



Appeal Decisions

Site visit made on 14 August 2019

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 18 November 2019

Appeal Ref: APP/R0660/W/19/3229227

2A Clifton Street, Alderley Edge SK9 7NW

- The appeal is made under section 78 of Town and Country Planning Act 1990 against a grant of planning permission subject to a condition.
 - The appeal is made by Mauricio Rodriguez and Paul Smith against the decision of Cheshire East Council.
 - The application ref 18/4792M dated 25 September 2018 was granted on 7 January 2019 and planning permission was granted subject to a condition.
 - The development permitted is retrospective application for replacement windows and conversion of garage to provide additional ensuite bedroom.
 - The condition in dispute is No 1 which states that: *'The elevated first and second floor windows on the east facing elevation shall be glazed using obscured glass to a minimum of level 3 of the Pilkington scale of obscuration. The window shall be non-opening unless the parts of the window are more than 1.7 metres above the floor of the room in which the window is installed. The replacement obscured glazing shall also be installed within 3 months of the date of this decision and they shall be kept at this level of obscurity at all times thereafter.'*
 - The reason given for the condition is: *'to protect the residential amenities of the occupants of the adjoining facing property'.*
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Paul Smith and Mauricio Rodrigues against Cheshire East Council. This application is the subject of a separate Decision.

Background and Main Issue

3. Planning permission was granted for what was described as replacement windows and conversion of the garage to a bedroom at 2A Clifton Street by the Council on the 7 January 2019. There was only one condition imposed on the grant of planning permission which related to the new windows that had already been installed.
4. The planning application was therefore retrospective and the Council's delegated report referred to harmful overlooking being generally significant enough to justify a refusal in most cases. However, the Council considered it reasonable to impose the standard wording of the condition contained in Paragraph A.3.(b) to Schedule 2, Part 1, Class A of the Town and Country

Planning (General Permitted) (England) Order 2015. The condition required the glazed windows to be obscure glazed and non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed. As the windows had already been installed, replacement obscure glazing was to be installed within 3 months. The appellants dispute that this condition is necessary.

5. The main issue is whether the condition is reasonable and necessary to protect the living conditions of the occupiers of No 2 Clifton Street with particular regard to overlooking and privacy.
6. The appeal dwelling is close to the corner of Clifton Street and London Road. The south side of Clifton Street is largely residential with traditional dwellings that have long narrow gardens. London Road is largely made up of shops at the front with other uses taking place at the rear as the buildings on London road are substantial. Whilst the postal address of the appeal dwelling is Clifton Street, the appeal dwelling forms the rear of a larger building that fronts onto London Road.
7. The appeal dwelling therefore consists of two sides and a gable end elevation. The gable end faces towards the back gardens of the dwellings on Clifton Street and originally had 4 modest windows on the first and second floor with two windows on each floor. It is these windows that have been replaced.
8. There are also three windows at first floor on the northern side elevation and two glass block windows on the first floor of the southern side elevation. In front of the gable end elevation, there is an access way for vehicle and pedestrian access with the garden wall of 2 Clifton Street forming the boundary between the access and the garden of No 2. Although the access way is of varying widths, the appeal dwelling is approximately 5 metres from the garden wall of No 2.
9. The new windows to the first floor are approximately 0.7 metres by 1.8 metres in height and the two at second floor are approximately 0.5 metres by 1.6 metres. Although described as windows by the parties, the windows resemble single patio doors with a single frame and one single pane of glass and a door handle and lock in the centre. The doors each have a glazed guard fixed to the outside brickwork. Although currently clear glass, the appellants propose obscure glazing to these guards.
10. The position, design and size of the new windows means that occupiers of the appeal dwelling could directly overlook the garden of No 2 Clifton Street. Whilst there are views of the garden from all of the new windows, the overlooking aspect is more pronounced from the second floor windows due to the height of the appeal dwelling. The narrowness of the gap between the rear of the appeal dwelling and the garden adds to the overlooking aspect as although the garden wall is tall, it is not sufficiently tall to provide privacy from first and second floor levels.
11. The appellants' view is that the degree of overlooking is not significantly different to what existed previously and that obscuring the outside guards would mean that only the upper portion of the door would provide an outlook. However, obscuring the guards would not significantly lessen the overall effect. The parties indicate that the original windows on both floors were 0.7 metres by 1 metre wide. The first floor windows are now 0.7 metres wide by

1.8 metres high and the second floor windows are now 0.5 metres by 1.6 metres. Whilst the appellant has referred to the glazing free from obscuration in the first floor windows being only 200 millimetres greater with the obscured guards, the change from windows to glazed doors does alter the nature of the appeal proposal to a significant degree in relation to overlooking and privacy.

