The Planning Inspectorate

Appeal Decision

Site visits made on 12 March and 26 March 2018

by Mike Worden BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th April 2018

Appeal Ref: APP/H1840/D/18/3192719
6 Weston Road, Bretforton WR11 7HW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr C. Todd against the decision of Wychavon District Council.
- The application Ref 17/02003/P, dated 29 September 2017, was refused by notice dated 29 November 2017.
- The application sought planning permission for proposed extensions to an existing dwelling with detached double garage without complying with a condition attached to planning permission Ref W/15/01038/PP, dated 16 June 2015.
- The condition in dispute is No 4 which states that: Before the first occupation of the building/extension hereby permitted the side windows on the north west elevation and the two elevations on the south west elevation as indicated on the approved plans shall be fitted with obscured glazing and shall be permanently retained in that condition thereafter.
- The reason given for the condition is: To protect the amenities of adjoining/nearby properties from unacceptable overlooking/loss of privacy in accordance with policy GD2 of the Wychavon District Local Plan (2006).

Decision

1. The appeal is allowed and planning permission is granted for extensions to an existing dwelling with detached double garage at 6 Weston Road, Bretforton WR11 7HW in accordance with the application Ref 17/02003/P made on the 29 September 2017 and the plans: Proposed Site Plan 002A; Proposed Floor Plans 005A; Proposed Elevations 006D, Amended Garage Plans 007B, without complying with condition No 4 set out in planning permission Ref W/15/01038/PP granted on 16 June 2015 by Wychavon District Council, but otherwise subject to the following conditions:

    1) The existing side boundary hedge between the appeal property and the property known as Brent Knoll shall be retained and shall not be felled, topped or lopped or otherwise removed without the previous written consent of the local planning authority.

    2) Prior to first use/occupation of the development hereby permitted, the details set out in the submitted Water Management Statement shall be fully implemented and remain thereafter.

Procedural Matter

2. Planning permission for the proposed extensions included a condition requiring that some of the windows should be fitted with obscured glazing and should be retained as such thereafter. The Council acknowledges that the wording of that condition is not particularly clear and that there are three windows which should be obscurely glazed as shown on the approved plans. These are the windows to the ensuite bathroom and the dressing room on the South West elevation, and the window to the ensuite bathroom on the North West elevation.

3. The appellant wishes the condition to be removed. The appellant indicated on the application form that the development had been completed and on my site visit I was able to see that the windows in the three openings concerned were not obscurely glazed.

Main Issue

4. The main issue is whether the condition is reasonable and necessary to protect the living conditions of neighbouring residents with particular regard to privacy.

Reasons

5. The three first floor windows of the recently added rear wing are the subject of the disputed condition.

6. To the rear of the appeal property, beyond a rear garden, there is a bungalow, Winterberries. The rear elevations of the two properties face each other although they are not parallel. On the village side of the appeal property there is a tall hedge separating it from Brent Knoll, a two storey property. Adjacent to Main Street there is another property, Dial House which is some considerable distance away from the appeal property, a factor which I consider means that any impact of the development on its occupants is extremely minimal.

7. I have not been provided with any local policy guidance which sets out minimum separation distances between habitable room windows of dwellings. Since the original permission was granted the Council has adopted the *South Worcestershire Development Plan* (the Development Plan). Policy SWDP21 of that plan sets out design considerations including that development should, amongst other things, provide an adequate level of privacy.

8. The three windows on the appeal property which are the subject of the condition are full length, but narrow. They are each fitted with an internal blind.

9. The windows on the rear elevation of Winterberries serve a living room, a bedroom which was in use as a dining room at the time of my visit, a kitchen and a utility room. The living room is furthest away from the two windows concerned on the rear elevation of the appeal property. It has large sliding patio doors. However there would not be potential for undue overlooking into it from either the dressing room or the ensuite bathroom windows given the distance between them and because of the relative angles of the properties.

10. The utility room of Winterberries has a window and door in the rear elevation and both have glazing bars on them. Notwithstanding that the occupants of

Winterberries say that that they change their clothes in the utility room when they have been out in the garden, I consider that is not a type of room where occupants would normally spend considerable time in. In any event, the glazing bars on the windows, the vegetation in the gardens, the distance between the properties, the slight offset angle between the elevations and the vertical angle between the first floor windows of the appeal property and the ground floor windows of Winterberries all combine to restrict potential for views into the utility room.

11. The kitchen window of Winterberries also has glazing bars and most of the reasons which I have set out above in relation to the utility room would also apply to the kitchen and the bedroom. It would be reasonable to assume that the kitchen would tend to be occupied more often and for longer durations than the utility room. However, whilst it may be possible for a degree of overlooking to occur particularly of a person standing at the kitchen sink by the window, this is not unreasonable in residential areas where houses are located in close proximity to each other, and is unlikely to lead to a significant loss of privacy.

12. The potential for overlooking into the bedroom of Winterberries from the windows concerned is very limited given the distance between the windows, the angle between the properties, and the glazing bars on the bedroom windows.

13. There is a high hedge between the side elevation on the appeal property and Brent Knoll which severely restricts visibility between the two properties. The retention of the hedge is the subject of a condition on the original permission and I could require that to be the case this time around. The upstairs bedroom window of Brent Knoll which faces Main Street is set at about ninety degrees to the side elevation of the appeal property and there is minimal potential for overlooking.

14. The side bedroom window of Brent Knoll is small and although just visible above the hedge, from the appeal property's ensuite bathroom window, I consider that the potential for overlooking is very limited given the presence of the hedge, the sizes of the windows concerned and the distances between them. I also consider that the potential for overlooking from the ensuite bathroom window is no greater than from those serving the bedroom and the Council has not considered it necessary to impose a condition requiring those windows to be obscurely glazed.

15. In reaching the conclusions above I have taken account of the long, narrow shape of the three windows in the appeal property which restricts the potential for overlooking from the rooms which they serve much more than would be the case with larger windows.

16. The Council has made reference to particular privacy concerns as two of the windows serve an ensuite bathroom. The privacy of the users of the bathroom can be protected due the installation of blinds on the windows and I have already addressed the issues relating to the privacy of nearby residents.

17. For the reasons set out above I conclude that the condition is not necessary or reasonable in order to protect the living conditions of the occupants of neighbouring properties with particular regard to privacy. The development without the condition would comply with Policy SWDP21 of the Development Plan.

Conclusions

18. For the reasons given above, and having considered all matters raised, I conclude that the appeal should succeed and I shall grant a new planning permission without the disputed condition.

19. In allowing the appeal and granting planning permission I have considered those conditions imposed on the original planning permission. No further conditions have been suggested to me.

20. The plans condition is not necessary as the development has been undertaken and I have listed the plans in the Decision. These plans include the amended elevation plan submitted by the appellant showing the three windows which are the subject of the appeal being non-obscurely glazed. A non-material amendment has been agreed by the Council but since amended floor plans have not been submitted to me, I have referred to the originally approved plan in this Decision.

21. Since the development has been completed and is occupied it is not necessary to impose a condition relating to time implementation or a materials condition.

22. I consider it is necessary in the interests of protecting the living conditions of the occupiers of Brent Knoll that the original condition requiring the retention of the hedge along the boundary is imposed and I have amended it slightly for clarity. I have no information before me as to whether the condition relating to water management on the original decision notice has been discharged but in any event it is necessary to ensure the retention of an appropriate and agreed drainage system.

Mike Worden

INSPECTOR