

Appeal Decision

Site visit made on 19 April 2017

by Paul Singleton BSc (Hons) MA MRTPI

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

Decision date: 2 May 2017

Appeal Ref: APP/P4605/W/16/3164695

8 Sarehole Mill Gardens, Moseley, Birmingham B13 8BP

- 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 a condition subject to which a previous planning permission was granted.
 - The appeal is made by Mr Naz Snipes against the decision of Birmingham City Council.
 - The application Ref 2016/04289/PA, dated 15 May 2016, was refused by notice dated 19 July 2016.
 - The application sought planning permission for erection of bungalow without complying with a condition attached to planning permission Ref 2015/10029/PA, dated 15th April 2016.
 - The condition in dispute is No 6 which states that: *"Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, (or any order amending, revoking and/or re-enacting that order, with or without modification), no enlargement, improvement or other alteration of a dwellinghouse or its roof shall be carried out without further subsequent planning approval of the Local Planning Authority"*.
 - The reason given for the condition is: *"In order to maintain an adequate area for amenity space at the rear of the dwellings and to safeguard the amenities of the occupiers of premises/dwellings in the vicinity in accordance with Paragraphs 3.8 and 3.10 of the Birmingham UDP 2005, Places for Living SPG and the National Planning Policy Framework"*.
-

Decision

1. The appeal is allowed and planning permission is granted for erection of bungalow at 8 Sarehole Mill Gardens and land at rear of 63 Trafalgar Road, Moseley, Birmingham B13 8BP in accordance with the application Ref 2016/04289/PA, dated 15 May 2016, without compliance with condition number 6 previously imposed on planning permission Ref 2015/10029/PA, dated 15 April 2016 subject to the conditions set out in the schedule to this decision.

Background and Main Issue

2. Planning permission Ref 2015/10029/PA was granted in April 2016 for the erection of a one bedroom bungalow on a vacant site between Numbers 6 and 10 Sarehole Mill Gardens. The development has not yet commenced. The appellant sought permission to carry out the development without complying with condition No 6 to that permission, the effect of which is to
-

remove the normal permitted development rights for the enlargement, improvement or alteration of the bungalow or its roof.

3. Permission was refused on the grounds that removal of the condition would allow rooflights overlooking adjacent residential property and that the installation of rooflights may require internal alterations that would adversely affect the living conditions of the occupiers of the bungalow. Accordingly, the main issue in the appeal is whether condition No 6 is necessary and reasonable to protect the living conditions of the future occupiers of the bungalow and the occupiers of other nearby dwellings.

Reasons

4. The application was unclear as to what changes to condition No 6 were being sought and no alternative wording for the condition has been suggested by the appellant. The appeal statement confirms that the variation sought is to allow a roof light(s) to be installed and the appellant's final comments indicate that a front rather than a rear roof light is envisaged.
5. The effect of condition No 6 is to remove the permitted development rights that would normally attach to a residential property. Its purpose is to ensure that any proposals for enlargement, improvement or alterations to the bungalow or its roof are brought under planning control rather than to absolutely prohibit such development. The condition does not preclude the making of an application for planning permission for such works. Rather than seeking permission for a specific proposal, however, the application sought a 'review' of the condition as a whole and the appeal has to be considered on this basis.
6. The appellant has submitted an indicative section of a roof light but there is no corresponding plan identifying the proposed location of this. In addition, as this drawing was not before the Council at the time of its decision and has not been subject to any consultation with those who might be affected by such development, I am unable to take it in to account in my consideration of the appeal.
7. Due to the small size of the plot the removal of permitted development rights for the enlargement, improvement or alteration of the bungalow is necessary and reasonable. This is needed both to ensure that a private amenity space of adequate size to serve the bungalow is retained and to protect the occupiers of neighbouring dwellings from potential detriment to their privacy and outlook. Condition No 6 is, therefore, necessary in order to bring any works of enlargement, improvement or alteration to the bungalow under planning control.
8. The rear elevation of the bungalow would be approximately 4.2 metres (m) from the boundary to the garden of Number 61 Trafalgar Road which is defined by a wall and fence of around 1.8m maximum height. Due to that minimal separation, a roof light or other window in the rear roof slope would give rise to overlooking of that rear garden and cause an unacceptable loss of privacy to the occupiers of the adjacent property. In the absence of a specific proposal for a roof light or other alteration to the roof it cannot be assumed that the tree close to the boundary would provide adequate screening to the rear garden. The removal of permitted

development rights for such works is, therefore, necessary in the interests of protecting the privacy of the occupiers of No 61.

