

Appeal Decision

Site visit made on 23 November 2016

by John Morrison BA (Hons) MSc MRTPI

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

Decision date: 23 February 2017

Appeal Ref: APP/Y2810/W/16/3156594

The Firs, Little Lane, Ravensthorpe, Northamptonshire NN6 8EX

- 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 Mr Neil Mason against the decision of Daventry District Council.
 - The application Ref DA/2016/0026, dated 12 January 2016, was refused by notice dated 10 May 2016.
 - The application sought planning permission for the *demolition of existing dwelling and outbuildings. Construction of detached dwelling with integral double garage* without complying with conditions attached to planning permission Ref DA/2014/0374, dated 16 October 2014.
 - The conditions in dispute are: 3. *the development shall be carried out strictly in accordance with drawing nos. 13102 (D), 201B, 206B, 207B received 11 September 2014 and, 098, 211A, 212A, 213A and 214A received 7 May 2014; and 10. Before the dwelling is first occupied the window/s on the eastern elevation shall be fitted with obscure glass which shall not be removed without the prior express consent in writing of the Local Planning Authority (Replacement of the glass with glass of an identical type would not necessitate the Council being notified).*
 - The reasons given for the conditions are: 3. *to ensure development is in accordance with the submitted drawings and to enable the Local Planning Authority to consider the impact of any changes to the approved plans; and 10. This condition is imposed because the Local Planning Authority consider that if plain glass was to be used in this location, the amenities of the dwellings at Paddock Close would be adversely affected due to overlooking.*
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing dwelling and outbuildings. Construction of detached dwelling with integral double garage at The Firs, Little Lane, Ravensthorpe, Northamptonshire NN6 8EE in accordance with the application Ref DA/2016/0026 dated 12 January 2016 without compliance with condition numbers 3 and 10 previously imposed on planning permission Ref DA/2014/0374 dated 16 October 2014 and subject to the following conditions:
 - 1) The development to which this planning permission relates is shown on approved plan; reference N221-010 Revision 6.
 - 2) The obscure glazing which has been fitted to the windows in the first floor of the east elevation of the dwelling hereby permitted shall be retained.
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- 3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development shall take place under Schedule 2, Part 1, Classes A, B, C, D or E.
- 4) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no windows or dormer windows other than those expressly authorised by this permission shall be inserted in the first or second floor of the east elevation.

Procedural Matters

2. It has been confirmed that the 2 metre fence between the rear garden of the appeal site and the dwellings on Paddock Close was agreed in the discharge of the relevant conditions concerning landscaping and boundary treatments as it was attached to the original planning permission. Specifically as they are shown on plan reference N221-404 revision A. I have been provided with a copy of this plan.
3. At the time of my site visit, the aforementioned fence had been erected. In addition, clear glass had been fitted to the ground floor windows in the east elevation. All of the first floor windows in the east elevation, including the roof lights, had been fitted with obscure glazing. The roof lights and sun pipes were in their proposed positions. The proposed variation of the relevant conditions therefore applies to development that has been carried out.

Application for costs

4. An application for costs was made by Mr Neil Mason against Daventry District Council. This application is the subject of a separate Decision.

Main Issues

5. The main issue is whether or not the specified conditions are reasonable and necessary in order to mitigate the effect of the development on the living conditions of the occupiers of neighbouring dwellings with particular regard to their privacy.

Reasons

6. There is no dispute between the parties concerning the revised siting of the roof lights and the addition of the proposed sun pipes, with specific regard to condition 3. Given that the changes in this respect are minor, not fundamental to the development approved and do not cause any material planning harm, I would agree. I shall therefore focus on the necessity and reasonableness of condition 10 and the proposal for it to be varied to allow for the windows in the ground floor of the east elevation to have clear glass fitted and thus for obscure glazing to apply to the first floor only.
7. With regard to the first floor, the use of obscure glazing does restrict any direct lines of sight towards the rear elevations and into the gardens of Numbers 1, 2 and 3 Paddock Close. Conversely, and largely owing to the difference in ground levels, there is a clear line of sight from the ground floor windows which

serve the living space and kitchen areas of the appeal building towards the first floor windows of the aforementioned Paddock Close dwellings.

8. However, this is not materially different to the view that is available from the rear garden of the appeal building. This view would still be available in the event that the windows in the ground floor of the east elevation were obscurely glazed. The siting, size, and extent of the garden to the appeal building is a lawful part of the planning permission that was granted.
9. The oblique angle and separation distance between the ground floor windows and the Paddock Close dwellings does go some way to mitigating the effect of the use of clear glazing on the privacy of occupiers. Furthermore, the existing two metre fence is more than adequate in preventing any clear views, along with the use of obscure glazing to the first floor, into the ground floor rooms or gardens of the Paddock Close dwellings from the appeal building.
10. With the above factors in mind, the effect of obscure glazing the ground floor windows of the east elevation of the appeal building would not reduce or further mitigate the overall effect the development has on the privacy of the occupiers of the Paddock Close dwellings. As such, measures to control it through planning conditions would be superfluous. The specified conditions in the form they are set out above are therefore not necessary.

Other Matters

11. I note that both the Council and the appellant explored the feasibility of erecting a taller 2.5 metre section of garden fence to the rear boundary of the appeal building. This was then suggested by the Council to be part of a further amended condition as specified in the officer's report to planning committee. It was the potential effect of this taller section of boundary fence that was cited by the Council's Planning Committee as the reason to refuse planning permission to vary the relevant planning conditions.
12. Given that this would have amended a further condition which was not the subject of the original planning application and it would have constituted development requiring planning permission in its own right, I am unable to take it into account in my findings. In addition, the development requiring planning permission would have to be subject to its own period of public consultation and as such, to accept it, would be potentially prejudicial to parties involved. Particularly given the overall height of a taller boundary treatment relative to the much lower level of the rear gardens to the Paddock Close dwellings.
13. I have therefore considered the matters relevant to this appeal on their own merits as set out above, with specific regard to the conditions proposed for variation.

Conditions

14. I have had regard to the wording of the varied conditions as suggested by the Council. However, for the reasons set out above as well as for clarity and enforceability I have made some changes. These are reflected in the wording I have used. Since development has been completed on site, conditions pertaining to physical works are no longer necessary.

15. For certainty, I have specified the approved plan as well as the location and retention of the obscure glazing that has been fitted in the interests of the living conditions of the occupiers of neighbouring dwellings with specific regard to privacy.
16. Having regard to the size and siting of the new dwelling and its relationship with the gardens of those surrounding it, I consider it reasonable in the interests of the living conditions of neighbouring occupiers to restrict further development that may be permitted without the need for express planning permission, specifically alterations and extensions to the dwelling and the erection of outbuildings. For the same reasons, I have placed further restriction on the insertion of any new windows in the first or second floors of the east elevation.
17. I note that a suitable landscaping scheme has been agreed for the site and it has been confirmed that the required bat and bird boxes have been installed in the agreed locations. There is therefore no longer a requirement to secure either by a further planning condition.

Conclusion

18. For the above reasons, there would be compliance with the Framework¹, specifically one of its core principles, which seeks to ensure a good standard of amenity for all existing and future occupiers of land and buildings. Subject to the above conditions therefore, and having regard to all other matters raised, the appeal is allowed.

John Morrison

INSPECTOR

¹ The National Planning Policy Framework 2012