



Appeal Decision

Site visit made on 13 June 2017

by Andrew McCormack BSc (Hons) MRTPI

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

Decision date: 24 July 2017

Appeal Ref: APP/Z2830/W/17/3169433

22 Meadow Lane, Little Houghton, Northampton NN7 1AH

- 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 J Arrowsmith against the decision of South Northants District Council.
 - The application Ref: S/2016/1175/FUL, dated 6 May 2016, was refused by notice dated 11 November 2016.
 - The application sought planning permission for replacement dwelling and garage without complying with a condition attached to planning permission Ref: S/2015/2669/FUL, dated 5 January 2016.
 - The condition in dispute is No 2 which states that: 'Within 1 month of the date of this permission the 1st floor window in the west facing elevation shall be obscure glazed and non-opening and shall be permanently retained as such thereafter, unless the parts of the window which can be opened are more than 1.7m above the floor of the room in which the window is installed AND within 2 months of the date of this permission the rooflight in the east facing roof slope shall be obscure glazed and non-opening and shall be permanently retained as such thereafter'.
 - The reason given for the condition is: 'To ensure that the amenities of the adjoining occupiers are not adversely affected by loss of privacy in accordance with Policy G3(D) of the South Northamptonshire Local Plan.'
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Decision

1. The appeal is allowed and planning permission is granted for the removal of Condition 2 of planning permission Ref: S/2015/2669/FUL, (variation of plans to allow the retention of the roof light in the eastern elevation), to allow the existing first floor west elevation window to be clear glazed and able to be opened, in accordance with the terms of planning application Ref: S/2016/1175/FUL and subject to the conditions set out below:
 - 1) The development shall not be carried out otherwise than in complete accordance with the approved plan Dwg. No: RF-13-1449 Rev D received 06 November 2015 and the Design and Access Statement stamped as received on the 3 October 2013, unless a non-material amendment is approved by the Local Planning Authority under the Town and Country Planning (General Development Procedure) (Amendment No3) (England) Order 2009;
 - 2) Notwithstanding the provisions of Classes [A-D (inc)] of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (Amendment) (No2) (England) Order 2008 (or any

- order revoking or re-enacting or amending that order) no enlargement of the dwellinghouse shall be undertaken at any time without the prior planning permission of the local planning authority;
- 3) Notwithstanding the provisions of 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 new or additional windows or other openings other than those shown on the approved plans shall be formed at first floor level at any time in the wall(s) or roof of the dwelling that will face east, south or west without the prior planning permission of the local planning authority.
2. To clarify, this decision and the grant of planning permission Ref: S/2016/1175/FUL does not remove or replace planning permission Ref: S/2015/2669/FUL which remains extant. Rather, it grants a further consent without the disputed condition imposed.

Procedural Matter

3. The windows which are the subject of this appeal are the west facing first floor window to bedroom 2 and the east facing rooflight which serves bedroom 1. From what I have seen and read, there has been a large amount of correspondence between the Council and the appellant with regard to the rooflight. Moreover, there appears to have been some uncertainty as to whether the issues regarding the rooflight have or have not been resolved. Given the reason for the imposition of Condition No 2 attached to planning permission Ref: S/2015/2669/FUL, and the subject of this appeal, I have had regard to the impact of both the window and rooflight. As a result, for reasons of clarity and certainty, I have assessed the appeal in respect of the window and rooflight in that context and on that basis.

Background

4. Condition No.8 of the original planning permission Ref: S/2013/1324/FUL for the construction of the appeal property required that the first floor windows to the front and west elevations of the new dwelling were obscure-glazed and non-opening. A subsequent planning application Ref: S/2015/1467/FUL was submitted which sought to remove Condition No.8 of the original planning permission. This was approved subject to a re-worded condition requiring the first floor south and west facing window and the east facing rooflight to be obscure-glazed and non-opening, unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed.
5. This revised wording was included in Condition No. 2 attached to the most recent planning permission, Ref: S/2015/2669/FUL. This also granted consent for the re-positioning of the rooflight on the east elevation of the appeal property. The appellant has subsequently made this appeal to vary or remove Condition No. 2 in order to remove the requirement for the west facing first floor window and east facing rooflight to be obscure-glazed.

Main Issue

6. The main issue is the effect of varying or removing Condition 2 of planning permission Ref: S/2015/2669/FUL on the living conditions of neighbouring occupiers with regard to privacy and overlooking.

