



Appeal Decision

Site visit made on 20 January 2020 by A J Sutton BA Hons DipTP DMS MRTPI

by David M H Rose BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 March 2020

Appeal Ref: APP/P4605/D/19/3239383

394 Highters Heath Lane, Maypole, B14 4TR

- 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 Tyler against the decision of Birmingham City Council.
 - The application Ref 2019/04880/PA, dated 4 June 2019, was refused by notice dated 15 August 2019.
 - The application sought planning permission for retention of conservatory and dormer with remedial works without complying with conditions attached to planning permission Ref 2017/08440/PA, dated 24 November 2017.
 - The conditions in dispute are Nos 2 and 3 which state that: No 2 *'The windows in the side elevations of the conservatory hereby approved facing the boundaries with Nos. 392 and 396 Highters Heath Lane shall be fitted with obscured glazing. Details of the glazing shall be submitted for the written approval of the Local Planning Authority within two months of this consent and should be installed as approved within two months of the condition's approval, and thereafter maintained as such.'* And No 3 *'No development shall take place on the rear dormer until samples of the material to be used in the construction of the external surfaces of the development hereby permitted. These materials shall be submitted for the written approval of the Local Planning Authority within two months of this consent and should be installed as approved within two months of the condition's approval.'*
 - The reasons given for the conditions are: No 2 *'In order to safeguard the amenities of the occupiers of the adjoining property'* And No 3 *'In order to secure the satisfactory development of the application site'*
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Decision

1. The appeal is dismissed.

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.

Background and Main Issues

3. Planning permission was granted for the retention of conservatory and dormer with remedial works at the appeal property (Ref 2017/08440/PA) as set out, principally, in the conditions which are the subject of this appeal.

4. I observed on the site visit that the rear dormer window has been clad in black material and the side elevations of the conservatory comprise obscured/frosted glazing panels.
5. The appellant is seeking to vary the wording of condition 2, requesting that 'film should be on sides [elevations of the conservatory] only, not rear'.
6. He also seeks to remove condition 3 or amend the wording to allow the rear dormer to 'remain without Bedec multi surface paint' and 'conservatory roof to remain as existing.' I would highlight that condition 3 is currently limited to the requirement to seek approval of materials to be used on the external surface of the rear dormer and to be submitted and installed within a stipulated time period.
7. The Council approved an application to discharge conditions 2 and 3, stating that in respect to condition 2, proposed commercial 2 way frosted film glazing was acceptable and for condition 3 Bedec multi surface paint (chocolate) was approved.¹
8. The decision notice states the proposed variation to the conditions has been refused as it would be detrimental to the residential amenities of the occupants of No 396 Highters Heath Lane by way of loss of light and outlook, which is not relevant to condition 3.
9. It also states that the conservatory and dormer by virtue of their size and design would not adequately reflect the existing character and appearance of the appeal property. Furthermore, submitted information makes reference to aspects of the development which may not accord with approved plans of the planning permission (Condition 1). Whilst this may well be the case the appeal before me relates to the variation of conditions 2 and 3 which are limited to glazing on the side elevations of the conservatory and materials for the external surfaces of the rear dormer respectively and this decision addresses these matters accordingly.
10. Therefore, the main issues are:
 - the effect of varying condition No 2 on the living conditions of occupiers of No 396 Highters Heath Lane; and
 - the effect of varying or removing condition No 3 on the character and appearance of the host dwelling.

Reasons for Recommendation

11. The much altered appeal property is a semi-detached dwelling set on a slope of a hill with similar properties on this part of Highters Heath Lane which have modest length narrow rear gardens.
12. The property has been extended on the southern elevation at the boundary with No 396. A large box style dormer with two windows covers the majority of the width of the original rear roof of the appeal property. A single storey rear extension has also been constructed to which a conservatory has been attached, positioned close to the southern boundary of the appeal property. Properties in the immediate vicinity of the dwelling appear relatively unaltered, particularly with regards roof extensions, with only one dormer immediately apparent at the rear of a property on the brow of the hill.

