The Planning Inspectorate

Appeal Decision

Site visit made on 5 June 2018

by Andrew Dawe BSc(Hons) MSc MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 June 2018

Appeal Ref: APP/J1860/W/17/3183564
6 Belvoir Bank, Malvern WR14 4LY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant, subject to conditions, of approval required under Schedule 2, Part 1, Paragraph A.4 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
- The appeal is made by Ms C Margetson against the decision of Malvern Hills District Council.
- The application Ref 17/00994/GPDE, dated 13 June 2017, was granted approval by notice dated 26 July 2017 subject to conditions.
- The development granted approval is single storey rear extension.
- The condition in dispute is No 3 which states that: The 3 proposed ground floor windows visible on the approved side (north-west) facing elevation shall be fitted with Pilkington Level 4 obscure glazing and shall be non-opening and retained as such thereafter.
- The reason given for the condition is: in order to protect residential amenity in accordance with Policy SWDP21 of the South Worcestershire Development Plan.

Decision

1. The appeal is allowed and the approval Ref 17/00994/GPDE for single storey rear extension at 6 Belvoir Bank, Malvern WR14 4LY granted under the provisions of Schedule 2, Part 1, Paragraph A.4 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) on 26 July 2017 by Malvern Hills District Council is varied by deleting condition No 3 and substituting for it the following condition:

   i) The 3 proposed ground floor windows visible on the approved side (north-east) facing elevation shall be fitted with Pilkington Level 4 obscure glazing and shall be non-opening and retained as such thereafter.

Procedural Matters

2. The provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) require the local planning authority to assess the proposed development solely on the basis of its impact on the amenity of any adjoining premises, taking into account any representations received. My determination of this appeal has been made in the same manner.

3. The wording of the original condition 3 in the Council's decision notice refers to the windows in the approved side (north-west) facing elevation. However, the parties have agreed during the appeal process that that elevation should be

correctly referred to as being north-east facing. I have determined the appeal on that basis.

Main Issue

4. The main issue is whether the condition concerned is reasonable and necessary in the interests of the living conditions of the residents of No 4 Belvoir Bank, in respect of privacy.

Reasons

5. I saw that the development had been completed with the windows concerned being non-obscure glazed. Those windows face towards the side of No 4 Belvoir Bank and its rear garden and conservatory in fairly close proximity, albeit that both dwellings are set away from the side boundary of No 6 to a degree. The side elevation of No 4 has a ground floor kitchen/diner window and a first floor bedroom window above set towards the rear of that elevation. Due to No 4 being at a lower level than the appeal site, the existing side boundary fencing to No 6 prevents any significant overlooking of the ground floor side window of No 4 and its rear conservatory. The same applies to the rear garden area of that property, in combination with significant screening directly to the side of that garden.

6. However, due to the difference in levels, the cill level of the first floor side bedroom window to No 4, which is also fairly low in relation to that room's floor level, is such that at only a slightly oblique angle, clear sight into that room, over No 6's boundary fencing, would be possible were it not for the existing fairly small amount of intervening vegetation. However, it cannot be guaranteed that that vegetation will remain at its current extent, if at all, in perpetuity as a screen and its effectiveness as such would also be likely to be affected seasonally if leaves are shed in the winter months. Due to those circumstances and the fairly close proximity of that bedroom window, such overlooking, without the vegetation screening, would be likely to amount to a harmful loss of privacy to residents using that room.

7. I acknowledge that it would have been possible to look into that window from the rear garden area where the extension now is, and indeed that is possible from the remaining area immediately to the side of the extension. However, the internal room space now created is likely to be used more intensively, and throughout the year in all weather conditions, than the outdoor space, thereby creating significantly more opportunities for overlooking.

8. I also acknowledge that it would have been possible to have built a different extension as permitted development without needing prior approval, with non-obscure glazed windows on the side elevation. However, that is not the scenario before me and I have determined the appeal on its merits, in line with the procedure set out in paragraph 2 above. The appellant also refers to the potential for having been able to build an extension with solid walls and adding windows later. However, had that been proposed for a scheme requiring planning permission or prior approval, there would have been scope to impose a condition to remove permitted development rights for such windows if necessary.

9. For the above reasons, the existing condition concerned is reasonable and necessary in the interests of the living conditions of the residents of No 4

Belvoir Bank, in respect of privacy, subject to a correction relating to the aspect of the side facing elevation which should be referred to as being north-east facing.

10. Whilst I note the reference in the Council's decision notice and appellant's appeal statement to policy SWDP21 of the South Worcestershire Development Plan, I have determined the appeal on its merits in accordance with the procedure set out in paragraph 2 above.

Conclusion

11. For the above reasons, I conclude that the planning permission should be varied, solely in terms of requiring the correct reference to the north-east facing elevation, as set out in the formal decision.

Andrew Dawe

INSPECTOR