
Appeal Decision

Site visit made on 11 October 2016

by Geoff Underwood BA(Hons) PGDip(Urb Cons) MRTPI IHBC

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

Decision date: 18 October 2016

Appeal Ref: APP/W1905/W/16/3151000

24 Cuffley Hill, Goffs Oak, Hertfordshire EN7 5EU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Osman Ismail against the decision of Broxbourne Borough Council.
 - The application Ref 07/15/1173/HF, dated 3 December 2015, was approved on 9 May 2016 and planning permission was granted subject to conditions.
 - The development permitted is infill existing timber structure with brick construction. Replace existing front elevation patio doors with new windows.
 - The condition in dispute is No 1 which states that: *"The three openings to the rear wall of the property the subject of this application shall be permanently closed in masonry and this work of amendment shall be completed, including finishes, within a period of 28 days commencing on the date of this notice."*
 - The reason given for the condition is: *"In order to prevent loss of amenity to neighbouring residential occupiers."*
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Decision

1. The appeal is allowed and the planning permission Ref 07/15/1173/HF for infill existing timber structure with brick construction. Replace existing front elevation patio doors with new windows at 24 Cuffley Hill, Goffs Oak, Hertfordshire EN7 5EU granted on 9 May 2016 by Broxbourne Borough Council, is varied by deleting condition 1 and substituting for it the following condition:

The three openings to the rear wall of the property the subject of this application shall be permanently closed in masonry to match the existing building and this work of amendment shall be completed, including finishes, within a period of 28 days commencing on the date of this appeal decision.

Preliminary Matter

2. I have found that the requirements of the condition are necessary. However, it would also be necessary to alter the period of compliance from that originally stated in the Council's decision notice of 28 days from their decision to that of the same compliance period from the date of my decision. Not to do so would prejudice the appellant by leaving him immediately in breach of the condition. Therefore, although I have allowed the appeal and varied the permission, I have replaced the condition with one with essentially similar requirements as that in contention.
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Background and Main Issue

3. The Council granted a certificate of lawful use for the appeal property to be used as a residential dwelling in 2015 and subsequently granted permission to infill a timber link between two parts of the building with brick construction. That scheme was revised whilst it was under consideration to include three windows along the rear elevation which the Council advise had been inserted into the building. These windows serve two bathrooms and a corridor. They contain obscured glass and are of a top swing opening casement design.
4. The amended plans accompanying that application indicate the three windows being “blanked in with UPVC panels” and a note on the plans indicates a “new 300mm tight trellis above existing fence” which separates the appeal site from 42a The Drive, a neighbouring house. The effect of the contentious condition would be to require that these windows are blocked up with masonry rather than the panels.
5. The National Planning Policy Framework (the Framework), supported by the Planning Practice Guidance, sets out the six tests with which planning conditions must comply, including that they are necessary and reasonable in all other respects.
6. The main issue therefore is whether the condition is necessary and reasonable in light of the effect the development would have on the living conditions of the occupiers of No 42a.

Reasons

7. The appeal building is a single storey dwelling located close to, and extends along most of, the boundary it shares with No 42a. This neighbouring property is a detached house set slightly higher than the appeal site whose garden slopes gently down to the party boundary. This is marked by a close boarded, timber fence over which the appeal building and the three rear windows are clearly visible from the house and garden at No 42a. The proximity of the appeal building to the garden of No 42a makes this relationship a particularly sensitive one.
8. The garden at No 42a is laid out as lawn close up to the boundary fence and there is an outdoor cooking area and childrens’ playhouse in that part of the garden near to the appeal building. The occupiers of No 42a could reasonably be expected to enjoy the use of this part of their garden without undue intrusion or disturbance.
9. The combined effect of the height and situation of the proposed building close to the boundary currently results in a dominant form of development on the users of the garden of No 42a. This existing effect is harmfully exacerbated by the presence of the windows. Notwithstanding that the windows contain obscured glass, their elevated position and proximity to the boundary of No 42a means they have a particularly intrusive effect. Whilst such an effect would diminish with distance so that it would be less marked within the house itself, the useable area of garden extends up to the boundary.
10. Although they are high level, the windows are not positioned so far above floor level that an occupier of the appeal dwelling could not reasonably be able to look out of them if open. When they are open they allow limited sideways

glimpses of the garden of No 42a to be seen. Their situation has led to both actual, albeit limited, and perceived loss of privacy.

