



Appeal Decision

Site visit made on 7 October 2019 by Ben Phillips Bsc Msc

Decision by R C Kirby BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 October 2019

Appeal Ref: APP/F0114/D/19/3234336

Ranikhet Farm, Park Corner, Freshford, Bath BA2 7UQ

- 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 Gerald Rideout against the decision of the Bath and North East Somerset Council.
 - The application Ref 19/01474/REM dated 7 April 2019, was refused by notice dated 19 June 2019
 - The application sought planning permission for erection of two storey extension without complying with a condition attached to planning permission Ref 09/02302/FUL dated 26 August 2009.
 - The condition in dispute is No 4 which states that: *'The proposed North West first floor window shall be non-opening and glazed with obscure glass and permanently retained as such.'*
 - The reason given for the condition is: *'To safeguard the amenities of adjoining occupiers from overlooking and loss of privacy.'*
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a two storey extension at Ranikhet Farm, Park Corner, Freshford, Bath BA2 7UQ in accordance with the application Ref 19/01474/REM dated 7 April 2019 without complying with condition No 4 previously imposed on the planning permission Ref 09/02302/FUL dated 26 August 2009 but otherwise subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 195.S001, 195.P001 and 195.P002.
 - 2) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification) no windows, roof lights or openings, other than those shown on the plans hereby approved, shall be formed in the north west elevation of the property.
 - 3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification) no extension, external alteration or enlargement of the dwelling shall be undertaken other than those expressly authorised by this permission.

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.

Main Issue

3. The main issue of the appeal is the effects that removing the condition would have on the living conditions of the occupiers of The Hollies, with particular regard to privacy.

Reasons for the Recommendation

4. The appeal property sits at an elevated level above its northern neighbour, The Hollies. It is set back from the highway, and its side elevation within which is the first floor window to which the appeal relates, faces towards the garden area of The Hollies. The window in question is a secondary window serving a first floor living space.
5. The window is located some distance away from the rear elevation of the Hollies and the area of garden closest to it. There would be no direct views from the window towards the rear of The Hollies because of the position of the window relative to it, the presence of outbuildings within the garden of Mundy's Cottage and mature landscaping.
6. Moreover, in the main, filtered views into other parts of the garden from the window would only be likely to be achieved because of the presence of boundary treatment and mature vegetation. The removal of the disputed condition would be unlikely to result in the garden area of The Hollies being less pleasant to use. The proposal would not result in a loss of privacy to the garden, over and above the existing situation, where there is an element of mutual overlooking given the tight knit nature of development in the locality.
7. It is concluded that the removal of the requirement for this window to be obscure glazed and unopenable would have no harmful effect on the living conditions of occupiers of The Hollies with respect to privacy. The proposed development would therefore comply with Policy D6 of the Bath and North East Somerset Local Plan 2011-2029 Core Strategy & Placemaking Plan - District-wide Strategy and Policies and paragraph 127 of the National Planning Policy Framework which, among other matters, collectively seek to adequately protect and not cause significant harm to living conditions and amenity.

Conditions

8. The guidance in the Planning Practice Guidance (PPG) makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. The extension has been constructed and the Council has not drawn my attention to any conditions which have not been complied with.
9. However, to ensure that the development is carried out as approved, a condition making reference to the approved drawings is necessary. The original permission included conditions controlling the installation of new openings in the north western elevation of the property and extensions and alterations. Such conditions are necessary to protect the living conditions of nearby occupiers and the character and appearance of the area. I will impose these

conditions, with revised wording to reflect the change in circumstances and the guidance in the PPG.

10. The Council has suggested that I impose a time limit condition for the new window to be installed, albeit not specifying what this period should be. However, s73(5) of the 1990 Act sets out that planning permission should not be granted under s73 to the extent that it has the effect to change a condition subject to which a previous planning permission was granted by extending the time within which development must be started. Accordingly, I have not imposed a time limit condition.

Other Matters

11. The personal circumstances of the occupiers of The Hollies are noted, as are the matters raised in the letters of objection initially submitted to the planning application. I have determined the proposal on its merits and against the development plan taken as a whole and found that no harm or conflict would occur. These matters do not alter the conclusion that I have reached.

Recommendation

12. For the above reasons and having regard to all other matters raised, I recommend that the appeal should be allowed and a new planning permission should be granted without the disputed condition.

B Phillips

APPEALS PLANNING OFFICER

Inspector's Decision

13. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the appeal is allowed and I shall grant a new planning permission without the disputed condition.

R C Kirby

INSPECTOR