



Appeal Decision

Site visit made on 8 August 2017

by Stephen Roscoe BEng MSc CEng MICE

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

Decision date: 22 August 2017

Appeal Ref: APP/J1860/W/17/3175676
15 Hall Green Close, Malvern WR14 3QY

- 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 Mr Dennis Flanagan against the decision of Malvern Hills District Council.
 - The application Ref 17/00120/HOU, dated 16 January 2017, was approved on 24 April 2017 and planning permission was granted subject to conditions.
 - The development permitted is a single storey extension.
 - The condition in dispute is No 3 which states that: *the kitchen window on the approved side facing elevation shall be fitted with Pilkington Level 4 obscure glazing and shall be retained as such thereafter.*
 - The reason given for the condition is: *in order to protect residential amenity in accordance with Policy SWDP 21 of the South Worcestershire Development Plan.*
-

Procedural Matter

1. At the time of my site visit, the proposed development was under construction and the window opening had been formed but not glazed.

Decision

2. The appeal is allowed and the planning permission for a single storey extension at 15 Hall Green Close, Malvern WR14 3QY is varied by deleting condition No 3.

Reasons

3. The main issue in this case is whether the disputed condition is reasonable and necessary to protect the living conditions of adjoining occupiers in relation to privacy.
4. The window which is the subject of this appeal is a ground floor kitchen window situated on the side elevation of a single storey rear extension. Part of this window faces an area in the rear garden of the adjoining property, immediately behind rear facing french doors. The boundary between the properties is formed of fencing which has a height of some 2m, and this prevents overlooking of the adjoining property. Fencing of this type is a common boundary treatment between residential properties.
5. Within the appeal property there is a pathway, or side pedestrian access, from the front of the property to its rear garden. This pathway lies between the fence that I have identified and the kitchen window. The fence also prevents overlooking of the adjoining rear garden from this pathway.

Should the fence be removed for any reason, the rear garden of the adjoining property would be overlooked by users of this pathway, as well as from the kitchen window of the appeal property. This is notwithstanding the slight level difference between the proposed kitchen floor surface and that of the pathway. I therefore consider that the development would possess an adequate level of privacy without the disputed condition, in accordance with South Worcestershire Development Plan¹ (DP) Policy SWDP 21.

6. As a consequence of all of these matters, I do not consider that the disputed condition is reasonable or necessary to protect the living conditions of adjoining occupiers in relation to privacy. I further conclude that the removal of the disputed condition would not conflict with DP Policy SWDP 21.

Conclusion

7. Having taken into account all other matters raised, none carry sufficient weight to alter the decision, and my conclusion is based on the evidence before me in terms of policy as a whole. For the reasons given above, I therefore conclude that the appeal should be allowed.

Stephen Roscoe

INSPECTOR

¹ South Worcestershire Development Plan: February 2016