
Appeal Decision

Site visit made on 18 October 2016

by Debbie Moore BSc (HONS) MCD MRTPI PGDip

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

Decision date: 11th November 2016

Appeal Ref: APP/Q3305/W/16/3154160

28 Bullmead Close, Street, BA16 0BF

- 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 Ms Jan Taylor against the decision of Mendip District Council.
 - The application Ref 2016/0820/VRC, dated 31 March 2016, was refused by notice dated 10 June 2016.
 - The application sought planning permission for the construction of a dwelling on land adjacent to No 26 Bullmead Close without complying with a condition attached to planning permission Ref 2014/1809/FUL, dated 12 December 2014.
 - The condition in dispute is No 6 which states that:
The proposed first floor windows in the west elevation which serve the living and dining room (detailed on drawing R468.12H received 12.11.14) shall be glazed with obscure glass. The windows shall also be non-opening unless the parts of the windows which can be opened are more than 1.7m above the floor of the room in which the windows are installed. The windows shall be permanently retained in accordance with the requirements of this condition.
 - The reason given for the condition is: *To safeguard the amenities of adjoining occupiers from overlooking and loss of privacy.*
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Decision

1. The appeal is dismissed.

Background and main issue

2. The appeal relates to a detached house that has been built on a plot of land at the end of a cul-de-sac. Planning permission was originally granted for the development in December 2014, and included several conditions. Condition 6 required the first floor windows in the west elevation, serving the living/dining room, to be fitted with obscure glass and non-opening. The planning permission has been implemented, although the windows subject to Condition 6 have been fitted with clear glass and open inwards. A subsequent application which sought to remove condition 6 was refused by the Council in June 2016. The appellant has appealed against that decision and is seeking to retain the windows as installed.
 3. The main issue is whether the disputed condition is necessary and reasonable, having particular regard to the living conditions of the occupiers of No 26 Bullmead Close in respect of privacy.
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Reasons

4. The two windows subject to the disputed condition provide light to the first floor open plan living accommodation. I saw from my site visit that the windows allow extensive views over the garden of No 26, apart from a strip of garden that is screened by the boundary fence and an area to the side of the shed.
5. Due to the orientation of the appeal property, the views from the disputed windows are angled towards the centre and rear of the neighbour's garden. Nevertheless, the level of overlooking is significant. I saw that the lower sills of the windows are positioned at a slightly higher level than is usual which restricts views to a certain extent. For example, it is not possible to see through the windows when sitting down. However, the views are unrestricted at standing height and, given that the windows serve one of the main living areas, it is highly likely that the occupiers of the appeal property pass them on a frequent basis.
6. On site, I also visited No 26 and it is apparent that the disputed windows afford relatively wide views over the garden. There is likely to be some overlooking into the rear of No 26 from the first floor windows of No 24, but this is limited, as the house is set back and at an angle, which restricts views. There was no evidence of overlooking from the other neighbouring properties, which adjoin the rear of the garden.
7. I have taken into account that there is often a level of overlooking in residential estates and I have considered the examples provided by the appellant. Whilst the examples demonstrate that there is overlooking elsewhere, this does not provide justification for the development as built. Prior to the erection of the appeal property, the occupiers of No 26 enjoyed relative privacy when using their rear garden. The garden is now overlooked leading to a material loss of privacy which adversely affects the living conditions of the occupiers.
8. The appeal property has been built with two balconies on the south-west and west elevations. Views from the south-west balcony are restricted due to its orientation. However, the balcony on the west elevation is close to the boundary and views from it are equally as extensive into the neighbour's garden as the views from the disputed windows. This situation would remain irrespective of compliance with Condition 6. The Council argues that the effect of overlooking from the windows is more significant than views from the balconies. It is highly likely that the living/dining room is used on a daily basis whereas the balconies are more likely to be used during the summer months. I agree, therefore, that the effect of overlooking from the windows is more significant than the overlooking from the balconies.
9. I agree with the appellant that there is no overlooking of the main habitable rooms of No 26. Nonetheless, the enjoyment of the garden area is still an important consideration and, as explained above, this has been adversely affected by the development.
10. I appreciate that requiring the windows to be obscure glazed and non-opening is undesirable for the occupiers as they wish to have a view over their garden and to be able to clean the windows safely from the inside. However, there are two other windows serving this part of the living accommodation which are positioned on the opposite wall. There is also a door which provides access to

the first floor balcony, which has views of the garden and is another source of light. Furthermore, I am advised that none of the windows are opened for ventilation as there is a separate ventilation system. I understand the convenience of cleaning the windows from the inside, but cleaning can be achieved by other means. Consequently, I do not consider that the effects of the condition would be harmful to the living conditions of the occupiers of the appeal property.

11. The appellant is concerned about precedent, however, such conditions should only be used to make development acceptable. In this case, it is clear that the Council advised about the effects of overlooking prior to the determination of the original planning permission. It was therefore within the control of the applicant to agree a solution at the design stage which would provide a satisfactory environment for current and future occupants in accordance with Policy DP7 of the Local Plan¹.
12. I have considered whether the issue could be addressed through the use of screening as suggested by the appellant. This is unlikely to be effective as the screening would need to be relatively high and in my view, this in itself would adversely affect the use of the neighbour's garden area. Moreover, it appears that the fence and boundary is not within the control of the appellant.
13. I have considered further representations from third parties, in particular the concerns about overlooking from the balconies. However, my consideration of this appeal must be confined to the disputed condition.
14. The windows subject to the disputed condition have led to a loss of privacy to the detriment of the living conditions previously enjoyed by the occupants of No 26 Bullmead Close. The development does not accord with Policy DP7 of the Local Plan, which seeks to protect the amenity of users of neighbouring buildings and land uses and to provide a satisfactory environment for current and future occupants. Furthermore, the proposal fails to meet the aims of the National Planning Policy Framework (the Framework), insofar as it seeks to secure a good standard of amenity for all existing and future occupants of land and buildings. Overall, I consider the condition as imposed to be reasonable.
15. I conclude that the disputed Condition 6 is necessary and reasonable and also complies with the other tests set out within Paragraph 206 of the Framework. The appeal is therefore dismissed.

Debbie Moore

Inspector

¹ Mendip District Local Plan 2006-2019, Part 1 Strategy and Policies (adopted December 2014)