
Appeal Decision

Site visit made on 6 December 2017

by R J Marshall LLB DipTP MRTPI

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

Decision date: 28 April 2017

Appeal Ref: APP/G1250/W/16/3156064

11, Willow Mead, Throop, Bournemouth, BH8 0AF

- 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 Master James Scammell against the decision of Bournemouth Borough Council.
 - The application Ref 7-2016-12098-G, dated 10 March 2016, was approved on 5 May 2016 and planning permission was granted subject to conditions.
 - The development permitted is described as "Minor material amendment to vary condition no. 1 of application No. 7-2014-12098-D to amend and add windows to South, North and East elevations".
 - The condition in dispute is No. 7 which states that: *Within one month from the date of this decision, the first floor window identified as WF08 in the "proposed east elevation" (as annotated on the approved plans) of the building shall be glazed with obscure glass to a level equivalent to Pilkington Level 3 or above (or the nearest equivalent standard) and shall be permanently retained as such unless otherwise agreed in writing by the Local Planning Authority.*
 - The reason given for the condition is: *To prevent undue overlooking of the adjoining residential property and in accordance with Policy CS 41 of the Bournemouth Local Plan: Core Strategy (October 2012).*
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Decision

1. The appeal is dismissed.

Background/Procedural matters

2. In July 2014 planning permission was granted (ref. 7-2014-12098-D) for "Alterations and two storey extensions to dwellinghouse (Revised application)" at 11, Willowmead. In May 2016 planning permission No. 7-2016-12098-G. was granted for what was described as "Minor material amendment to vary condition no. 1 of application No. 7-2014-12098-D to amend and add windows to South, North and East elevations." It was on this application that the disputed condition No. 7 was attached.
3. Amending a scheme that has planning permission may be done by: a) making a non-material amendment; or b) amending the conditions attached to the planning permission, including seeking to make minor material amendments. Applications in the latter instance are made under Section 73 of the Town and Country Planning Act (TCPA) 1990. If permitted they create a new permission that sits alongside the original permission which remains intact and unamended. In this case the Section 73 approach has been taken. Hence the new permission, No. 7-2016-12098-G.

4. Two matters arise from this approach. First, the wording used for the new permission should have had the description used in the original permission, rather than just referring to the amendments and additions. I have had regard to this in my decision. Second, under Section 73 of the TCPA in granting planning permission for the new application the local authority had the power to impose new conditions provided they did not materially alter the development that was subject to the original permission and are conditions that could have been imposed on that permission. The implications of this are considered below.
5. The Council's statement was inadvertently copied late to the appellant. However, whilst I note the concerns expressed on behalf of appellant on this I am satisfied that sufficient time has been provided for observations to be made or advice sought. On behalf of the appellant, who no longer uses the agent who submitted the appeal, it is queried whether the application on which the disputed condition was imposed should have been made and it is requested that the appeal decision should be postponed. However, as the appeal has not been withdrawn it stands to me to proceed to a decision and I see no prejudice to the appellant in so doing.

Main issue

6. The main issue in this appeal is whether the disputed condition is relevant to the development to be permitted and whether it is necessary in the interests of the privacy of the occupier of No. 12 Willow Mead.

Reasons

Main issue

7. It appears to be argued on behalf of the appellant that the disputed condition is not relevant to the development to be permitted. Permission No. 7-2014-12098-G was worded to "amend and add windows to South, North and East elevations". The window on to which condition 7 applies is not one of those added or amended windows. However, as the application was made in the form outlined above it went beyond just the amendment and addition of windows. It was an application for alterations and two storey extensions without compliance with a condition listing the approved plans. A new permission was created for the development on which conditions may be imposed, albeit with the caveats referred to below.
8. The disputed condition seeking obscure glazing of the window in question was clearly relevant to planning, in so far that it sought to prevent loss of privacy. And relevant to the development to be permitted in so far that it sought to prevent overlooking from a window in the extensions for which permission was sought and which faced a neighbouring property. The disputed condition, in requiring obscure glazing in one window, does not materially alter the development that was subject to the original permission and is a condition which could have been imposed on the earlier permission. To the extent referred to above it meets the requirements in the National Planning Policy Framework (the Framework) on the imposition of conditions.
9. However, the Framework also requires that conditions be necessary and reasonable. Turning first to necessity when permitting the extensions in application 7-2014-12098-D the Council did not see the necessity to impose

