

Appeal Decision

Site visit made on 18 April 2017

by J C Clarke BSc(Hons) BTP MRTPI

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

Decision date: 19 May 2017

Appeal Ref: APP/M0655/D/17/3171349

1 Willow Close, Lymm, Cheshire WA13 9DL

- 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 David Reynolds against the decision of Warrington Borough Council.
 - The application Ref 2016/29467, dated 8 December 2016, was refused by notice dated 3 February 2017.
 - The application sought planning permission for '*Proposed amendments to previous application to include dormer and roof amendments, alterations to window and door positions and a porch*' without complying with a condition attached to planning permission Ref 2007/10186, dated 14 May 2007.
 - The condition in dispute is No 1 which states that: '*The proposed dormer windows within the eastern elevation that have been glazed with obscure glass, and that serve the landing and 1st floor room to the southern side of the property, shall be maintained with obscure glazing in perpetuity*'.
 - The reason given for the condition is: '*To safeguard the privacy and amenity of the occupiers of adjacent properties*'.
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Decision

1. The appeal is allowed and planning permission is granted for Proposed amendments to previous application to include dormer and roof amendments, alterations to window and door positions and a porch at 1 Willow Close, Lymm, Cheshire WA13 9DL in accordance with application Ref 2016/29467 made on the 8 December 2016 without compliance with condition number 1 previously imposed on planning permission Ref 2007/10186 dated 14 May 2007.

Procedural Matters

2. The Council decision notice refers to '*...non-compliance with condition 1 of application 2016/29467*'. However, I have considered the appeal on the basis that the condition in dispute is on planning permission 2007/10186.
 3. Planning permission was originally granted in 2006 for pitched roof dormers to front and rear and a single storey rear extension at the appeal property. Condition 1 on planning permission 2007/10186, which was for a revised form of development, required 2 of the dormer windows on the rear elevation of the building to be maintained with obscure glazing. The application subject to the current appeal sought permission for the obscure glazing to be removed. The Council officer report on the application indicates that the obscure glazing had
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been removed and replaced with clear glass before the application was submitted. As a result I have determined the appeal on the basis that the application was submitted under Section 73A(2)(c) of the Town and Country Planning Act 1990 (as amended) for development which had already been carried out without complying with condition 1 on permission 2007/10186.

4. The fact that the obscure glazing has already been replaced with clear glazing has not affected my consideration of the appeal, which I have assessed on its planning merits.

Main Issue

5. The main issue is whether condition 1 on planning permission 2007/10186 is necessary to protect the privacy of persons using the rear gardens of nearby dwellings, particularly number 2 Willow Close.

Reasons

6. Paragraph 206 of the National Planning Policy Framework (the 'Framework') states that planning conditions should only be imposed where, amongst other requirements, they are necessary. The Planning Practice Guidance (PPG)¹ establishes that to be 'necessary' a condition must be needed to make the development acceptable in planning terms.
7. Numbers 1 and 2 Willow Close constitute 2 adjacent detached dwellings in an established residential area. Both dwellings are set within fairly extensive plots and are positioned with a similar alignment and orientation to each other.
8. Whilst I understand that number 1 was originally a bungalow it is now substantially enlarged and includes 6 dormer extensions including 3 to the front and 3 to the rear. As a result its design and scale now contrasts with that of nearby dwellings. Condition 1 on planning permission 2007/10186 concerns the southernmost and central dormers on the rear elevation. These respectively serve a bedroom and landing and face towards the rear of the property.
9. From within the bedroom served by the southernmost of the dormers subject to condition 1, it is possible to see at an angle across the rear garden of number 2. Due to the origins of the dwelling as a bungalow, these views would exceed any which would have existed before the dormers were created. However, due to the rearward facing orientation and the position of the dormer, which is set slightly away from the boundary with number 2, the views are not untypical of those which can appropriately exist from rearward facing windows where neighbouring properties adjoin each other. The resultant overlooking from this and the landing window are not sufficient to cause material harm in this respect.
10. Whilst it is possible to see into part of the rear garden of 9 Lymmhay Lane from the bedroom dormer window subject to condition 1, this view is partial and over a considerable distance. Views towards the rear of 11 Lymmhay Lane are over a similarly long distance and are substantially shielded by a large detached garage.

¹ Paragraph: 004 Reference ID: 21a-004-20140306

11. The Council's Supplementary Planning Guidance (SPG) 2 'House Extension Guidelines' states that windows within any extension should be sited so that they do not overlook adjoining properties or gardens. However, as it is not uncommon for there to be some overlooking of nearby gardens from rearward facing windows such as those subject to appeal without there being an unacceptable effect on privacy, I have considered this aspect of the SPG with some flexibility.
12. I accept that circumstances at the site do not appear to have changed substantially since condition 1 was imposed. However this and my earlier points do not lead me to conclude that the extent of overlooking from the dormers is sufficient to justify retaining the requirement for them to be obscure glazed.
13. I also acknowledge that the presence or otherwise of supporting letters from occupiers of 9 and 11 Lymmhay Lane would not in itself determine whether the proposals would have an acceptable effect on privacy within those properties. This point does not, however, outweigh my earlier findings.
14. Having regard to all the factors set out above, I conclude that condition 1 on planning permission 2007/10186 is not necessary to protect the privacy of persons using the rear gardens of nearby dwellings. Its removal would not conflict with the relevant provisions of policy QE6 of the Warrington Local Plan Core Strategy 2014 or the Framework. As condition 1 is not necessary, requiring it to be retained would conflict with paragraph 206 of the Framework.
15. For the reasons given above I conclude the appeal should succeed. I will grant a new planning permission without the disputed condition.

Jonathan Clarke

INSPECTOR