



Appeal Decision

Site visit made on 22 January 2019

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 March 2019

Appeal Ref: APP/D1835/W/18/3206683

The Mews, Rose Bank, Worcester, WR5 1EQ

- 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 Mr Philip Deeley, Matthews City and Country Homes against the decision of Worcester City Council.
 - The application Ref P18D0061, dated 6 February 2018, was refused by notice dated 29 June 2018.
 - The application sought planning permission for plot style substitution of The Montgomery and The Mews house types following granting of planning permission P15D0146 without complying with a condition attached to planning permission Ref P17D0279, dated 21 July 2017.
 - The condition in dispute is No 2 which states that: The windows on the northern elevation to the Mews Property shall be glazed in material which, although permitting the passage of light, cannot be seen through and glazing of this type shall thereafter be retained in the windows.
 - The reasons given for the condition is: To safeguard the privacy of occupants of adjacent properties in accordance with policy SWDP 21 of the South Worcestershire Development Plan and the aims and objectives of the National Planning Policy Framework.
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Decision

1. The appeal is allowed and planning permission is granted for plot style substitution of The Montgomery and The Mews house types following granting of planning permission P15D0146, at The Mews, Rose Bank, Worcester, WR5 1EQ in accordance with the terms of the application, Ref P18D0061, dated 6 February 2018, subject to the following conditions:
 1. The permission hereby granted is an amendment to planning approval No. P15D0146 dated 14-04-16 and, otherwise than is altered by this permission, the scheme shall be carried out in accordance with that planning permission and the conditions attached thereto as if they formed part of this permission.
 2. Notwithstanding any details shown on the submitted plans, suitably amended details of the following matters shall be submitted to and approved by the local planning authority in writing before occupation of any approved unit.

Schedule:

Screening boundary treatment to the northern elevation of the Mews Property.

The development shall not be undertaken other than in full accordance with such approved details.

3. Notwithstanding any details shown on the submitted plans, suitably amended details of the following matters shall be submitted to and approved by the local planning authority in writing before the buildings are first occupied.

Schedule:

the easterly Montgomery property shall either obscurely glaze (glazing of this type shall thereafter be retained in the window) and/or relocate the easterly first floor window to the eastern elevation

The development shall not be undertaken other than in full accordance with such approved details.

4. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no windows/dormer windows (other than those expressly authorised by this permission) shall be constructed on the northern elevation of the approved Montgomery properties.

Application for costs

2. An application for costs was made by Mr Philip Deeley, Matthews City and Country Homes against Worcester City Council. This application is the subject of a separate Decision.

Main Issue

3. The Council's reason for refusing the application also refers to the effects of the proposal on the occupiers of the host dwelling. However, this does not reflect the original reason for Condition 2. Accordingly, the main issue is whether Condition 2 is reasonable and necessary in the interests of safeguarding the living conditions of the adjacent occupiers of dwellings, in respect of privacy and the perception of overlooking.

Reasons

4. The appeal property comprises a recently built dormer bungalow ('the Mews') situated within the north-eastern corner of a larger residential development (referred to as 'Rose Bank'). The northern flank elevation of this property faces the rear elevations and gardens of dwellings along Edward Close, which are located on relatively lower ground, north of the Mews.
5. In accordance with the requirements of Condition 2, the two modest sized windows in the northern flank elevation of the Mews, which serve the kitchen to this property are obscure glazed.
6. Paragraph 55 of the National Planning Policy Framework (the Framework) says that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be

permitted, enforceable, precise and reasonable in all other respects. The Planning Practice Guidance (PPG)¹ states that the 6 tests must all be satisfied each time a decision to grant planning permission subject to conditions is made. The tests are set out in an accompanying table to the PPG, alongside key considerations.

7. Most notably, in considering whether a condition is necessary, it must not be imposed unless there is a definite planning reason for it. Furthermore, in considering whether a condition fairly and reasonably relates to the development to be permitted, one key consideration is that it must also be justified by the nature or impact of the development permitted.
8. The obscure glazed kitchen windows at the Mews are extensively screened from the dwellings along Edward Close by the existing permanent boundary treatment which comprises a low wall and pillars, in-filled with cedar panels, which is about 2m in height. This is separated from the Mews by the side garden pathway serving this property. On the other side of this boundary treatment, facing the dwellings along Edward Close is a line of recently planted trees, which form part of the landscaping for the wider Rose Bank development. The dwellings along Edward Close also incorporate rear boundary treatments of varying designs and heights.
9. Based on the above arrangement the removal of Condition 2, and the introduction of clear glazing at the Mews would not impact on the privacy or the perception of overlooking for the occupiers of dwellings along Edward Close.
10. Nonetheless, the Council is concerned that there are no planning controls in place to secure the retention of the existing boundary treatment in perpetuity. Consequently, if this is removed or falls into disrepair, the privacy of the occupiers of adjoining neighbours would be unacceptably compromised. However, from my observations and the information before me, the existing boundary treatment is robust, and the probability of this failing is low. I also have no cogent reason why the occupiers of the Mews would wilfully want to remove this.
11. Moreover, due to the size of the kitchen windows at the Mews and existing tree planting, any inter-visibility between the Mews and adjacent dwellings along Edwards Close would be limited and filtered and would not unacceptably effect privacy and the perception of overlooking for adjacent occupiers.
12. In any event, if the boundary treatment were removed, views towards the dwellings in Edward Close, albeit filtered by the landscaping would still be permissible from the existing garden pathway and a doorway along the northern flank elevation of the Mews. This undermines the retention and reasonableness of Condition 2. I also observed that the obscure glazing in the windows of the Mews, unacceptably suppress the outlook from the kitchen area of this dwelling.
13. Considering all the above factors, I conclude that Condition 2 is unjustified and does not serve a definite planning reason. It is therefore not necessary or reasonable in the interests of safeguarding the privacy and the perception of overlooking for adjacent occupiers. For the above reasons, the removal of

¹ Paragraph: 004 Reference ID: 21a-004-20140306

Condition 2 would not result in any conflict with the aims of Policy SWDP 21 of the South Worcestershire Development Plan, which amongst other matters seeks to provide a good standard of amenity for occupiers of land and buildings.

14. I also find no conflict with the aims of the Framework, which along with other things requires that development should provide a high standard of amenity for existing and future occupiers.

Conditions

15. The guidance in the PPG makes clear that decision notices for the grant of planning permission under section 73 of the Town and Country Planning Act 1990 (the Act) should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. As I have limited evidence before me about the status of the other conditions imposed on the original planning permission, I shall impose all those for the reasons originally stated. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties. However, I have amended condition 4 of my Decision to reflect the most recent version of Town and Country Planning (General Permitted Development) Order.

Conclusion

16. For the reasons given above I conclude that the appeal should succeed. I will grant a new planning permission without the disputed condition and restating the undisputed conditions.

M Aqbal
INSPECTOR