The Planning Inspectorate

Appeal Decision

Site visit made on 7 January 2020

by Chris Baxter BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 January 2020

Appeal Ref: APP/J4423/W/19/3236756
3 Chorley Road, Sheffield S10 3RJ

- 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 Ian Snow against the decision of Sheffield City Council.
- The application Ref 19/01805/FUL, dated 16 May 2019, was refused by notice dated 8 July 2019.
- The application sought planning permission for demolition of existing dwellinghouse and erection of dwellinghouse including provision of parking and landscaping works without complying with conditions attached to planning permission Ref 18/02099/FUL, dated 14 August 2018.
- The conditions in dispute are Nos 3, 6 and 7 which state that:
  Condition 3: *The dwelling shall not be used unless a 1.8 metre high privacy screen has been provided along the south boundary of the south facing external terrace area. Within three months of the commencement of development full details including elevations, sections and materials of the privacy screen shall have been submitted to and approved in writing by the Local Planning Authority. The privacy screen shall be provided in accordance with the approved details and thereafter retained.*
  Condition 6: *The first floor master bedroom windows in the south elevation of the dwelling and ensuite bathroom windows to bedroom 4 located in the east elevation shall be fitted with obscure glazing to a minimum privacy standard of Level 4 Obscurity and any part of the window(s) that is less than 1.7 metres above the floor of the room in which it is installed shall be non-opening, fixed or include measures to restrict the method of opening the window(s). If restricted opening windows are proposed full details of the design, extent of opening and mechanism for restricting the opening of the window(s) shall be submitted to and approved in writing by the Local Planning Authority within three months of the commencement of the development. The windows shall be permanently retained in that condition thereafter.*
  Condition 7: *The second floor velux windows in the south roof plane of the dwelling with the exception of the velux windows to the master bedroom dressing/bathroom mezzanine level; shall be fitted with obscure glazing to a minimum privacy standard of Level 4 Obscurity and any part of the window(s) that is less than 1.7 metres above the floor of the room in which it is installed shall be non-opening, fixed or include measures to restrict the method of opening the window(s). If restricted opening windows are proposed full details of the design, extent of opening and mechanism for restricting the opening of the window(s) shall be submitted to and approved in writing by the Local Planning Authority within three months of the commencement of the development. The windows shall be permanently retained in that condition thereafter.*

- The reasons given for the conditions are:
  Condition 3: *In the interests of the amenities of adjoining properties.*
  Condition 6: *In the interests of the amenities of occupiers of adjoining property.*
  Condition 7: *In the interests of the amenities of occupiers of adjoining property.*

Decision

1. The appeal is allowed and planning permission is granted for demolition of existing dwellinghouse and erection of dwellinghouse including provision of parking and landscaping works at 3 Chorley Road, Sheffield S10 3RJ in accordance with the application Ref 19/01805/FUL, dated 16 May 2019, without compliance with condition numbers 3, 6 and 7, and subject to the conditions in the attached schedule.

Procedural Matter

2. At the time of my site visit there was no privacy screen along the south boundary of the south facing terrace and the south facing windows in the first floor bedroom and the rooflights in the attic room were in place without any obscure glazing. I have dealt with the appeal accordingly.

Background and Main Issue

3. The proposal seeks to remove condition 3 and 7 which would remove the need to install a privacy screen on the south terrace area and allow glass in the roof lights of the south elevation which would not be obscurely glazed. The proposal also seeks the variation of condition 6 to allow the first floor windows in the master bedroom to be cleared glazed and would retain obscure glazing in the en-suite bathroom windows.

4. The main issue is therefore the effect of the proposal on the living conditions of the occupiers of 5 Chorley Road (No 5) with regards to privacy.

Reasons

5. The windows in the south elevation of the appeal property and the south terrace area are not close to the boundary with No 5. Due to the positioning of the property at No 5 and the distance from the appeal site, there is no direct overlooking from the windows and terrace areas of the appeal property that results in loss of privacy to the windows and doors of No 5.

6. The windows in the south elevation and the south terrace area do face towards the whole of the rear garden area of No 5. The appeal property is a tall building with large window openings and is set at a substantially higher level than that of No 5. The primary views from the windows and terrace areas to the south of the appeal property are over and beyond, and not directly down into the garden of No 5.

