



Appeal Decision

Site visit made on 19 August 2019 by Darren Ellis MPlan

by Susan Ashworth BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 1 October 2019

Appeal Ref: APP/W4705/W/19/3229878

29B West View Avenue, Burley in Wharfedale, Ilkley, LS29 7LF

- 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 & Mrs Gregory against the decision of the City of Bradford Metropolitan District Council.
 - The application Ref 19/01044/VOC, dated 7 March 2019, was refused by notice dated 2 May 2019.
 - The application sought planning permission for the construction of detached dwelling with access from West View Avenue without complying with a condition attached to planning permission Ref 15/01766/FUL, dated 22 July 2015.
 - The condition in dispute is No 6 which states that: *"All windows in the southern (side) elevation of the building shall be part installed with obscure glazing as shown on the approved drawings and these shall be fixed, non opening windows. Thereafter, this type of obscure, non opening glazing shall be retained throughout this elevation."*
 - The reason given for the condition is: *"To safeguard the privacy of occupants of dwellings to the west of the development and accord with Policy UR3 of the Replacement Unitary Development Plan."*
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Decision

1. The appeal is dismissed.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Background and Main Issue

3. Planning permission was originally granted in 2015¹ for the construction of a detached dwelling. The dwelling has been constructed with two of the three southern (side) windows as openable windows in contravention of condition 6 of the permission.
4. The application subject to this appeal sought to vary condition 6 to remove the requirement for the southern (side) windows to be fixed shut and instead for one to be a top-hung escape window and one to be bottom-hung and on a permanent restrictor. The appellant asserts that the original condition is not reasonable as having windows that are fixed shut would not comply with

¹ Application Ref: 15/01766/FUL

building regulations and that the alterations to the windows would not cause any harmful overlooking of the neighbouring property. The appellant also claims that the wording of the condition is ambiguous.

5. The main issues are whether the condition is reasonable in the interests of the living conditions of the occupiers of the neighbouring property and whether the wording of the condition is precise.

Reasons for the Recommendation

6. The appeal site comprises a newly-built two-storey dwelling within a residential area which was constructed in part of the rear garden of No.72 Airedale Terrace. The dwelling, which has an unusual design seemingly to take into account its close proximity to the boundary with the adjoining property, features three partially obscure-glazed canted bay windows to the south (side) elevation. The two windows nearest to the dwelling at No.74 serve a bedroom with the third window serves an en-suite bathroom.
7. The condition refers to "*All windows in the southern (side) elevation of the building...*". Whilst the side elevation in question faces south-south-east, the orientation of the property, and the details on the approved plans, is such that the correct elevation and part of the windows to which the condition refers are readily identifiable. I am therefore satisfied that the condition is precise.
8. Design Principle 2 of the Householder Supplementary Planning Document (SPD), adopted in 2012, requires that extensions and alterations should not cause unacceptable harm to the privacy of neighbours. Specifically, the principle states that two-storey extensions will not normally be acceptable if there is less than 7 metres between a first-floor habitable room window of an extension and a boundary which adjoins a neighbour's private or semi-private garden. While this principle applies to extensions to dwellings, it is reasonable in this case to apply these standards to this new-build property given the proximity to the neighbouring properties.
9. The canted bay windows that are the subject of this appeal are only just within the boundary that adjoins the rear garden of No.74, and therefore would not comply with the separation standards set out in Design Principle 2 of the SPD if not obscure glazed and fixed shut. Moreover, it seems to me that given their projecting nature, located at first floor level, immediately adjacent to the boundary of the neighbouring property, the windows have the potential to be intrusive and as such have a harmful impact on the living conditions of the adjoining occupiers.
10. The proposal would allow the middle of the three windows, marked as window W2 on the drawings submitted in the appellant's statement and which serves a bedroom, to be top-hung so as to serve as an escape window. The window faces towards the dwelling at No.74 and while the views would be limited by the nature of its top opening mechanism, the proposed window would nevertheless provide clear views of the rear garden. In addition, although I note the angle between the properties is oblique, there would also be a degree of overlooking of habitable room windows at the rear of that property.
11. The appellant states that the juxtaposition of the bedroom window and the neighbouring property at No.74, is similar to that between the rear bathroom window and No.72 Airedale Terrace. However, that window is not a projecting

window and does not lie immediately on the boundary between the two properties.

12. I acknowledge that the escape window could satisfy the requirements of building regulations. However, a condition which would restrict its use for emergency escape only would be neither reasonable nor enforceable. The Council has suggested other means by which the room could be made to comply with building regulations and there is no evidence before me on this matter to the contrary.
13. The proposed window to the en-suite bathroom would be bottom-hung and the appellant suggests it could be restricted by a mechanism that would allow the window to open at the top by a maximum of 100mm. I acknowledge that the window would provide ventilation and would not be used as an escape window and therefore does not need to be fully open. However, as with the other windows, at first floor level and in such close proximity to the boundary, the window opening by even a limited degree is likely to result in overlooking of the garden. Moreover, a condition requiring the restriction on opening would be unenforceable and, it seems to me, unreasonable given that the permission is for the life of the development not just the current occupiers.
14. If the works required by condition 6 are not carried out then the harm that would be caused to the living conditions of the occupants of No.74 Airedale Terrace would be significant. I therefore find the condition to be necessary and reasonable, in line with paragraph 55 of the National Planning Policy Framework. In addition, for these reasons the amendment of the condition would be contrary to policy DS5 of the Core Strategy Development Plan Document and the Householder Supplementary Planning Document, which amongst other things seek to protect the living conditions of the occupants of neighbouring properties.

Conclusion and Recommendation

15. For the reasons given above and having had regard to all other matters raised, I recommend that the appeal is dismissed.

Darren Ellis

APPEAL PLANNING OFFICER

Inspector's Decision

16. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the appeal is dismissed.

S Ashworth

INSPECTOR