The Planning Inspectorate

Appeal Decision

Site visit made on 16 August 2017

by G Powys Jones MSc FRTPI

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

Decision date: 31 August 2017

Appeal Ref: APP/Z5630/D/17/3174574
20b Henley Drive, Kingston Upon Thames, KT2 7EB

- 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 carried out without complying with a condition subject to which a previous planning permission was granted.
- The appeal is made by Mr Pascal Borg against the decision of the Council of the Royal Borough of Kingston Upon Thames.
- The application Ref 16/15087/FUL, dated 11 October 2016, was refused by notice dated 13 December 2016.
- The application sought planning permission for the retention of single storey rear extension without complying with a condition attached to planning permission Ref 15/14995/HOU, dated 23 December 2015.
- The condition in dispute is ***Condition No 4*** imposed on the permission.
- ***Condition 4*** states that: *The utility room door in the eastern (side) elevation of the single storey extension shall be obscurely glazed above a height of 1.5m, the obscure glazing shall be retained in perpetuity.*
- The reason given for ***Condition 4*** is: *To protect the amenities and privacy of the adjoining residential properties in accordance with policy DM10 (Design Requirements for New Development including House Extensions) of the LDF Core Strategy, Adopted April 2012.*

Decision

1. The appeal is allowed and planning permission is granted for the retention of single storey rear extension without complying with condition No 4 attached to planning permission Ref 15/14995/HOU, dated 23 December 2015, at 20b Henley Drive, Kingston Upon Thames, KT2 7EB in accordance with the terms of the application Ref 16/15087/FUL, dated 11 October 2016, subject to the following conditions:

   i) condition Nos. 5 & 6 attached to planning permission Ref 15/14995/HOU, dated 23 December 2015, are hereby re-imposed and shall continue to have effect.

   ii) The trellis fence erected by the appellant on the boundary between the appeal property and 20a Henley Drive shall be retained in perpetuity and shall not be altered, modified or removed without the prior consent of the local planning authority, obtained in writing.

Preliminary and procedural matters

2. The development permitted under planning permission *Ref 15/14995/HOU, dated 23 December 2015* is in place. The appellant, in effect, wishes to remove condition 4 from that permission.

3. I was asked to assess the proposal from the neighbouring property, 20a Henley Drive, which I did. I saw that 20a was built at a lower level than the appeal property, and for this reason its garden and nearest upper floor windows, particularly those serving a bathroom, were susceptible to being overlooked from the appeal property.

Main issue

4. The main issue is the effect of removing the condition in dispute on the living conditions of the residents of 20a Henley Drive with specific reference to privacy and visual impact.

Reasons

5. The glazing subject of the appeal is inserted in a side door serving a utility room at the side of the house, leading into the garden. The utility room is also accessed internally from the dwelling's kitchen area. The appellant has erected a high trellis fence opposite the door above the original boundary fence separating his property from 20a Henley Drive. The trellis fence is inlaid with hessian and a heavy-duty plastic material to achieve opaqueness. The appellant has also planted some bamboo in front of the fence.

6. I saw that the trellis fence proved effective in preventing views from the utility room into next door, even when the utility room door was open. It also assisted in preventing views towards and into next door from parts of the appellant's garden.

7. To my mind, so long as the trellis fence remains in place, the Council's insistence on retaining the obscure glazing required under the terms of the condition in dispute would be unjustified.

8. I have considered the comments made by the residents of No 20a, and note in particular the reference to the planning history and the 'evolution' of the side door serving the appellant's utility room. But as has already been explained, the trellis fencing erected has proved effective in maintaining and, indeed, improving privacy for No 20a's residents.

9. When viewed from 20a's garden and from within the house, I did not find the trellis fencing's presence either dominating or oppressive, taking account of the extent and height of the other, approved boundary treatment.

10. I conclude firstly, that the requirement for the retention or insertion of obscure glazing in the utility room's glazed door to be unnecessary to maintain privacy. Secondly, the trellis fencing erected by the appellant in my view has not caused adverse visual impact to neighbouring residents. Accordingly, there is no conflict with those provisions of policy DM 10 of the Council's Core Strategy designed to protect neighbouring amenity.

Conditions

11. As already mentioned, a condition to ensure that the trellis fence be kept in place shall be imposed in the interests of maintaining neighbouring privacy.

12. It is also necessary, for the same reasons as those set out in the original planning permission, to re-impose condition Nos. 5 & 6 imposed on planning permission Ref 15/14995/HOU, dated 23 December 2015.

13. Given that the extension is complete, Condition Nos. 1,2 & 3 imposed on that earlier permission are regarded as 'spent' and are no longer necessary.

14. All other matters raised in the representations have been considered, including the other references to the Framework but none is of such strength or significance as to outweigh the considerations that led me to my conclusions.

G Powys Jones

INSPECTOR