



Appeal Decision

Site visit made on 4 September 2019

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 September 2019

Appeal Ref: APP/A5840/W/19/3229994

18A Dumelow House, Grove Park, London SE5 8LH

- 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 Miss Vicky Wagner against the decision of the Council of the London Borough of Southwark.
 - The application Ref 18/AP/3085, dated 25 September 2018, was refused by notice dated 5 December 2018.
 - The application sought planning permission for the erection of a 4 bed dwelling and the development described as the "Variation of Condition No. 2 (approved plans) of planning permission ref No. 14-AP-1720 dated 26.09.2014 for Retention of re-built works and completion to form a new 4 bed family dwellinghouse within the original volume over lower ground, ground and first floors with associated landscaping" without complying with a condition attached to planning permission Ref 14/AP/4707, determined by appeal dated 4 January 2016.
 - The condition in dispute is No 10 which states that: The windows in the Eastern and Western side elevations serving the upper floor (first floor) of the building shall be fitted with obscure glazing to a minimum height of 1.7 metres above finished floor level and shall be permanently retained in this condition thereafter.
 - The reason given for the condition is: to protect the privacy of local residents.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. A recent appeal decision¹ gave consent for the dwelling the subject of this appeal. This included at condition 10, the requirement for obscure glazing to the eastern and western first floor windows, to a height of 1.7m. This was to mitigate harm to the living conditions of occupants of neighbouring residential properties in regard to overlooking. The current proposal follows various planning decisions, however the previous appeal decision is the most relevant to the main issue of this appeal.
3. The first-floor windows on the east and west side of the dwelling are tall. These are arranged in groups of 3 and repeated on four occasions on both sides. Appendix A5 of the appellant's statement shows the first-floor layout plan and annotates the eastern groups of windows as Triple Sets 1 to 4 (TS 1-4). Purely for convenience I shall adopt this same reference convention in my decision.

¹ Planning Appeal Reference: APP/A5840/W/15/3129851

The proposal seeks to vary the condition to not require obscure glazing for window groups TS2, TS3 and TS4.

4. On my visit, I noted that vinyl frosted window film had been applied to these windows. The appellant was able to temporarily remove one from each set to allow my assessment to take place.

Main Issue

5. The main issue is therefore whether condition 10 is reasonable and necessary in respect of local and national policy, with particular respect to the effect to the living conditions of adjoining neighbours in regard to privacy.

Reasons

6. The site is in a back-land location and subsequently behind a row of residential properties. It also slopes down from west to east. The eastern boundary is subsequently lower than the west boundary. The dwelling is also partially submerged below natural ground level. The first-floor is arranged as an open plan living/kitchen area.
7. To the east of the site is the rear garden and detached dwelling of 19 Grove Park (No 19). A tall fence is on the boundary with No 19. Nevertheless, window group TS2 enables oblique views into the rear windows of this dwelling, its patio area and some of the rear garden adjacent to the patio. Furthermore, the footprint of the subject dwelling is not fully perpendicular to properties facing Grove Park and is instead set at a slight angle. This therefore enables a greater extent of overlooking into rear windows of the neighbouring dwelling than if it had been perpendicular. As a consequence, window group TS2 provides comparatively overt and invasive views of No 19 over a relatively short distance.
8. Window groups TS3 and TS4 do not enable views into rear windows or the patio of No 19. However, views into its garden area are relatively extensive and mostly unimpeded by landscaping. When standing at windows TS3 and TS4 I was able to observe the large sections of the garden. These views also provided a relatively clear view of the lower parts of boundary hedging between No's 19 and 20. This means that a substantial part of the garden would be overlooked without the benefit of the opaque glazing. Views from these windows would therefore also be substantially harmful to the living conditions of occupiers of No 19. Therefore, an alternative put forward by the appellant, to allow clear glazing for window groups TS3 and TS4, would still result in substantially harmful overlooking into the majority of the neighbour's garden.
9. As a consequence, the window groups TS2, TS3 and TS4 without the benefit of obscure glazing, would fail to satisfy policy 13 of the Southwark Council Core Strategy (2011). This seeks development that sets high standards to avoid amenity and environmental problems that affect how we enjoy the environment. Moreover, the proposal would not accord with saved policy 3.2 of the Southwark Council – Southwark Plan (2007) which seeks development to be granted where it would not cause a loss of amenity. The condition is therefore reasonable and necessary, irrespective of the change of circumstances offered by the appellant. This condition, including in regard to window groups TS2-TS4, subsequently passes the tests in regard to the correct

