
Appeal Decision

Site visit made on 9 January 2018

by R C Kirby BA(Hons) DipTP MRTPI

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

Decision date: 26th January 2018

Appeal Ref: APP/V3120/W/17/3178986

Little Dene, Yarnells Hill, North Hinksey, Oxford OX2 9BG

- 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 I & O Ltd against the decision of Vale of White Horse District Council.
 - The application Ref P16/V2717/FUL, dated 25 October 2016, was approved on 13 April 2017 and planning permission was granted subject to conditions.
 - The development permitted is Variation of Conditions 2 - amended plans and Condition 11 - kitchen windows on first and second floors to be glazed with obscured glass with restricted opening of P14/V0428/FUL (retrospective) (as amended by plans and revised planning statement received 21 February 2017).
 - The condition in dispute is No 10 which states that: *Prior to first occupation of the development the kitchen windows on the first floor and second floor (as annotated on the approved plans) shall be obscured glazed and shall be fixed shut. Thereafter the windows shall remain obscured glazed and fixed shut at all times.*
 - The reason given for the condition is: *To protect the privacy of adjacent dwellings (Policy DC9 of the Local Plan 2011).*
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Decision

1. I allow the appeal and vary the planning permission Ref P16/ V2717/FUL for the variation of conditions 2 - amended plans and condition 11 - kitchen windows on first and second floors to be glazed with obscured glass with restricted opening of P14/V0428/FUL (retrospective) (as amended by plans and revised planning statement received 21 February 2017), granted on 13 April 2017 by the Vale of White Horse District Council by deleting condition No 10 and substituting it with the following condition:
 - 1) The kitchen windows in the side elevation of the building at first and second floor level shall be fitted with obscure glazing with restricted vertical opening to a maximum of 11 degrees and shall be permanently retained as such.

Background and Procedural Matter

2. Application Ref P16/V2717/FUL followed the granting of planning permission Ref P14/V0428/FUL for the demolition of the existing dwelling and the erection of a four-storey building containing 8, 2 bedroom flats with access improvements, car and cycle parking and enclosed bin store.
3. The appellant seeks to vary the disputed condition such that the kitchen windows on the first and second floors could have obscure glazing and restricted opening.

Main Issue

4. The main issue is whether or not the disputed condition is reasonable and necessary in the interests of the living conditions of nearby occupiers, with particular regard to privacy.

Reasons

5. The building accommodating the flats is located within close proximity to the side party boundary with neighbouring properties. It is set back some distance from Wycliffe Lodge to the east, which has a sloping rear garden adjoining the appeal site, and follows a similar building line to Appleton Dene to the west.
6. The windows to which the disputed condition relates serve kitchens. Between the floor area of the kitchen and the window in each flat is a deep worktop area with sink fitted. The windows are double paned with obscure glazing and one side is fixed shut. I observed on my site visit that the windows that have been installed can be opened, albeit only a small amount, as they have a restrictor hinge preventing them from being opened wide.
7. I consider that the design of the kitchen areas in front of the windows and their limited opening would prevent overlooking of the neighbouring gardens to the east of the site to an unacceptable degree. The sloping nature of the gardens and the extent in which the windows could be opened would be unlikely to affect the neighbouring occupiers use and enjoyment of their gardens to a harmful degree. Furthermore, it would be unlikely that neighbouring occupiers would be aware of somebody in the flats using the sink area, because of the distance that they would be stood from the window. It would therefore be unlikely that a perceived loss of privacy would be experienced.
8. In light of the above, I am satisfied that the obscure glazing of the windows and their restricted opening ensures that there is no harmful overlooking or loss of privacy to nearby occupiers to the east of the appeal site, either actual or perceived. I consider that it is not therefore necessary to require that the windows are fixed shut on this elevation.
9. The appellant has calculated that there is a distance of 14 metres between Appleton Dene and the appeal property. The kitchen windows on the west elevation at first and second floor level face towards the side elevation of Appleton Dene, which has windows and a door in it. I observed on my site visit that because of the design of the kitchen areas within the flats and the design of the windows, as set out above, and intervening landscaping that only a small area of the side elevation of Appleton Dene could be seen from the windows. No direct overlooking of windows or the door on the side of this property occurs.
10. Accordingly, I am satisfied that the design of the kitchen windows on the west elevation of the building ensures that no harmful overlooking of Appleton Dene or loss of privacy to its occupiers occurs. I therefore also find that the disputed condition is not necessary to protect the living conditions of the occupiers of this property.
11. In light of the foregoing, I consider that the disputed condition is not reasonable or necessary to protect the privacy and living conditions of nearby occupiers. The design of the windows with their restricted opening would not affect the living conditions of nearby occupiers in terms of privacy to a harmful

degree. Thus there is no conflict with the design aims of Core Policy 37 of the Vale of White Horse Local Plan 2031 Part 1, the privacy and amenity aims of saved Policy DC9 of the Vale of White Horse Local Plan 2011 and the guidance on privacy and amenity within the Vale of White Horse Design Guide SPD.

12. For the reasons given above, I conclude that the appeal should succeed. I will vary the planning permission by deleting the disputed condition and substituting it with another.

R C Kirby

INSPECTOR