



Appeal Decision

Site visit made on 9 January 2018

by J Ayres BA Hons, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 1st February 2018

Appeal Ref: APP/Z3825/W/17/3180838

Land to the rear of 27 Millfield, Southwater RH13 9HT

- 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 Aesthetic homes Ltd against the decision of Horsham District Council.
 - The application Ref DC/17/0070, dated 12 January 2017, was refused by notice dated 8 March 2017.
 - The application sought planning permission for a part retrospective application for the proposed construction of 5 x 4 bed detached dwellings with associated parking and amenity space without complying with a condition attached to planning permission Ref DC/16/0137, dated 28 July 2016.
 - The condition in dispute is No 3 which states that: *"The windows above ground floor level in the south west elevation of plot 1, the south west and north east elevations and the rear dormers in plots 2 and 3, the north east and south west elevations of plot 4 and the north east, north west and south east elevations of plot 5 shall at all times be glazed with obscured glass precise details of which, together with details of any opening, shall be submitted to and approved in writing by the Local Planning Authority in writing before installation. The approved glass and any agreed opening details shall be maintained at all times."*
 - The reason given for the condition is: *"to protect the amenities and privacy of the adjoining property and in accordance with Policy 33 of the Horsham and District Planning Framework 2015."*
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Decision

1. The appeal is allowed and planning permission is granted for a part retrospective application for the proposed construction of 5 x 4 bed detached dwellings with associated parking and amenity space at Land to the rear of 27 Millfield, Southwater RH13 9HT in accordance with the application Ref DC/17/0070, dated 12 January 2017 subject to the conditions in the attached schedule.

Background and Main Issue

2. The Planning Permission¹ for the development included a condition requiring, amongst other things, that the dormer windows in Plots 2 and 3 be obscure glazed. The Council's decision notice states that the condition is necessary to protect the living conditions of neighbouring dwellings in Roman Lane. This is

¹ DC/16/0137

different to the reason given on the decision notice for the Planning Permission which referred to the adjoining property. However, given the relationship of the development with the properties along Roman Lane, and the Council's assessment of them as part of the application DC/16/0137, I accept that the Council may have considered these properties to be adjacent to the development site.

3. The appellant is seeking to vary part of condition 3 so that the dormer windows at Plots 2 and 3 can be retained with clear glazing.
4. I consider that the main issue is whether this element of the condition is necessary and reasonable to protect the living conditions of neighbouring occupiers, with specific regard to those occupying properties on Roman Lane.

Reasons

5. The appeal site is in a residential area, and properties occupy relatively modest plots, being positioned in close proximity to each other. Plots 2 and 3 are bound to the rear by a band of mixed mature trees, some being deciduous and some evergreen. This boundary provides screening between the appeal site and the properties along Roman Lane, and the screening will increase as the laurel matures. At the time of my site visit it was possible to see the properties along Roman Lane, however the evidence demonstrates that during the summer months the visibility is greatly reduced.
6. When the Council considered the application for the Planning Permission it assessed the impact of Plots 2 and 3 on the living conditions of those occupiers of properties along Roman Lane. It was concluded that due to the screening and the positioning of the development views from first floor windows would be at an angle, and there would not be an unacceptable loss of privacy to occupiers of properties along Roman Lane in respect of the use of their private amenity space.
7. I do not agree with the Council's assessment when the Planning Permission was granted that there was no overlooking of the rear amenity areas of those properties along Roman Lane from the first floor windows of Plots 2 and 3. There is an existing element of overlooking due to the situation of the development, its location within a residential area where houses sit within close proximity to each other, and the deciduous nature of some of the trees.
8. The dormer windows on Plots 2 and 3 are in the second floor rear bedrooms of the dwellings. Although a storey higher, views from the dormer windows remain at an angle. On the basis of my assessment at the time of my site visit, and having considered the evidence submitted, I find that the use of clear glazing in the dormer windows in Plots 2 and 3 does not increase the level of overlooking to the extent that it results in an unacceptable loss of privacy to the occupiers of the dwellings in Roman Lane when using their private amenity areas.
9. As such I conclude that the use of clear glazing in the dormer windows on Plots 2 and 3 does not have a detrimental impact that results in harm to the living conditions of neighbouring occupiers, and therefore complies with Policy 33 of the Horsham District Framework 2015 insofar as it relates to residential amenity.