the disputed condition on the grounds that the window was a sufficient distance from the neighbouring property, 12 Willow Mead, as to not cause issues of overlooking. The Council has since changed its mind saying that it is clear that privacy has been compromised, especially as this neighbouring property has a balcony. It also claims to have been confused by the way the plan was annotated, though it is unclear how this is material to the issue before me. The neighbour in question also raises strong concerns on loss of privacy.

10. The appeal property is a detached house on a large plot at the end of a residential cul-de-sac. To one side of the site is No. 12 Willow Mead. The permitted alterations and extensions have greatly enlarged the appeal building, to provide accommodation for a disabled young boy, by extending it to one side and deeper into the plot. The window, identified as WF08 on the application plans, is the one on which the disputed condition has been attached. It is in the side elevation of the rearward extension, serves a bedroom and faces onto the rear garden of No. 12. A reference by the Council to discussions having taken place on a compromise solution involving the use of an obscure glazing film on the existing window is strongly disputed on behalf of the appellant.
11. No. 12 Willow Mead has a small balcony in its rear elevation close to the boundary with the appeal site. Given the set back of the extension from the side boundary of No. 12 this window is within the region of 11 metres from the neighbour's boundary. Lack of boundary screening, other than an approximately 2 metre high fence, means that from the bedroom window there are clear views to the balcony. Given the proximity of the balcony to the window, even with the line of vision being slightly oblique, this gives the prospect of an unacceptable loss of privacy in the absence of obscure glazing.
12. It is contended on behalf of the appellant that the balcony at No. 12 may be unlawful. However, whatever the background to its construction may be there is no evidence that it may not remain in place and it is quite appropriate for me to have regard to the privacy of those using it. This remains the case notwithstanding the assertion on behalf of the appellant, unsupported by direct evidence, that privacy screens to the side of the balcony may at some stage in the past have been removed.
13. *From what I saw views from the bedroom window do not allow substantial* views through a balcony door to the neighbour's living room, so I do not share the neighbours concern on this point. However, views would be obtained from the bedroom window onto that part of the neighbour's garden close to the rear elevation of the house and thus the area most likely to be used for sitting out in. Views over this area from the distance in question would also cause harm through loss of privacy.
14. Turning to reasonableness the bedroom is also served by a window facing out onto open land. Thus views from the bedroom would remain even with one window obscure glazed and there is no evidence that obscure glazing would unduly restrict light to the room. The disputed condition is not, therefore, unreasonable.
15. It is concluded that the disputed condition is relevant to the development to be permitted, necessary in the interests of the privacy of the occupier of No. 12 Willow Mead and is not unreasonable. Removing the condition would be contrary to Policy CS41 of the Bournemouth Local Plan; Core Strategy (2012)

which seeks to ensure that new development protects the amenity of neighbouring residents.

Other matters

16. Some third party concerns go beyond those raised by the Council. There is some concern that the Council permitted an extension of the size built. However, this large plot was capable of accommodating a substantial extension of the kind permitted and this is not the type of case where an original decision was so fundamentally flawed as to justify overturning the entire decision. Other concerns have been raised about other conditions on the development being breached. However, that is not a matter for this appeal. Lack of harm in the foregoing respects does not, though, alter my view that the disputed condition should be retained.
17. I appreciate that there are concerns on some aspects of the Council's handling of this case and that a considerable degree of ill-feeling has arisen between neighbours and those representing the appellant. I note also the stress and costs that the appeal process is said to have given rise to along with concerns on trustees liabilities. However, I come to the case afresh and judge it on its planning merits.

Conclusion

18. For the reasons given above it is concluded that the appeal should be dismissed.

R J Marshall

INSPECTOR