



Appeal Decision

Site visit made on 24 September 2019 by Alex O'Doherty LLB(Hons) MSc

Decision by R C Kirby BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th January 2020

Appeal Ref: APP/F0114/W/19/3229785

34 Bristol Road, Corston, Bath BA2 9AA

- 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 Gary Austin against the decision of Bath & North East Somerset Council.
 - The application Ref 19/01064/VAR, dated 13 March 2019, was refused by notice dated 8 May 2019.
 - The application sought planning permission for erection of replacement dwelling following demolition of existing without complying with a condition attached to planning permission Ref 18/00418/FUL, dated 11 June 2018.
 - The condition in dispute is No. 2 which states that: The development/works hereby permitted shall only be implemented in accordance with the plans as set out in the plans list below.
 - The reason given for the condition is: To define the terms and extent of the permission.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of replacement dwelling following demolition of existing at 34 Bristol Road, Corston, Bath BA2 9AA in accordance with the application Ref 19/01064/VAR dated 13 March 2019, without compliance with condition number 2 previously imposed on planning permission Ref 18/00418/FUL dated 11 June 2018, subject to the conditions set out in Schedule 1.

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 appellant is seeking to vary condition 2 to allow the design of the approved dwelling to be changed by inserting a window in the side elevation at first floor level. The main issue is the effect of this change on the living conditions of the occupants of No 33 Bristol Road, Corston, with particular regard to privacy.

Reasons for the Recommendation

4. The construction of the appeal property was largely complete at the time of my site visit. The new dwelling is in close proximity to the boundary with No 33 and the proposed new window would be roughly in line with the first floor

bedroom window at No 33. It is likely that the window would be visible from the ground floor window of No 33. Whilst hedgerow runs along the party boundary, this could be removed at any time, either by present or future occupiers of the appeal property, and so cannot be relied upon to protect the privacy of neighbouring occupiers.

5. However, the proposal is for a fully sealed and obscurely-glazed window, which would prevent occupiers of the room from seeing out of the window into the garden area of No 33 and its living accommodation, thereby protecting the privacy of the occupiers of this property. This matter could be controlled by a suitably worded planning condition. Figures provided by the appellant, which have been confirmed by the Council, show that the distance between Nos 34 and 33 is over 11 metres. As such, I consider that any perception of overlooking from the new window would be minimal, due to the separation distance and the size of the proposed window.
6. Given the above I conclude that the revised design of the dwelling would not result in a loss of privacy to the occupants of No 33 Bristol Road and harm to their living conditions would not result. The proposal accords with Policy D6 of the Bath and North East Somerset Local Plan 2011-2029: Placemaking Plan (adopted July 2017) which seeks to allow existing and proposed development to achieve appropriate levels of privacy.

Other Matters

7. Interested parties have queried whether this window is needed, due to the existing windows at the appeal property, but the amount of light entering that room does not relate directly to the main issues in this appeal. I note the representations regarding the age of an occupant at No 33, but as the window would be fully sealed and obscurely-glazed, the change to the existing situation would be slight. In considering the main issue in this appeal, I have had due regard to the aims of the Public Sector Equality Duty contained in the Equality Act 2010.

Conditions

8. The guidance in the Planning Practice Guidance 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 development is nearing completion and therefore I have omitted the standard time limit condition as this is no longer necessary. Condition 3 of the original permission has already been discharged, and therefore has not been imposed either.
9. A condition is however necessary requiring that the development is undertaken in accordance with the approved plans to provide certainty. In accordance with this appeal proposal drawing ref: TWP16-BR-018 Revision C has been replaced with TWP16-BR-018 Revision D. A condition is also necessary to ensure that the window remains fixed shut and is obscurely-glazed, to safeguard the living conditions of the occupiers of No 33.
10. All the other existing conditions have been imposed, including: conditions relating to parking and turning provision, and construction vehicle access are necessary in the interests of highway safety; a condition relating to precautionary working methods compliance is also necessary to avoid harm to

protected species and to avoid ecological harm, as is a condition relating to wildlife protection and enhancement.

Conclusion and Recommendation

11. Based on the above, and having regard to all matters raised, I recommend that the appeal should be allowed.

Alex O'Doherty

APPEAL PLANNING OFFICER

Inspector's Decision

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

RC Kirby

INSPECTOR

Schedule 1 – Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 1:1250 OS Site Location Plan, TWP16-BR-009, TWP16-BR-010 Revision D, TWP16-BR-011 Revision D, TWP16-BR-012 Revision C, TWP16-BR-013 Revision C, TWP16-BR-014 Revision C, TWP16-BR-015 Revision C, TWP16-BR-016 Revision C, TWP16-BR-017 Revision C, TWP16-BR-018 Revision D, TWP16-BR-020 Revision A.
- 2) The proposed window on the side elevation (east) shown on drawing ref: TWP16-BR-018 Revision D shall be obscurely-glazed and fixed shut. Thereafter the window shall be permanently retained as such.
- 3) The existing parking and turning area to the south of the proposed dwelling shall be kept clear of obstruction and shall not be used other than for the parking of vehicles in connection with the development hereby permitted.
- 4) Vehicles associated with the construction of the development hereby approved shall access the site only via the access drive off Corston Lane and shall not use the access off the A4 Bristol Road at any time.
- 5) Works must proceed only in accordance with the recommendations in section 4.1.7 of the approved Bat Survey Report dated 10th May by Avian Ecology, and with the following measures for the protection of bats and birds, following provision of a tool-box talk to site workers:
 - Careful visual pre-commencement checks by all relevant site personnel for signs of active bird nests and bats shall be made of the interior and exterior of the building and its roof, and any crevices and concealed spaces, prior to demolition or any works affecting these areas;
 - Active nests shall be protected undisturbed until the young have fledged;
 - Works to the roof and any areas with concealed spaces or crevices shall be carried out by hand, lifting tiles (not sliding) to remove them and checking beneath each one;
 - If bats are encountered works shall cease and a licenced bat worker shall be contacted for advice before proceeding.
- 6) No occupation of the development hereby approved shall commence until:
 - (a) measures to provide benefit to wildlife, for example, bird nesting opportunities; bat boxes; hedgehog homes and access routes for hedgehogs; and wildlife friendly planting; have been installed on site according to advice provided by a suitably experienced ecologist; and
 - (b) a brief report produced by a suitably experienced ecologist confirming and demonstrating, using photographs where appropriate, completion of the measures in part (a) of this condition, has been submitted to and approved in writing by the Local Planning Authority.

All works within the scheme shall be carried out in accordance with the approved details prior to the occupation of the development and shall be retained and maintained thereafter.