use of conditions as set in paragraph 55 of the National Planning Policy Framework.

Other matters

10. The appellant refers to a recent approval² of a terrace serving flats 5 and 6 at 18 Grove Park. This would have increased over-looking into neighbouring rear gardens to some extent. However, the observation point is from the rear elevation of that property. This is part of a relatively consistent existing rear building line. As a result, the view would not be significantly different to the outlook of rear windows of the flats under the terrace. As such, whilst the terrace presents a slightly greater opportunity for overlooking, the vantage is similar to existing rear facing windows. Accordingly, the effect of overlooking from the terrace is both significantly different and greatly reduced in comparison to the effect of the proposal.
11. It is in evidence that the recess for each window has been altered since the previous Inspector's visit, thus reducing the scope for overlooking. I recognise that the field of vision has been narrowed with reduced chance for overlooking, especially when standing back into the room at oblique angles. However, on my visit when standing back perpendicular to the window views were clear and largely unaffected by the narrowed recess. Furthermore, when standing close to the windows the effect of a reduced recess was minimal. As a result, this physical change has had only a limited bearing on the scope for overlooking.
12. The appellant states that approval³ was given in 2011 and revised in 2012⁴ to convert the chapel into a dwelling without the need for obscure glazing at first floor. I understand that this approval included only bedrooms at first floor and was therefore materially different to the now constructed dwelling. Furthermore, a revised version approved in 2014⁵ was subject to first floor obscure glazing, where I understand the proposal again only included bedrooms at first floor. In any event, the planning history has only had a limited bearing on my consideration of overlooking.
13. The site is within the Camberwell Grove Conservation Area (CA). The statutory requirements⁶ entail that special attention be paid to the desirability of preserving or enhancing the character and appearance of the CA. However, the proposed revision to the glazing type of window groups TS2-TS4 would be of no real significance to the character of the conservation area and would therefore have a neutral effect.
14. The first floor is arranged as a living room and kitchen area. In addition to window groups TS1-8, the space is naturally illuminated by a range of rooflights and a large rear facing window. Consequently, the required obscure glazing has only a very limited effect on the available ambient light within the space. As such, I am unconvinced that this has resulted in a substantial loss of sunlight. Furthermore, whilst I have some sympathy that the condition prevents an outlook for the appellant onto her eastern garden, this disbenefit does not out-weight the identified harm to the neighbour's living conditions which would result from the use of clear glazing.

² Planning Application Reference: 18/AP/1646

³ Planning Application Reference: 11/AP/1225

⁴ Planning Application Reference: 12/AP/1305

⁵ Planning Application Reference: 14/AP/1720

⁶ Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990

15. I understand that the previous use of the building was as a chapel. There is limited evidence to show the extent or purpose of the chapel's first floor. Also, historical details are not in evidence to show previous land levels or the extent of landscaping or boundary details. These elements would have had an impact on the extent of overlooking that would have been possible from the first-floor windows. Subsequently, I can only afford this limited weight.
16. Discussions between the Council and appellant, in regard to required mitigation, has had only a limited bearing on my decision in regard to the main issue. A condition requiring further landscaping would not adequately mitigate the identified effect as it would be neither immediate nor permanent. Furthermore, such a condition would also effect access to daylight and sunlight to the eastern elevation, which would jeopardise the permanency of such screening.

Conclusion

17. For the above reasons the appeal is dismissed.

Ben Plenty

INSPECTOR