¹ Ref 2018/04093/PA dated 24 July 2018

Living Conditions

13. The appeal property benefits from a slightly elevated position in relation to No 396. The rear gardens of both dwellings also have a sense of openness bounded by a relatively low wall/fence. The projection of the conservatory combined with the extension, its proximity to the shared boundary and the higher position of the appeal property affects the outlook and privacy of those using ground floor habitable rooms in No 396, resulting in an increased sense that they are being overlooked. I note that the development does not have an adverse effect on light as the rear of No 396 benefits from a south eastern aspect.
14. Whilst not addressing the matter of outlook specifically, it was reasonable and necessary to attach a condition to the planning permission to ensure that views from the development were obscured on the side elevations of the conservatory in order to safeguard the privacy of occupiers of the adjoining property and those using the appeal property.
15. I observed on the site visit that the side elevations of the conservatory have been constructed using a material which appears to be obscured glazing panels with a patterned detail. Whilst I am unable to confirm the specific substance of this material be it film over glass or a glazing panel, regardless the effect is the same. It clearly comprises the obscured glazing required, which appears to satisfy the issue seeking to be addressed by the condition.
16. Condition 2 is constructed in a precise manner, relating solely to windows in the side elevations of the conservatory and that they shall be fitted with obscured glazing. It does not place a requirement on the appellant to fit obscured glazing in the rear elevation of the conservatory and therefore the proposed changes to the wording of the condition in this respect would not appear necessary.
17. It is therefore concluded, in the interest of safeguarding the residential amenities of the occupants of No 396, and for other reasons outlined above the wording of condition 2 should not be varied. This is compliant with advice set out in Paragraph 3.14C of the Birmingham Unitary Development Plan 2005 (UDP) and the Extending Your Home Supplementary Planning Document 2007 (SPD) which requires development not to spoil neighbours enjoyment of their homes through loss of privacy and in respect to conservatories obscured glazing to side windows may be required to 'protect yours and your neighbours privacy.'
18. Policy PG3 of the Birmingham Development Plan 2017 (Development Plan) and Paragraph 3.14 D of the UDP relate to matters of character and appearance. The decision notice also references the 45 Degree Code 2006, whilst the conservatory may exceed the 45° rule, this is not a matter of dispute in terms of this particular condition and therefore has not been decisive in this appeal.

Character and Appearance

19. By virtue of its mass and size, the large dormer dominates the rear roof of the appeal property, altering the property's appearance. As such it was reasonable and necessary to attach a condition for the approval of external surface materials to ensure the character and appearance of the dwelling was protected.

20. Condition 3 requires the approval of materials which would comprise the external surfaces of the dormer and the Council has approved Bedec multi surface paint MSP, the colour of which is specified as chocolate. However, the dormer as built is clad by black material which, in my view, emphasises its scale, bulk and prominence and fails to blend with the existing roof tones of the appeal property and surrounding roofscape and in doing so harms the appearance of the dwelling.
21. As such I agree that the colour choice of the external surface material as originally approved by the Council would soften the appearance of the development and would harmonise it more effectively with the original roof, thereby protecting the appearance of the host dwelling. Indeed, such tones were observed on the external finish of a rear dormer on a dwelling north of the appeal property on Highters Heath Lane, which made it appear less stark in its setting.
22. The appellant has also requested that the condition be modified to allow the conservatory roof to remain as existing. However, condition 3 specifically relates to the rear dormer development. Matters relating to the conservatory roof are addressed by condition 1 within the approved plans.
23. In light of the foregoing, I find no justification to vary the wording of the condition or to remove it, although I note the appellant's comment that the condition does not place an obligation to retain the approved material.
24. I conclude, in the interest of protecting the character and appearance of the appeal property condition 3 should not be varied or removed, compliant with Policy PG3 of the Development Plan, Paragraphs 3.14C-D of the UDP and the SPD which collectively requires high quality design which reinforces a sense of place and local distinctiveness.

Other Matters

25. I have had regard for the Coleshill appeal decision, however this case relates to a property in North Warwickshire and principally concerns contravention of guidance relating to the 45° rule which is not a matter before me in this case.
26. I have also had regard for the potential financial hardship resulting from this decision. I have nothing before me confirming the personal circumstances of the appellant and therefore I can only give limited weight to this matter in reaching my decision.
27. I note the thread of email correspondence submitted by the appellant which indicates that an officer of the Council found the existing cladding for the rear dormer acceptable. Whilst I have had regard for this statement, this position was subsequently retracted by the Council and I am required to consider the proposal before me. As outlined above I conclude that the retention of the cladding would be detrimental to the appearance of the host dwelling.
28. Whilst permitted development rights have changed since the original grant of permission, I do not find these to be decisive in the consideration of the disputed conditions before me.

Conclusion and Recommendation

29. For the reasons outlined above, and having regard to all other matters raised, it is recommended that the appeal should be dismissed.

A J Sutton

APPEAL PLANNING OFFICER

Inspector's Decision

30. I have considered all the submitted evidence and concur that the appeal should be dismissed.

David MH Rose

INSPECTOR