12. Overlooking and privacy harm is likely to arise from occupiers of the appeal dwelling standing by or walking passed the doors and looking out at eye level. The guards are around 1m tall and even if they are obscured they are not set sufficiently high to offer meaningful mitigation to the actual and perceived overlooking that is currently possible in relation to 2 Clifton Street, and the harm that would arise to the living conditions experienced there. The close proximity of the appeal dwelling to the garden of No 2 does mean that the impact of any increase in glazed elements is more pronounced.
13. The appellants are concerned about the impact upon their living conditions with regard to ventilation and sunlight and outlook. The appellant refers to the replacement windows as principle windows. However, there are other light sources. There are two windows on the northern elevation of the living room and a third window to the stairwell. There are three floor to ceiling glass panels between the living room and the stairwell. To the south elevation where the kitchen is situated there are two glass block windows. I have not been advised of any restrictions that would prevent any existing side windows from being opened particularly as they do not directly overlook any other dwellings and they do provide light. I have not been advised that it would not be possible for the appellants to alter the style of the glass block windows which are on the south side of the appeal dwelling to increase light.
14. The appellants consider that the condition is not in parity with the perceived issue of overlooking. However, the nature of the appeal dwelling as a conversion at the back of a larger building does mean that the windows to the appeal dwelling are not particularly large. There would be limited outlook from the replacement windows due to the obscure glazing. However, the limited outlook has be balanced with the overlooking issues that the appeal proposal with patio style windows has created.
15. Moreover, I note the recently recorded fire at the adjacent property, which resulted in ventilation implications at the appeal property. While I accept that this could have had very serious implications, the condition does allow for top opening windows above 1.7m. The replacements as fitted are single pane and so apparently cannot be opened in such a way, however, I am not persuaded that the condition is inherently unreasonable on this point given it provides for some natural ventilation. I further note the appellants' view that the second floor windows do not extend above 1.7m in height and so could not be opened in compliance with the condition regardless of the style of window installed. However, it is not demonstrated from the evidence before me that sufficient natural ventilation could not be achieved from other windows that are not subject to this appeal together with condition-compliant windows where the height of the window opening allow.
16. The second floor has rooflights which are commonly a source of light when a higher floor is created in the roof space and the appellant has chosen to reduce the width of the second floor windows. The test here is not solely whether the second floor arrangements for lighting would be allowed were

this a new proposal. In dealing with the application, consideration has to be given to the living conditions of nearby occupiers as well.

17. The floor plan of the original approval is relied upon by the appellants to show that windows were approved on the east elevation. However, the issue in dispute is the impact of the new windows rather than any suggestion that any windows on the eastern elevation are unacceptable. It is not disputed that the distances and relationship with No 2 Clifton Street remain the same. The appellants' photographs clearly show the previously installed windows as being smaller than those subject to this appeal, and not at floor level. While the photographs provided by the appellants do show an original window which is opened inwards, whereas the Council has referred to sash windows, this does not significantly alter the impact of the new windows in relation to neighbour privacy.
18. The new windows which open back for their full length allow an occupier to stand at the door and look out and the proposed obscured guards would not meaningfully address this. I am also not satisfied that the increase in depths of the window casements mitigates the overlooking harm I have identified, particularly if the occupiers of the appeal dwelling can open the door and look out or lean on the guard.
19. Whilst the appellants refer to no robust evidence of significant overlooking, I do not find that to be the case. From outside, the proximity of the new windows to the garden of No 2 and the height difference illustrates the nature of the overlooking. I saw during my site visit and from the submitted photographs that the relationship between 2A and 2 Clifton Street potentially allows for harmful overlooking, and there is nothing before me to indicate that this relationship has materially altered since the condition was imposed.
20. The appellants refer to the condition being cumbersome. It is however a typical condition. In these particular circumstances, the replacement door type windows with single panes of glass means that the whole structure must necessarily be non-opening in order to comply with the condition. A different style might allow the lower section to be fixed shut and the top to open above 1.7m where the aperture size would permit. On the evidence before me, I am not persuaded that such a solution could not be found within the scope of the condition which would remedy the privacy harm while also allowing reasonable light and ventilation. As such and given the harm I have identified in relation to living conditions at 2 Clifton Street, I find that the disputed condition is both reasonable and necessary to mitigate that harm.

Other Matters

21. As part of the appeal process, the appellants submitted a sample of window film which they said was submitted with the planning application and which they consider would achieve the obscuration referred to on the application plans being considered as part of this appeal. However, the approved plans only show obscuration of the glazed guards not the full length of the windows. Although previous emails have been submitted as part of the separate costs application, an alternative form of glazing for the full length of the windows has not been suggested as part of this appeal. Even if it were, I have insufficient information before me to make that assessment. The piece of submitted film appears to be transparent and there was no film in place at the time of my visit to assess. The appellants in their email refer to an Inspectors

decision and a Local Government Ombudsman Decision which indicate that film may be acceptable but that information is not provided. There is also no evidence before me which, for example, compares the effectiveness of the film provided with the Pilkington minimum level 3 scale of obscuration referred to in the standard condition. I do not however share the Council's view that the use of film would be unenforceable.

22. There have been a number of objections from local residents including residents living on Clifton Street. There have also been responses supporting the application. A number of supporters refer to recent improvements in the immediate vicinity of the appeal proposal such as the absence of drain odours and improved bin storage. However, those improvements are not directly linked to the style of window openings for the appeal dwelling. Similarly, any perceived improvement with regard to the character and appearance of the appeal proposal is not an issue before me and would not, in any event, alter my findings. Whilst comments are made about the access to the rear having previously being used for illegal activity and that situation having improved, I have limited evidence to support that or to show any link between the appeal proposal and any improvement. Similarly, there is limited evidence, that increased light from the appeal proposal is required to make the area safer. Whilst I have noted all of the comments of the supporters as well as the objectors, such comments do not alter my findings.

Conclusion

23. In relation to the main issue, I therefore conclude that in these particular circumstances, it is both reasonable and necessary to retain the condition in order to prevent harm to the living conditions of the occupiers of 2 Clifton Street with regard to overlooking and privacy.
24. The condition is also necessary to comply with Policy DC3 of the Macclesfield Borough Local Plan Adopted January 2004, which states that development should not significantly injure the amenities of nearby residential property due to loss of privacy.
25. For all the reasons given, I conclude that the appeal is dismissed.

E Griffin

INSPECTOR