

Appeal Decision

Site visit made on 4 April 2017

by Stephen Hawkins MA MRTPI

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

Decision date: 21 April 2017

Appeal Ref: APP/P2114/D/17/3169127

12 Baring Road, Cowes, Isle of Wight PO31 8DA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr and Mrs W Dreyer against the decision of Isle of Wight Council.
 - The application Ref P/01281/16, dated 20 September 2016, was refused by notice dated 17 November 2016.
 - The application sought planning permission for demolition of conservatory; single storey extensions; replacement enlarged roof to provide roofspace accommodation to include dormer windows on front and rear elevations and balcony with privacy screening on front elevation; timber decked area; replacement external steps; rebuild of retaining wall and new boundary wall without complying with a condition attached to planning permission Ref P/01550/12-TCP/27539/C, dated 11 December 2012.
 - The condition in dispute is No 7, which states that *"The flat roof area on the south west corner of the development hereby permitted shall not be used as a balcony, roof garden or similar amenity area without the grant of further specific permission from the Local Planning Authority"*.
 - The reason given for the condition is *"In the interests of the amenities of adjoining properties and to comply with Policy DM2 (Design Quality for New Development) of the Island Plan Core Strategy"*.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in this appeal is the effect that varying condition 7 to allow access to the flat roof area for maintenance and repair only would have on the living conditions of occupiers of adjoining residential property, having regard to privacy.

Reasons

Living conditions

3. The appeal site is occupied by a recently extended detached 1½ storey dwelling, adjoined on both sides by residential properties. The roof area referred to in condition 7 is at the rear of the dwelling. It is accessed by a door at landing level forming part of a larger glazed area lighting the stairwell. Steel
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safety balustrading with glazed infill panels has been fitted on the outer edge of the roof area.

4. From the roof area there is an extensive view over the rear garden of 14 Baring Road (No 14) as well as a direct view into a habitable room on its ground floor. The obscured panels at the side of the balustrade are of limited effect in terms of reducing the extent of overlooking. Use of the roof area would therefore substantially erode the levels of privacy currently enjoyed by the occupiers of No 14.
5. I can fully understand why it would be advantageous for the appellants to have access to the roof area. Even so, maintenance and repair are quite broad terms which could cover a range of works to the building of varying scale and duration, not easily distinguished from the activities currently restricted by condition 7. Therefore, the proposed variation would not be precise, as it would not enable the appellants to understand exactly what was restricted by condition 7. The condition as varied would also be unenforceable, as it would be practically impossible to detect a breach of its requirements. For a similar reason, keeping the access door locked with the key removed would not be an enforceable requirement. Accordingly, the proposed variation would not meet two of the tests applied to conditions in paragraph 206 of the National Planning Policy Framework (the Framework).
6. The appellants say that they do not intend to use the roof area as a first floor deck, it has not been surfaced as a deck and no planters or other items would be placed there. During my visit, I observed that there was a properly surfaced first floor deck at the front of the dwelling affording expansive views over the Solent. I therefore have no reason to doubt that the appellants would not use the roof area other than as an access for repair and maintenance. However, planning permission runs with the land. There is no guarantee that future occupiers of the dwelling would not wish to use the roof area for the purposes restricted by condition 7. If the Council were unable to enforce against these activities there would be unacceptable harm to the living conditions of the occupiers of No 14 for the reason set out above.
7. There would be no failure to accord with Policy DM2 of the adopted Island Plan Core Strategy, as it contains no relevant criteria concerning the safeguarding of the privacy of occupiers of adjoining residential property. However, the proposed variation would not be consistent with paragraph 17 of the Framework, as it would not secure a good standard of amenity for existing occupants of buildings.

Other matters

8. The proposed variation would not fail to preserve or enhance the character or appearance of the Cowes Conservation Area. However, the absence of such harm is a neutral factor and does not weigh in favour of the proposal.

Conclusion

9. For the reasons given above I conclude that the appeal should be dismissed.

Stephen Hawkins

INSPECTOR