Reasons

7. The appeal property is a relatively new detached dwelling on the northern edge of Little Houghton. There are detached properties to the south and east of the building. There is open countryside to the north which is designated as an Important Local Gap between the village and Northampton. To the west of the appeal property is an area of garden land owned by 20 Meadow Lane (No.20). The appeal property is secluded and set back from the highway. The windows of the appeal property affected by this appeal are a west facing first floor window to bedroom 2 and an east facing rooflight to bedroom 1.
8. The west facing first floor window of the appeal property is about 3 metres from the boundary with the large garden area of the neighbouring property at 20 Meadow Lane (No.20). I note the concerns of the occupiers of No.20 with regard to privacy and overlooking. However, from what I have seen at the site visit, I find that privacy is already somewhat limited due to the low stone wall which exists between the two properties. The wall reaches to a height of approximately 1.5 metres. As a result, the garden area of No.20 can be viewed reasonably easily from the west facing ground level kitchen window of the appeal property. Furthermore, I note that there is no significant means of screening or planting on the boundary and therefore views westwards from the appeal property are generally open across the garden area of No.20.
9. Whilst I appreciate that the west facing window is a secondary window to bedroom 2 of the appeal property, due to its limited adverse impact on privacy and overlooking, I find that to obscure glaze the window would be unreasonable and would adversely impact the living conditions of the occupiers of the appeal property.
10. The relevant window overlooks an area of the neighbouring garden and is some way from overlooking any nearby dwelling. It is inevitable that a degree of overlooking of garden land not owned by the property owner would result from many development proposals. As such, it would be unreasonable to restrict the amenity of occupiers through unnecessarily conditioning such aspects of developments where there is no significant harm caused.
11. Having had regard to the evidence before me, I acknowledge that the first floor window provides a view over the garden area of No.20. However, given the open aspect of the garden area, as demonstrated by the low stone wall and limited screening along its boundary with the appeal property, I find that this area is undoubtedly not private. This is confirmed by the ability to view across the garden area of No.20 from ground level at the appeal site. Therefore, I find that the non-obscured glazing of the first floor window and its ability to be openable would have no significant adverse effect on the living conditions of neighbouring occupiers with regard to privacy and overlooking.
12. At the time of the site visit, I note the opening mechanism for the rooflight had been removed and that obscured- glazing film was in place on the glass. As such, I saw that no views could be had from the rooflight. Therefore, from what I have seen and read, it seems to me that matters regarding the impact of the rooflight on the privacy of neighbouring occupiers have been effectively addressed.
13. Notwithstanding this, from my observations, I find it highly unlikely that views of the neighbouring property at 24 Meadow Lane (No.24) would be obtained

from the rooflight were it to be openable and clear-glazed. This is due to the position of the rooflight facing directly onto the roof of No.24. Furthermore, I find that views into the rear garden of No.24 from the rooflight would be unlikely due to the large shelter structure erected which I was able to see from the french windows serving bedroom 1 on its north elevation. As a result, I find that the rooflight, clear-glazed and openable, would have no significant adverse impact on privacy or overlooking in terms of neighbouring occupiers.

14. Therefore, it is my view that the restrictions placed on the rooflight with regard to obscured glazing and its requirement to be non-openable, as set out in Condition No.2 are unnecessary and unreasonable. Whilst I acknowledge that the intention of Condition No.2 is to protect the privacy of neighbouring occupiers, having considered these matters, I find that the condition is not reasonable or necessary. As a result, the condition does not meet the six tests set out in the National Planning Policy Framework. Furthermore, and in any event, I find that the impact of the window and rooflight with the restrictions removed would not be so significant as to render the development harmful and unacceptable.
15. Consequently, I conclude that the removal of Condition No 2, as attached to planning permission Ref: S/2015/2669/FUL, would have no significant adverse effect on neighbouring occupiers with regard to privacy and overlooking. It would therefore comply with Policy G3 of the Local Plan. Amongst other matters, this policy seeks to ensure that development has no unacceptable harm on the living conditions of neighbouring occupiers.

Conditions

16. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. As I have no information before me about the status of the other conditions imposed on the original planning permission Ref: 2015/2669/FUL, I shall impose all those that I consider remain relevant. In the event that any have in fact been discharged, that is a matter which can be addressed by the parties.
17. Therefore, a condition which relates to approved plans (1) is reasonable and necessary to clarify the permission and for the avoidance of doubt. Conditions 2 and 3 relate to the removal of permitted development rights and are necessary and reasonable in the interests of the living conditions of neighbouring occupiers. I have removed Condition No.2 attached to planning permission Ref: S/2015/2669/FUL as I find it to be unreasonable and unnecessary.

Conclusion

18. For the above reasons, and having had regard to all other matters raised, I conclude that the appeal should be allowed and planning permission granted.

Andrew McCormack

INSPECTOR