11. The presence of windows above the fence would mean that if the windows are open it is likely that those using the garden of No 42a would hear activities within the bathrooms which would be a further intrusive effect. Even if the windows were not capable of being opened thus reducing sound and overlooking, their presence is such that they would still give rise to an intrusive effect on users of the garden.
12. In hours of darkness, light from within the appeal dwelling would be seen intermittently through the three windows emphasising their proximity to the garden of No 42a and compounding their intrusive effect. Although the appellant considers that the intensity of light emitted from the windows would be low, the effect of lighting in drawing attention to the windows so close to the boundary would be the intrusive effect rather than the levels of light spilling over.
13. These intrusive effects will have led to considerable harm to the occupiers of No 42a, particularly in the levels of privacy they could otherwise expect to experience in their garden and from the rear aspect of their house. The removal of the windows and permanent blocking of the openings with masonry would remove these intrusive effects and preserve the living conditions of the occupiers of No 42a.
14. No details of the design, appearance or performance of the proposed UPVC panels have been provided and I can appreciate the Council's concerns about whether they would be effective in avoiding all the harm set out above. Whilst they may overcome any intrusion arising as a result of overlooking, it is not clear that they would necessarily obscure light from within the building or be of a permanent enough design to be likely to be retained in the long term. In particular, it is unlikely that their appearance would entirely avoid the intrusive effect and perceived loss of privacy which the existing windows give rise to.
15. The existing windows are positioned very close to the outside face of the wall in which they are located which, in the absence of any evidence to the contrary, adds to my concern that a satisfactory arrangement would be unlikely to be secured by way of panels. Furthermore, should the internal spaces of the appeal dwelling be re-arranged in the future this may give rise to pressure to open up boarded over windows. Therefore it has not been satisfactorily demonstrated that the use of panels would be an acceptable alternative to the blocking of the openings with masonry.
16. Whilst the addition of a trellis to the fence would go some way to obscuring the windows from view, even when combined with such panels, I do not consider that this would satisfactorily avoid all the harm set out above or avoid creating additional harm through the heightening of the boundary treatment.
17. I therefore consider that the condition is both necessary to avoid harm to neighbours' living conditions and reasonable in its requirements to permanently close up the windows and that the condition complies with the Framework's requirements in this respect.
18. I have considered the effect the implementation of the condition may have on the living conditions of future occupiers of the appeal dwelling. However none

of the windows serve habitable rooms and whilst their removal would reduce some natural light and ventilation the former would be limited in any event due to their size and northerly aspect and the bathrooms would no doubt be served by mechanical ventilation. I do not consider that the condition would harm occupiers' living conditions nor do I consider it would adversely affect the external appearance of the building as long as the masonry would match that of the existing building. I have added a requirement that the masonry matches the existing into the replacement condition for the avoidance of doubt in respect of this last point and do not consider that any party would be prejudiced by my doing so given the standard nature of the requirement.

19. The condition is supported by Borough of Broxbourne Local Plan Second Review, 2005 (Local Plan) saved Policy H6 which seeks to protect the amenity of existing residential areas by avoiding material harm to the privacy, amenity or environment of nearby residents arising from extensions to existing dwellings (with which the proposed alterations are analogous to), amongst other criteria.
20. In support of the appeal the appellant refers to PPS7, although this has been replaced by the Framework. In any event the requirements of the condition would accord with the Framework's core planning principle of always seeking to secure a good standard of amenity for all existing and future occupants of land and buildings. Without the condition the proposed development would not comply with saved Local Plan Policy H6 or the Framework.

Other Matter

21. Although an interested party has raised concerns regarding the history of various buildings on the site and the appellant's intentions for disposing of dwellings such matters are not pertinent to the consideration of the condition in questions and I have consequently given them little weight in reaching my conclusion.

Conclusion

22. The condition is therefore necessary and reasonable to protect the living conditions of the occupiers of No 42a. However, for the reasons set out above, the appeal is allowed and the planning permission is varied as set out in my decision to ensure that a reasonable compliance period is included in the condition.

Geoff Underwood

INSPECTOR