7. It is not uncommon in residential areas, for houses to have some level of overlooking into the garden areas of neighbouring properties. There are some trees located on the boundary with No 5 which are deciduous and would offer limited screening, particularly during winter months. Whilst there are some views from the appeal site into the garden of No 5, given the site levels and height of the appeal property, there are no harmful effects to the living conditions of the occupiers of No 5 in respect of overlooking and privacy.

8. I therefore find that the proposal would not have a harmful effect on the living conditions of the occupiers of No 5 in respect of privacy. The proposal would be in accordance with Policy H14 of the Sheffield Unitary Development Plan 1998 and the National Planning Policy Framework which seeks development to not deprive residents of privacy.

9. It has been described that appeal dwelling is taller and larger than the previous dwelling on site and extends beyond the rear elevation of the previous house. I note that the rooms which have the windows subject of this appeal, do have alternative outlooks from windows that are not obscurely glazed. I also acknowledge that not all the windows in the south elevation were required to have obscure glazing. These matters however, do not alter my findings on the main issue. Concerns have also been raised that the appellants supporting photos are not representative of the current views. My assessment of the appeal has been made on all the evidence submitted including observations from my site visit.

10. The appellant has referred to a number of other applications for residential development. Insufficient evidence has been provided with regards to these other schemes for me to determine whether they are comparable to the appeal scheme. I have therefore attached no weight to these other schemes in the consideration of this appeal.

Conditions

11. A new planning permission is being granted which is separate from the original permission. Any conditions attached to the original permission will not be automatically carried over. I have therefore considered whether any of the previous conditions should be imposed along with any new conditions.

12. The standard time limit condition and condition relating to the approved plans and materials are not necessary given the property has been completed. Condition 2 is the modified condition relating to obscure glazing in the en-suite bathroom windows to bedroom 4, as well as condition 3 which also relates to obscure glazing. These conditions are necessary in the interests of protecting living conditions for neighbouring occupiers.

13. There is a condition on the original planning permission which requires the submission of further details to be discharged. This condition relates to boundary treatment to the northern site boundary. I have no clear evidence before me of the details that were submitted in order to discharge this condition or whether this condition has been discharged. I have therefore imposed this condition, although in a modified manner for the sake of clarity and given the development has been implemented. In the event that this condition has been discharged, it is a matter which can be addressed by the parties.

14. Some of the conditions are drafted in a particular form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matters because the development has already taken place. The purpose and effect of the conditions are therefore to ensure that the use of the site authorised by the grant of planning permission may only continue if the appellant complies with each one of a series of requirements.

Conclusion

15. I therefore conclude, for the reasons given above, that the appeal is allowed.

Chris Baxter

INSPECTOR

Schedule of Conditions

1) Unless within 3 months of the date of this decision details of a suitable means of boundary treatment to the northern site boundary shall be submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 3 months of the local planning authority's approval, the use of the site shall cease until such time as a scheme is approved and implemented.

   If no scheme in accordance with this condition is approved within 6 months of the date of this decision, the use of the site shall cease until such time as a scheme approved by the local planning authority is implemented.

   Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter remain in use.

   In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

2) The en-suite bathroom windows to bedroom 4 located in the east elevation shall be fitted with obscure glazing to a minimum privacy standard of Level 4 Obscurity and any part of the window(s) that is less than 1.7 metres above the floor of the room in which it is installed shall be non-opening, fixed or include measures to restrict the method of opening the window(s). If restricted opening windows are proposed full details of the design, extent of opening and mechanism for restricting the opening of the window(s) shall be submitted to and approved in writing by the Local Planning Authority within three months of the date of this decision. The windows shall be permanently retained in that condition thereafter.

3) The first floor window in the north elevation of the building facing No. 1 Chorley Road shall be fully glazed with obscure glass to a minimum privacy standard of Level 4 Obscurity and any part of the window(s) that is less than 1.7 metres above the floor of the room in which it is installed shall be non-opening. fixed or include measures to restrict the method of opening the window(s). If restricted opening windows are proposed full details of the design, extent of opening and mechanism for restricting the opening of the window(s) shall be submitted to and approved in writing by the Local Planning Authority within three months of the date of this decision. The windows shall be permanently retained in that condition thereafter.