

Appeal Decision

Site visit made on 14 March 2017

by Diane Fleming BA (Hons) MRTPI

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

Decision date: 3 April 2017

Appeal Ref: APP/Y3805/C/16/3162600

Appeal Ref: APP/Y3805/C/16/3162601

198 Upper Shoreham Road, Shoreham By Sea, West Sussex BN43 6BG

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Mark Draper and Mrs Lucy Draper respectively against an enforcement notice issued by Adur District Council.
 - The enforcement notice was issued on 24 October 2016.
 - The breach of planning control as alleged in the notice is without planning permission, within the last four years, the installation of two uPVC replacement windows in the first floor, west (side) elevation of the property, shown outlined in red in photograph 1 attached to the notice.
 - The requirements of the notice are 1. Replace the existing clear glass in both windows shown in photograph 1 with level 3 obscure glass as shown in photograph 2 attached to the notice. 2. Fix shut both windows for perpetuity unless the parts of the windows which can be opened are more than 1.7metres above the floor of the room in which the windows are installed.
 - The period for compliance with the requirements is 2 months.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Appeal B is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period for Appeal B, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended in relation to that appeal have lapsed.
-

Decisions

Appeal A

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the installation of two uPVC replacement windows in the first floor, west (side) elevation of the property on land at 198 Upper Shoreham Road, Shoreham By Sea, West Sussex BN43 6BG referred to in the notice.

Appeal B

2. As set out above this appeal has lapsed.
-

Appeal A

The ground (a) appeal and the deemed planning application

Main Issue

3. The main issue is the effect of the development on the living conditions of neighbouring occupiers at No 2 New Barn Road, having regard to privacy.

Reasons

4. The appeal relates to a detached, two storey house which overlooks a busy main road. Planning permission was granted in April 2016 for a first floor, rear extension. During the course of the construction works to implement the grant of planning permission the appellant replaced two clear glazed, openable, first floor, flank windows that served as secondary windows to two bedrooms, with two larger windows. These new windows are now the principle windows for two bedrooms which have been re-configured from the area on the first floor of the house following the addition of the extra bedrooms at the rear.
5. Parallel to the western flank wall of the house is a vehicular access way that enables the occupiers of neighbouring properties to park their cars at the rear. To the west of this and at right angles to it there are the rear gardens of a number of houses in New Barn Road. Unlike other houses in New Barn Road though, the first property at No 2 has its principle elevation overlooking the busy main road and is set back behind the line of the front wall of the house at the appeal site. It is separated from the main road by a wide grass verge, a high wall and a garden. There is no rear garden as the rear wall of No 2 abuts the side boundary of No 4. A two storey extension has been added in the past to the side of No 2 which has windows at ground and first floor level overlooking the main road. There are also patio doors and a clear glazed window at ground level overlooking a small side garden adjacent to the vehicular access way. Two small windows at first floor level within the flank wall of the extension appear to be obscure glazed.
6. The Council are concerned that the new windows at the appeal site have resulted in a loss of privacy for the occupiers of No 2. This is because the new windows are larger than those that existed previously and they are also now the principle windows for those rooms. This has allegedly resulted in a greater level of overlooking and as the only windows for each of the rooms the Council consider it is more likely that they will be opened to provide ventilation which would enable more overlooking.
7. At the site visit I saw that there is a significant gap between the flank walls of the two houses. The Council advise that the distance is approximately 13.5m, which is not disputed by the appellant. Within the bedrooms of the appeal site I saw that the height of the window cills is high so that if sitting down in the rooms it is only possible to have a view of the sky from the windows. The window ledges are also deep and it is only when stood immediately adjacent to the northern window that it is possible to see into the side garden and the threshold of but not the whole room served by the patio windows at No 2. When standing near to the bedroom window at the front of the house it is only possible to see over the front garden of No 2 and there are no views into the second ground floor flank window at No 2 from either of the new windows.

8. There is also a deciduous tree within the garden of No 2 that currently obscures the view of the patio doors and the front garden from the appeal site. However, as the tree could be removed, pruned or die in the future, it cannot be relied upon to provide a permanent screen.
9. Whilst there has always been a degree of overlooking between the properties, I consider that the changes that have taken place at the appeal site have resulted in harm to the living conditions of the occupiers of No 2, having regard to privacy. However, the level of harm is not significant especially bearing in mind the previous relationship and is limited by the distance between the houses, their position relative to one another, the height of the window cills and the depth of the window ledges. The alterations have therefore not resulted in an unacceptable loss of privacy and as such do not conflict with Policy AH7 of the Council's Local Plan (LP)¹. This policy expects extensions to be designed so as not to result in an unacceptable degree of overlooking. I give it weight as it is consistent with the National Planning Policy Framework's requirement for a good standard of amenity for all existing occupants of land and buildings.

Conditions

10. No conditions have been suggested by the Council in the event of planning permission being granted. Since the development being granted planning permission was substantially complete when the notice was issued, none are necessary.

Conclusion

11. For the reasons given above I conclude that Appeal A should succeed on ground (a) and planning permission will be granted.

D Fleming

INSPECTOR

¹ Adur District Local Plan adopted April 1996