
Appeal Decision

Site visit made on 25 October 2016

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

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

Decision date: 18 November 2016

Appeal Ref: APP/Q4625/W/16/3154714

6 Kixley Lane, Knowle, Solihull, B93 0JG

- 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 Ivan Parry against the decision of Solihull Metropolitan Borough Council.
 - The application Ref PL/2016/01615/VAR, dated 20 June 2016, was approved on 15 July 2016 and planning permission was granted subject to conditions.
 - The development permitted is two storey rear and side extensions and single storey front shower room and porch.
 - The condition in dispute is No 3 which states that: the window to be installed in the north elevation of the first floor bathroom which faces number 8 Kixley Lane shall be obscurely glazed, and non-opening. The window shall thereafter be permanently retained in that condition.
 - The reason given for the condition is: to safeguard the amenities of neighbours in accordance with Policy P14 of the Solihull Local Plan 2013.
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Decision

The appeal is allowed and planning permission Ref PL/2016/01615/VAR for two storey rear and side extensions and single storey front shower room and porch at 6 Kixley Lane, Knowle, Solihull, West Midlands B93 0JA granted on 15 July 2016 by Solihull Metropolitan Borough Council, is varied by deleting condition No 3 and replacing it with the following condition:

- 1) The extension hereby permitted shall not be occupied until the bathroom window in the side elevation facing 8 Kixley Lane has been fitted with obscured glazing and once installed the obscured glazing shall be retained thereafter.

Preliminary Matters

1. Section 79(1) of The Town and Country Planning Act 1990 as amended (the '1990 Act') makes provision for an appeal made under Section 78(1)(a) thereof, as is the case here, to be allowed, dismissed or any part of the decision of the local planning authority reversed or varied. However the only matter in dispute in this case is condition No 3, and there is nothing before me nor reason apparent from my site visit to arrive at a different conclusion regarding the acceptability of the proposal in other respects.
 2. Section S73 applications are commonly said to be seeking to vary or remove conditions to which an existing permission is subject. However, that is not strictly the case. If such applications (or appeals against their refusal or non-determination) succeed, a completely new permission is created that stands
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alongside the original and the applicant or appellant is able to choose which is implemented. The 2016 application is described as a removal of condition 1 of permission PL/2015/51019/MINFHO. However, as the original permission was for two storey rear and side extensions and single storey front shower room and porch I have used this description in the formal decision and banner heading.

Main Issue

3. The main issue is the effect of a window that is capable of being opened on the living conditions of the occupiers of 8 Kixley Road with particular regard to privacy.

Reasons

4. The appeal property is a detached house that is presently being extended and refurbished. The surrounding area is predominantly residential in nature. The side elevation, facing 8 Kixley Lane (No 8), of the extended dwelling has a window opening at first floor level. A temporary 'window' was in the opening at the time of my site visit. The window would serve a bathroom and the bottom of the window opening is located around 1.7 metres above the floor level of that room.
5. No 8 has a clear glazed window in the side elevation that faces No 6 and this window is offset from the window in No 6. I noted at my site visit that due to the height above the floor level the main view out of the window in No 6 is of the top portion of the flank wall of No 8. It would be unlikely that the majority of people utilising the bathroom would be able to have a view into No 8's side window even with the window open due to its height above the floor level. Moreover, any views through the open window would be at an oblique angle given the offset of the windows.
6. The appellant has stated that an inward opening tilt and turn window would allow sufficient ventilation and allow access for maintenance of the window. It is common ground between the parties that the window would be obscure glazed. Taking into account all of the above I consider that the capability to open the window would not have a significant effect on the living conditions of the occupiers of No 8 with particular regard to privacy. It follows that there is no conflict with Policy P14 of the Solihull Local Plan which, amongst other things, seeks to protect and enhance the amenity of existing occupiers of houses.
7. For the reasons set out above, I allow the appeal and delete condition No 3 of planning permission Ref PL/2016/01615/VAR and replace it with a modified condition to allow the window to be opened.

D. Boffin

INSPECTOR