



Appeal Decision

Site visit made on 30 October 2017

by Jonathan Price BA(Hons) DMS DipTP MRTPI

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

Decision date: 10th November 2017

Appeal Ref: APP/F2605/W/17/3180525

Kilmore, Elsing Road, Lyng, Norfolk NR9 5RR

- 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 and Mrs John Riches against the decision of Breckland District Council.
- The application Ref 3PL/2017/0479/HOU, dated 10 April 2017, was approved on 24 May 2017 and planning permission was granted subject to conditions.
- The development permitted is first floor extension above the existing garage building.
- The conditions in dispute are Nos 4, 5 and 6 which state that:
 - 4. Notwithstanding the provisions of Class A & C of Part 1 of Schedule 2 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), there shall be no additional window or other opening constructed at first floor level or above in the south and/or west elevations of the development or enlargement or alteration of permitted openings hereby approved without the prior written permission of the Local Planning Authority.*
 - 5. The hedges and trees along the southern and western boundaries shall not be cut down, uprooted, destroyed, lopped or topped, other than in accordance with the approved plans and particulars, without the previous written approval of the Local Planning Authority. Any trees or hedges removed without consent shall be replaced during the next planting season November/March with trees of such size and species as agreed in writing with the Local Planning Authority.*
 - 6. No permanent external lighting shall be erected on the garage extension unless full details of its design, location, orientation and power have first been agreed in writing with the Local Planning Authority.*
- The reasons given for the conditions are:
 - 4. To help safeguard the privacy and amenity of the occupiers of adjacent properties in accordance with Policy DC1 of the Adopted Core Strategy and Development Control Policies Development Plan Document 2009.*
 - 5. To ensure that the trees and hedges are retained in the interests of the visual amenities of the area and the satisfactory appearance of the development in accordance with Policy DC12 of the Adopted Core Strategy and Development Control Policies Development Plan Document 2009.*
 - 6. In the interests of visual amenity and to minimise unnecessary light spillage above and outside the development site.*

Decision

1. The appeal is dismissed in respect of grant of planning permission subject to condition 5 and allowed in respect of grant of planning permission subject to conditions 4 and 6 and so the planning permission Ref 3PL/2017/0479/HOU for first floor extension above the existing garage building at Kilmore, Elsing Road,

Lyng, Norfolk NR9 5RR granted on 24 May 2017 by Breckland District Council, is varied by deleting conditions 4 and 6.

Background and Main Issue

2. The Council has granted permission for living accommodation above a detached double garage at the appeal property. The conditions contested were imposed for reasons which sought to protect the living conditions of neighbouring occupiers and preserve the visual amenities of the area. The main issue in this appeal is therefore whether the conditions imposed were reasonable and necessary in the interests of visual amenity and the acceptable living conditions of neighbouring occupiers, with particular regard to privacy and outlook.

Reasons

3. Kilmore is a detached house situated in a backland site to the rear of frontage housing along the Elsing Road. There are neighbouring dwellings setback a similar distance from the road to either side of this house. The conditions relate to the permission granted to provide a first floor studio space above the existing detached double garage that is situated to the front of the house at the side of its drive.
4. In granting permission the Council considered that the proposed first floor extension to the garage would be an adequate distance away from the neighbouring dwellings to the south and west not to result in any unacceptable degree of harm to their present living environment in regard to visual dominance, loss of light, overlooking and overshadowing. The Council's conclusion took account of the existing boundary vegetation which would screen the development and that the only openings facing these neighbours would be high-level rooflights offering limited potential for overlooking.
5. Paragraph 206 of the National Planning Policy Framework (the Framework) states that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
6. Condition 4 removes permitted development rights to alter or add any windows facing the neighbours to the south and west. The Planning Practice Guidance (PPG) advises that conditions restricting the future use of permitted development rights will rarely pass the test of necessity and should only be used in exceptional circumstances.
7. The PPG goes on to state that the scope of such conditions needs to be precisely defined, by reference to the relevant provisions in the Town and Country Planning (General Permitted Development) (England) Order 2015, so that it is clear exactly which rights have been limited or withdrawn. Whilst condition 4 does comply with this advice by precisely defining the permitted development rights affected I am not persuaded that the exceptional circumstances apply in this case to justify the necessity for the restriction imposed.
8. The neighbouring houses to the south are separated by long rear gardens and a boundary hedge. The existing garage is set back from the boundary with the neighbouring house to the west, with intervening trees. There is no evidence of an intention to add or alter the proposed arrangement of rooflights and windows and, were this to take place at some later point, the distances and

screening that exist would avoid any material harm to the living conditions of the neighbours due to loss of privacy or overlooking.

9. Condition 5 provides the Council control over the retention of adequate tree and hedging along the south and west boundaries to ensure the proposal would be adequately screened from the neighbouring occupiers and to preserve visual amenity. The fact that neighbours have previously removed trees is not relevant to my decision on this appeal. I consider condition 5 provides the Council with a reasonable safeguard in securing the retention of existing trees and hedging. This would not prevent routine maintenance and trimming or the removal of branches to allow the permitted development to be carried out which could reasonably be agreed in writing with the Council. There is separate legislation governing high hedges but I am not persuaded this would restrict any condition reasonably required through the Town and Country Planning Act 1990.
10. Consequently, I consider that condition 5 would meet the tests set out in paragraph 206 of the Framework and be both reasonable and necessary to ensure that the trees and hedges are retained in the interests of visual amenity and to accord with Policy DC12 of the Council's Core Strategy and Development Control Policies Development Plan Document 2009.
11. With regard to Condition 6 the dwellings in this location are sufficiently well spaced apart not to require control over any external lighting provided to the approved development.

Conclusion

12. For the reasons given I conclude that the appeal be allowed in respect of conditions 4 and 6 and dismissed in respect of condition 5.

Jonathan Price

INSPECTOR