



Appeal Decision

Site visit made on 13 August 2019

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 September 2019

Appeal Ref: APP/N4720/W/19/3229697

Cuileann, Woodacre Crescent, Bardsey, Leeds LS17 9DQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions
 - The appeal is made by Mr R Jain against the decision of Leeds City Council.
 - The application Ref 18/06241/FU, dated 2 October 2018, was approved on 29 November 2018 and planning permission was granted subject to conditions.
 - The development permitted is retrospective single storey side and rear extension.
 - The condition in dispute is No 2 which states that: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking or re-enacting that Order with or without modification) within 3 months from the date of this permission, the windows on the eastern elevation of the rear extension, facing Cherry Trees on the eastern border shall be glazed with obscure glass to at least level 3 obscurity and thereafter retained as such.
 - The reason given for the condition is: In the interests of residential amenity.
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Decision

1. The appeal is allowed and the planning permission Ref 18/06241/FU for retrospective single storey side and rear extension at Cuileann, Woodacre Crescent, Bardsey, Leeds LS17 9DQ granted on 29 November 2018, is varied by deleting condition 2 and substituting it for the following condition:
 - (2) Within 1 month of the date of the appeal decision Ref APP/N4720/W/19/3229697, details of a 2.0 metre high fence to the boundary with Cherry Trees and aligned with the side elevation of the extension shall be submitted to the Local Planning Authority. The details shall include the precise position, materials and specification of the fence. Once approved in writing by the Local Planning Authority, the approved fence shall be erected within 3 months of written approval of the details being received and shall be retained thereafter unless it is replaced with a fence of the same position, materials and specification.

Background and Main Issue

2. Planning permission has been granted retrospectively for a single storey side and rear extension. The extension includes a clear glazed window and further high-level glazing to its side elevation facing the boundary with the neighbouring property known as Cherry Trees. The appeal seeks permission to remove condition 2, which requires these windows to be obscure glazed.
3. The main issue is whether the condition is reasonable and necessary having regard to the living conditions of occupiers of Cherry Trees.

Reasons

4. Cuileann is situated on higher ground than the neighbouring property Cherry Trees. The single storey extension at Cuileann projects past the two-storey side elevation of the dwelling towards this neighbouring boundary and is set in from the boundary. The section of boundary that sits in line with the side elevation of the extension is denoted by a timber fence as well as mature planting on the Cherry Trees side of the boundary which exceeds the height of the fence.
5. At the time of my site visit, the existing boundary treatments prevented any material overlooking towards the main habitable windows, patio area and conservatory serving Cherry Trees. Views towards rear sections of the neighbouring garden were usual within a residential setting and not markedly different to those that could already be achieved from upper floor windows. I was also able to see a first-floor window within a side projection on Cherry Trees, however the angle, distance and differential height prevented any material harm to privacy. However, I am conscious that during winter months the planting within the garden of Cherry Trees is likely to be more sparsely foliated, thereby increasing the potential for overlooking to areas immediately to the rear of the dwelling at Cherry Trees. Accordingly, a clear glazed window would result in material harm to the privacy of occupiers at Cherry Trees for a significant period of the year.
6. My attention has been drawn to a previous conservatory on the site. The appellant suggests that the footprint remains the same and consequently the gap from the eastern façade to the neighbouring boundary and provision of clear glazing facing Cherry Trees is similar to the previous situation. The available evidence suggests there was a condition requiring the windows to the side elevation of the previous conservatory to be obscure glazed. Regardless, the extension subject of this appeal required planning permission in its own right and must be assessed against current national and local policy requirements.
7. The appellant contends that the extension is more an occasional living room, that the rear elevation provides the principle focus and that the side windows are secondary windows. However, the room provides main habitable accommodation and the level of use of this room could not reasonably be controlled.
8. During my site visit, I noted the existing path to the side of the extension which links the rear garden of the host dwelling to the front of the property. The appellant suggests that the ability to look towards Cherry Trees from this path is comparable to the views from the extension. However, any activity on the path would be transient and the path is at a lower level than the internal floor level of the extension. This comparison does not therefore persuade me that the clear glazed window has an acceptable relationship with the living conditions of the occupants at Cherry Trees.
9. The appellant has confirmed that they would be willing to accept an alternative condition to increase the boundary fence to 2.0m in height or for new screen planting to be provided as an alternative to the requirement for obscure glazing. I am concerned that new planting would take many years to grow to a height where it would become effective and the retention of the planting on the Cherry Trees side of the fence could not be guaranteed. However, the suggested higher fence would provide suitable mitigation given the line of sight

towards the main habitable windows, patio area and conservatory serving the neighbouring property. The increased fence height would need to sit on a similar alignment to the side elevation of the extension to provide effective screening. Accordingly, replacement of condition 2 with a condition requiring precise details of a fence to be submitted to and approved by the Council, its subsequent implementation and retention would suitably mitigate any impact on privacy for the occupiers of Cherry Trees.

10. The Council has raised concerns that a fence of increased height would be visually dominant, however, taking into account the height of the existing fence, the relatively short section of fence that would need to be increased and the intervening soft landscaping on the Cherry Trees side, the increase in height would not result in any material harm in terms of an overbearing impact.
11. The existing Condition 2 is not clear as to which windows in the side elevation should be obscure glazed. The triangular shaped area of high-level glazing is above eye level and does not impact on the privacy of neighbouring occupants. A condition to increase the height of the boundary treatment would mitigate any overlooking impact in terms of clear glazing at eye level. A requirement to obscure glaze the high-level glazing would therefore not be necessary to protect neighbouring living conditions.
12. For the foregoing reasons, condition 2 is not necessary to protect the living conditions of neighbouring occupiers at Cherry Trees subject to it being replaced by a condition requiring a fence measuring 2.0 metres in height to be erected, in line with the side elevation of the rear extension, along the boundary with Cherry Trees. Consequently, in that regard, the replacement condition would accord with the requirements of policy P10 (Design) of the Leeds City Council Core Strategy (2014) and saved policy GP5 of the Leeds Unitary Development Plan (Review 2006) and the requirements of the Framework.
13. Whilst not on its own determinative, in reaching this conclusion I have also given regard to part HDG2 of the Leeds City Council Householder Design Guide Supplementary Planning Document (2012) which recommends that all development proposals should protect the amenity of neighbours.

Other Matters

14. Condition 2 included a time period of 3 months from the date of the Council's decision for the obscure glazing to be installed. This period of time has already elapsed. Given I am replacing this condition, I am including a new time period for provision of details and subsequent installation of the 2.0 metre high boundary fence, starting from the date of this decision.
15. I note the third-party representations raising concerns in respect of the impact of the proposal on the character and appearance of the Bardsey-cum-Rigton Conservation Area (CA). In reaching their decision the Council did not identify any such harm and from my observations on site I am satisfied that the extension preserves the character and appearance of the CA. Concerns in respect of the retrospective nature of the planning application and the proposal's compliance with building regulations are not matters for me to assess under the terms of this appeal. I also note the references to the Bardsey-cum-Rigton Neighbourhood Plan (October 2017 to October 2032) but

this does not alter my conclusions on the main issue that condition 2 is not necessary to protect neighbouring living conditions subject to compliance with the replacement condition for provision of a higher boundary fence.

Conclusion

16. For the above reasons, the appeal is allowed and condition 2 is substituted for a condition requiring a higher fence.

M Russell

INSPECTOR