved policies of the North Somerset Replacement Local Plan 2007 (the RLP) with the exception of Policy H/7 referred to in the Council's decision notice. I have accordingly determined the appeal in the light of the policies of the newly adopted DMP and saved Policy H/7 of the RLP.
5. The Council has provided a List of Plans that were submitted with the application and which it considered at the time of its decision. These refer to later revisions of plans than those listed in the decision notice. This has been attributed to a typographical error. I have therefore determined the appeal on the basis of the plans provided with the appeal and as referred to in the Council's submitted List of Plans.
6. At my site visit I was afforded access to No 55 Dial Hill Road and carried out my inspection on this basis and without entering into any discussion over the merits of the appeal with the interested party.

Main Issue

7. The main issue in the appeal is the effect of the proposal on the living conditions of the occupants of No 55 Dial Hill Road having regard to privacy.

Reasons

8. The application to the Council sought to substitute revised plans for those identified at condition No 2 of the existing approval, and which include an additional dormer window situated on a north facing roof slope. The window is required to facilitate the provision of an en-suite bathroom to the main bedroom. While the need for a dormer-type window over an alternative arrangement has been questioned this is not before me for consideration and I have determined the appeal on its merits.
9. With the appeal property being in close proximity to No 55 the additional dormer window would fall within the 21m minimum separation guideline set out within the Council's Residential Design Guide of 2013 (the RDG). As I saw at my site inspection it would be easily seen from the first floor bedroom window at No 55 thereby indicating a potential for unwanted overlooking and a corresponding loss of privacy.

10. However, the RDG identifies that in limited circumstances it is possible to preserve privacy and prevent overlooking through the use of obscured glazing. Windows serving landings and bathrooms are examples provided by the guidance and the appellants have indicated their willingness to accept such a restriction in the form of a planning condition. A suggested form of wording for a condition has been provided by the Council.
11. Given the close proximity to No 55 and opportunities for overlooking I have identified, I find that such a restriction requiring the proposed window to be obscured glazed and also non-opening below 1.7m would be necessary. Having regard also to the stated intentions of the appellants I find that the imposition of such a restriction would be reasonable. With these restrictions, as can legitimately be secured by a condition, I am satisfied that the proposal would accord with the requirements of saved Policy H/7 of the RLP and Policies DM32 and DM38 of the DMP for new extensions to not prejudice the living conditions of adjoining occupiers with regards to privacy and overlooking.
12. In reaching my determination I have also had regard to the relationship of the proposed dormer window with No 53. However, as the nearest affected windows of that property are positioned to the side of the proposal I am satisfied that no opportunities for harmful overlooking would arise. An interested party has also raised concerns over the effect of the proposed dormer window on the character and appearance of the area. This does not form part of the Council's reasons for refusal and, with regard to the existence of other dormer windows in the vicinity, I do not find it to weigh heavily against the proposal.
13. Overall, I conclude that while condition No 2 remains necessary to provide certainty over the scheme that has been authorised in the original planning permission, the proposal would not result in a harmful loss of privacy to the occupants of No 55. Accordingly, I am satisfied that the condition can be varied to refer instead to the revised plans of the proposal.

Conditions

14. 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 information before me about the status of the conditions imposed on the original planning permission, I shall impose all those I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed between the parties.
15. With the appeal allowing revised plans I do not find it necessary to vary or remove condition No 6 that restricts permitted development rights to install additional window openings. Given the close relationship between the appeal property and its neighbours the restrictions imposed by this condition remain necessary.
16. For the reasons given above I consider a further condition is necessary to secure the obscure glazing and non-opening of the additional dormer window and I attach new condition No 7 to this effect. In so doing I have had regard to the suggestion provided by the Council and agree that it is necessary and reasonable to restrict permitted development rights in this respect in order to protect the living conditions of neighbours in perpetuity.

Conclusion

17. For the reasons given above I conclude that the appeal should be allowed subject to conditions.

David Walker

INSPECTOR

Annex

Schedule of conditions

- 1) The development hereby permitted shall begin not later than the expiration of three years beginning with the date of planning permission Ref 14/P/0860/F which for the avoidance of doubt is 11 July 2014.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:

Drawing no. 1413/P-100 Rev A: Location plan
Drawing no. 1413/P-200 Rev A: Site massing plan
Drawing no. 1413/P-300 Rev A: Existing Ground Floor plan
Drawing no. 1413/P-400 Rev A: Existing First Floor plan
Drawing no. 1413/P-500: Existing roof plan
Drawing no. 1413/P-600: Existing front and rear elevations
Drawing no. 1413/P-700: Existing side elevations
Drawing no. 1413/P-1000 Revision D: Proposed Ground Floor plan
Drawing no. 1413/P-1100 Revision G: Proposed First Floor plan
Drawing no. 1413/P-1200 Revision H: Proposed roof plan
Drawing no. 1413/P-1300 Revision H: Proposed East & West elevations
Drawing no. 1413/P-1400 Revision J: Proposed North & South elevations
- 3) The materials to be used in the construction of the external surfaces of the extension hereby permitted shall match those used in the existing building. If any other material is proposed no development shall take place until such has been approved, in writing, by the Local Planning Authority.
- 4) No work shall be commenced until samples of roof tiles to be used in the development, have been placed on site and approved, in writing, by the Local Planning Authority. The developments shall be carried out in the approved materials unless otherwise agreed in writing.
- 5) The balcony hereby permitted shall not be used until the obscure glazed privacy screen for east end of the balcony, has been installed in accordance with details and specifications that have first been submitted to and approved in writing by the Local Planning Authority.
Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order (England) 2015, or any Order amending or revoking and re-enacting that Order, the said privacy screen shall not subsequently be altered or removed without the prior written permission of the Local Planning Authority.
- 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order (England) 2015 (or any order revoking, re-enacting or modifying that Order), no additional windows, rooflights or dormers shall be inserted in the north and east (side) elevations facing no. 55 Dial Hill Road and no. 53 Dial Hill Road without the prior written consent of the Local Planning Authority.
- 7) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order (England) 2015, or any order revoking and re-enacting that Order, the dormer window on the north and east elevation hereby approved shall be glazed permanently with

glazing that provides a degree of obscuration no less obscure than that which is provided by privacy level 3 of the Pilkington Group Limited textured glass range as defined in publication "Pilkington Textured Glass Range" (published January 2010). This window shall be non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed.

End of schedule