9. The front elevation of the bungalow would face directly onto a parking area rather than a neighbouring dwelling or garden. The Council accepts that a roof light in the front roof slope might be acceptable but considers that details of the use of and access to the roof space are required before any decision on the possible relaxation of the condition is made. I do not agree.
10. On the Council's assessment the front elevation of the bungalow would be 11m from the nearest point of the boundary to the rear garden of No 65 Trafalgar Road, that boundary being formed by a fence of about 1.8m in height. The appendix to the Council's Places for Living Supplementary Planning Guidance suggests a minimum separation of 21m between the rear elevations of 2 storey dwellings which, it says, allows for a reasonable garden length of 10.5m as well as some degree of privacy without significant screening. That 10.5m minimum distance applies to situations in which first floor windows look directly towards a neighbouring garden.
11. The separation distance of 11m between the bungalow and the rear garden to No 65 compares favourably with that minimum standard, given that any potential view from a roof window in the bungalow would be an oblique rather than a direct view. In my judgement, that separation distance would be sufficient to minimise any risk of a loss of privacy to the occupiers of No 65 when using their garden. The removal of the permitted development rights for the installation of a roof light in the front elevation of the bungalow is, therefore, unnecessary to protect the living conditions of the occupiers of that dwelling and places an unreasonable restriction on the appellant.
12. The second reason for refusal cites concerns that the provision of an access to the roof space could reduce the area of living space within the bungalow. On the assumption that such works would affect only the interior of the building, they would not constitute development¹ and would be outside the scope of the rights which have been removed by condition No 6. Any deviation from the approved plans when constructing the bungalow could represent a breach of condition No 1 to the planning permission. However, as the effect of condition No 6 is to place restrictions on the future enlargement, improvement or alteration of the bungalow once it has been completed, the Council's concerns are not relevant to the issues in the appeal.
13. Accordingly, I find that a condition that removes the normal permitted development rights for the enlargement, improvement or alteration of the bungalow and its roof is necessary in the interests of ensuring adequate provision of private amenity space for the future occupiers of the dwelling and to protect the living conditions of the occupiers of No 61 Trafalgar Road. However, the removal of the normal rights to install rooflights in the front roof slope of the bungalow is neither necessary nor justified. It is, therefore, appropriate to grant a new permission for the erection of the bungalow with suitably modified conditions that allow for the installation of roof lights in its front elevation but which preclude other alterations to the

¹ As defined in Section 55 of the Town and Country Planning Act 1990

roof and other works to enlarge, improve or alter the dwelling without express planning permission.

Other Matters

14. I note the appellant's reference to an appeal decision issued in 2012 and relating No 12 Sarehole Mill Gardens (Ref APP/P4605/A/12/2177279). However, that decision is concerned with a condition with a different wording and purpose to that which is in dispute in the current appeal.

Conditions

15. Planning Practice Guidance (PPG) makes clear that decision notices for the grant of planning permission under section 73 of the Town and Country Planning Act 1990 should repeat the relevant conditions from the original planning permission, unless they have already been discharged. As I have no information as to the status of the other conditions imposed on the original permission, and as development has not yet commenced, I shall attach all of the other conditions to the new permission. In the event that some of these have already been discharged that is a matter which can be addressed by the parties. In accordance with the PPG, the time limit for implementation will run from the date of the original permission.

Conclusion

16. For these reasons I conclude that the appeal should be allowed and that a new permission should be granted with suitably amended conditions which reinstate permitted development rights in relation to the installation of roof lights in the front elevation of the bungalow.

Paul Singleton

INSPECTOR

Schedule of Conditions

- 1) The development hereby approved shall begin not later than 3 years from 15 April 2016.
- 2) The development hereby approved shall be implemented in accordance with the details submitted with the application and shown on drawing number 2017 (14.04.2016) and the Location Plan ('the approved plans'). For the avoidance of doubt, Drawing No. 2017 has deleted the three parking bays previously shown in the rear of 63 Trafalgar Road.
- 3) The facing brick shall be the same as agreed for the adjacent bungalows - Hanson Regency. No construction of the roof shall take place until tile samples have been submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details.
- 4) No development shall take place until details of finished site and ground floor levels in relation to the existing site levels, adjoining land and buildings have been submitted to and approved in writing by the local planning authority. The details shall include the proposed grading and mounding of land areas, cross sections through the site and relationship with the adjoining landform and buildings. The development shall be implemented in accordance with the approved details.
- 5) No occupation of the bungalow shall take place until full details of the proposed boundary treatment of the site have been submitted to and approved in writing by the local planning authority. These details shall include plans showing the locations of existing, retained and proposed new boundary treatments and scaled drawings indicating the positions, height, design, materials, type and colour of proposed new boundary treatments. The approved scheme shall be implemented before occupation of the dwelling hereby permitted and shall be retained thereafter.
- 6) No development shall take place until such time as a scheme for drainage of the site has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details and thereafter maintained.
- 7) Notwithstanding the provisions of Class A of Part 1 to Schedule 2 to the Town and Country Planning (General Permitted Development) Order 2015, (or any order amending, revoking and/or re-enacting that order, with or without modification), no enlargement, improvement or other alteration of the dwelling hereby approved shall be carried out without express planning permission.
- 8) Notwithstanding the provisions of Classes B and C of Part 1 to Schedule 2 to 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 enlargement consisting of an addition to the roof of the dwelling hereby approved shall be carried out and no rooflights or windows shall be constructed on the north elevation of the bungalow without express planning permission.

End of Schedule of Conditions