



Appeal Decision

Site visit made on 13 November 2019

by T A Wheeler BSc (Hons) T&RP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 January 2020

Appeal Ref: APP/J4423/D/19/3235790

10 School Lane, Stannington, Sheffield, S. Yorkshire S6 6DD

- 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 without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mrs Patricia Tipple against the decision of Sheffield City Council.
 - The application Ref 19/01281/FUL, dated 22 March 2019, was refused by notice dated 18 June 2019.
 - The application sought planning permission for erection of rear conservatory to dwellinghouse (as amended by letter dated 25 May 2007) without complying with a condition attached to planning permission Ref 07/01188/FUL, dated 7 June 2007.
 - The condition in dispute is No 3 which states that:
The windows on the elevation of the conservatory facing the boundary with 8 School Lane shall in accordance with the applicant's letter dated 25 May 2007 only be opened for reasonable cleaning and maintenance and not for any other purpose.
 - The reason given for the condition is: In the interests of the amenities of occupiers of adjoining property.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of rear conservatory to dwellinghouse at 10 School Lane, Stannington, Sheffield S6 6DD in accordance with the application Ref 19/01281/FUL made on the 22 March 2019 without complying with condition No 3 set out in planning permission Ref 07/01188/FUL granted on 7 June 2007 by the Sheffield City Council, but otherwise subject to the following conditions:
 1. The windows in the elevation of the conservatory facing the boundary with 8 School Lane shall be glazed with obscured glass and shall not at any time be replaced with clear glass.
 2. The windows in the elevation of the conservatory facing the boundary with 8 School Lane shall, in respect of the side opening function of the casement, only be opened for the purposes of cleaning and maintenance, and in respect of the limited top opening tilt function of the casement, may be open at other times for the purpose of providing ventilation.

Procedural Matter

2. Under section 73A of the Town and Country Planning Act 1990 I consider the works subject to the appeal as an application for planning permission without complying with a condition subject to which the previous permission was granted.

Main Issue

3. The main issue is whether planning condition no 3, in respect of the restrictions it places on the opening of windows in the conservatory, is necessary in respect of the privacy of the occupiers of the adjoining property, and the prevention of disturbance arising from noise, enforceable and reasonable in all other respects.

Reasons

4. There are 2 opening windows in the conservatory which face towards the rear of the neighbouring property, where there is a patio and full length patio doors to a kitchen/diner room. There is a boundary fence but it is not of a height that would prevent overlooking. The windows are glazed with obscured glass in accordance with condition 2 of the planning permission. The windows can open inwards in 2 modes – sideways to permit cleaning, and tilting from the bottom to allow ventilation.
5. On my site visit I observed the situation from both properties. The appellant opened the windows in both modes so I could assess the degree of intervisibility. When opened in the side opening mode, as would be the case for cleaning, a full view towards the neighbouring property was possible. Were the windows to be opened in that manner on a frequent basis the living conditions of the neighbours would be compromised to an unacceptable extent.
6. However, when opened in the top opening mode, the windows tilt inwards only to a limited extent and whilst it is physically possible to see through the opening towards the neighbouring property, to do so one would need to stand close to the window and take a sideways view through the gap. Whilst a clear view can be gained of the neighbour's patio area, that towards the patio door is oblique and provides a limited level of intrusion. At the time of my site visit the reflections in the glass were such that very little could be seen inside the neighbouring property, although that may not always be the case.
7. Due to the south-east orientation of the conservatory, it can be necessary to open the windows in the tilt mode to provide adequate ventilation. The neighbour considers that other measures could be used to control the heat within the conservatory, including keeping the conservatory doors open. Leaving aside the doors to the conservatory, which the appellant may well not wish to leave open, the only other window is a small top hung light in the front elevation, which I am told does not allow enough ventilation to keep temperatures at an acceptable level.
8. In addition to visual intrusion, the neighbour is concerned about the loss of privacy due to conversations being overheard, and also possible noise disturbance from radios and televisions. However, a similar level of disturbance would be possible through the opening of the other window, or the patio doors.
9. The neighbour raises a number of other points, including the importance of protecting the privacy of their 2 young children, given that ownership of the property may change in the future. They are also concerned that having barbecues or using a jet washer on their patio may cause problems for the appellant, which they do not wish to do. These issues are not necessarily contingent on the opening of the conservatory windows, and could apply equally if there were no conservatory but a patio with doors.

10. Whilst the appellant agreed to the disputed condition at the time of the original application that does not prejudice the right to make an application to vary the condition as she has done.
11. The Council's 'Designing House Extension -Supplementary Planning Guidance from the Unitary Development Plan' advises that rear conservatories can affect privacy and recommends that either a solid side wall or fence is used to reduce overlooking. It has been suggested that allowing the appeal could set a precedent that would make the control of similar development more difficult. However, individual cases can be very different in terms of their merits and I see no reason why my conclusions in this matter should undermine the normal operation of the Council's policies in relation to such matters.
12. In light of my findings above opening the windows in the elevation of the conservatory facing 8 School Lane in tilt mode would not result in any harm to the living conditions of occupiers of this neighbouring property in terms of privacy or noise. As a result I find no conflict with Policy H14(c) of the Sheffield Unitary Development Plan (March 1998)(the SUDP).

Conditions

13. Condition 2 of the original planning permission remains relevant, although I have amended the wording in the new permission since all that is required is to ensure that the obscured glazing is retained. This is a minor, inconsequential, change therefore I have not sought the views of the parties on it. This becomes condition 1 of the new permission since a time limit condition is no longer necessary.
14. Condition 2 is an amended version of the disputed condition 3 which protects the privacy of the occupiers of no 8 School Lane whilst also providing for the reasonable ventilation of no 10 School Lane.
15. For the reasons given, I consider condition 2 to be necessary and reasonable. I also consider it to be enforceable since it would be possible for the neighbour to seek corrective action if the windows are opened in the side opening mode for prolonged periods which would demonstrably not be for cleaning.

Conclusion

16. I have considered all matters that have been raised but none demonstrate that condition 3 is necessary or reasonable in its current form and does not conform to the Framework's six tests¹. Its replacement in a new permission with the condition I have imposed would not conflict with Policy H14(c) of the SUDP which requires, amongst other things, that development should not deprive residents of privacy.
17. For these reasons, I conclude that the appeal should be allowed.

Tim Wheeler

INSPECTOR

¹ National Planning Policy Framework February 2019, paragraph 55.