Other Matters

10. I have had regard to other issues raised relating to the history of the site and the implementation of the Planning Permission. However, these are not matters that are before me as part of this appeal, and concerns over these issues should be raised with the Council in the first instance.

Conditions

11. For decision notices for the grant of planning permission under S73 of the Town and Country Planning Act 1990 the Planning Practice Guidance makes it clear that the relevant conditions from the original planning permission should be repeated, unless they have been discharged.
12. The Planning Permission granted in 2016 has been implemented and there is no need for the time limit condition. I have given careful consideration to the remaining conditions attached to that permission. Conditions 4, 7, 9 and 17 of the Planning Permission have been discharged since the grant of the Planning Permission².
13. I have considered whether or not the conditions could be updated to reflect the current position. The development has been completed and therefore conditions 8, 12, 13 and 14 of the Planning Permission are not applicable as they are specific to matters relating to the construction period.
14. Conditions 10 and 11 of the Planning Permission removed permitted development rights in respect of alterations to the dwellings, erection of structures within the curtilage, and fences and walls or other means of enclosures. Permitted development rights should only be restricted in exceptional circumstances. In this instance, taking into account the location of the site in respect of surrounding properties, I consider that such conditions are necessary in the interests of protecting the living conditions of neighbouring occupiers and the character and appearance of the area.

Conclusion

15. For the reasons set out above I conclude that condition 3 on the Planning Permission, so far as it relates to the use of obscured glazing on the dormer windows, is unnecessary and does not meet the tests set out in paragraph 206 of the National Planning Policy Framework.
16. Therefore I conclude that the appeal should be allowed and a new permission granted for the development to be carried out in accordance with the conditions set out in my formal decision.

J Ayres

INSPECTOR

² DISC/16/0225 and DISC/17/0121

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans:
Site plan 3414PC02 Rev D
Details plan 3414PL01 Rev E
Location plan 3414.SP01 REV A
Layout plan Drainage 47530/SK5 REV 0
Elevation & Floor plan Proposed house type P3 and P2 3414.P04 Rev A
Elevation & Floor plan Proposed house type P1 3414.P03
Landscape Plan P475/001 Rev A
Tree plan 3414.C14B
Layout plan 3414/PC02 Rev D
Layout plan 3414.PL01 Rev E
Elevation plan 3414.PC01 Rev B
Elevation plan plots 4 and 5 as built 3414.P02 rev A
Maintenance and Management Report received 15.06.2016
Materials Schedule received 15.02.2016
Design and Access Statement received 20.01.2016
Arboricultural Development Report received 0.01.2016
- 2) The windows above ground floor level in the south west elevation of plot 1, the south west and north east elevations in plots 2 and 3, the north east and south west elevations of plot 4 and the north east, north west and south east elevations of plot 5 shall at all times be glazed with obscured glass precise details of which, together with details of any opening, shall be submitted to and approved by the Local Planning Authority in writing before installation. The approved glass and any agreed opening details shall be maintained at all times.
- 3) The buildings hereby approved shall not be occupied until the parking turning and access facilities have been provided in accordance with the plans hereby approved (or in accordance with plans submitted to and approved in writing by the Local Planning Authority) and the parking turning and access facilities shall thereafter be retained solely for that purpose and solely in connection with the development.
- 4) The garages shall be used only as private domestic garages for the parking of vehicles incidental to the use of the properties as dwellings and for no other purpose.
- 5) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 or Orders amending or revoking and re-enacting the same, no gate, fence, wall or other means of enclosure shall be erected or constructed in front of the forward most part of any proposed building which fronts or faces onto a highway or vehicular access serving the site unless prior written permission has been

granted by the Local Planning Authority (pursuant to an application for the purpose).

- 6) No extension, enlargement, alteration or provision within the curtilage of the of the dwellinghouses as provided for within Schedule 2, Part 1, Classes A, B, C, D & E of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (or any order revoking and re-enacting that Order with or without modification) other than that expressly authorised by this permission shall be carried out without planning permission obtained from the Local Planning Authority.
- 7) The surface water drainage to serve the development shall be carried out in accordance with the details approved in writing under DISC/16/0162 (condition 18 of DC/13/1142), including management and maintenance plan of any SUDS scheme.
- 8) The means of surface water drainage to serve the development shall be carried out in accordance with the details approved in writing under DISC/16/0162 (condition 18 of DC/13/1142) and shall thereafter be maintained.

END OF SCHEDULE