



Appeal Decision

Site visit made on 11 March 2020

by Martin Whitehead LLB BSc(Hons) CEng MICE

an Inspector appointed by the Secretary of State

Decision date: 19 March 2020

Appeal Ref: APP/M4320/W/19/3236720

2 and 2A Fishermans Close, Formby L37 1XX

- 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 and Mrs Fletcher against the decision of Sefton Metropolitan Borough Council.
 - The application Ref DC/2019/00965, dated 20 May 2019, was refused by notice dated 19 August 2019.
 - The application sought planning permission for Variation of Condition No 2 attached to planning application DC/2017/01128 refused 20 October 2017 - allowed on appeal 19 April 2018 ref APP/M4320/W/18/3194662 - for alterations to the roof designs and elevations, without complying with a condition attached to planning permission Ref DC/2018/01822, dated 19 November 2018.
 - The condition in dispute is No 11 which states that: *'The first floor en-suite and dressing room windows to Bedroom 2 in the north elevation of 'Fletcher House' shall not be glazed otherwise than with obscured glass and top opening and shall thereafter be permanently retained as such.'*
 - The reason given for the condition is: *'To safeguard the amenities of occupiers of 3 Fishermans Close.'*
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Decision

1. The appeal is allowed and planning permission is granted for variation of Condition No 2 attached to planning application DC/2017/01128 refused 20 October 2017 - allowed on appeal 19 April 2018 ref APP/M4320/W/18/3194662 - for alterations to the roof designs and elevations at 2 and 2A Fishermans Close, Formby L37 1XX in accordance with the application Ref DC/2019/00965, dated 20 May 2019, without compliance with condition number 11 previously imposed on planning permission Ref DC/2018/01822, dated 19 November 2018 and subject to the following conditions:
 - 1) The development hereby granted shall be carried out in accordance with the following details and plans, so far as they are still subsisting and capable of taking effect:
 - PL7002 SL.01.Rev H - Site layout with street scene
 - PL7002 FH.FP.01 G - Fletcher House - floor plans
 - PL7002 FH.EL.01.G - Fletcher House - elevations 01
 - PL7002 FH.EL.02.G - Fletcher House - elevations 02
 - PL7002 LH.FP.01.F - Latham House - floor plans
 - PL7002 LH.EL.01.G - Latham House - elevations
 - PL7002 EW.01.Rev F - Landscaping & external works

- 2) The sustainable drainage scheme approved 26 June 2018 ref DC/2018/00899 shall be implemented and managed throughout its lifetime.
- 3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any subsequent Order or statutory provision revoking or re-enacting the provisions of that Order), no garages, outbuildings or other extensions to the dwellings shall be erected.
- 4) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any subsequent Order or statutory provision re-enacting or revoking the provisions of that Order), no window or dormer window shall be added to the properties.
- 5) Any trees or plants that within a period of five years after planting, are removed, die or become, in the opinion of the local planning authority, seriously damaged or defective shall be replaced with others of a species, size and number as originally approved in the first available planting season unless the local planning authority gives its written consent to any variation.

Preliminary Matters

2. The appellant has made an application for costs against the Council. This application is the subject of a separate Decision.
3. Whilst the address given for the permitted development is 2 Fishermans Close, the address of the property to which the disputed condition relates is 2A Fishermans Close. I have amended the site address accordingly to cover the whole of the development that has been implemented under this permission.

Main Issue

4. The main issue is whether the condition is reasonable and necessary to protect the living conditions of the occupants of 3 Fishermans Close, with particular regard to matters of privacy.

Reasons

5. The development permitted on appeal ref APP/M4320/W/18/3194662, described as the *'demolition of the existing dwelling and construction of two detached dwellings with garages and associated drives'* at 2 Fishermans Close, was changed under planning permission ref DC/2018/01822. The Council has indicated that the development that has been implemented is that granted under planning permission ref DC/2018/01822 and the appellant has referred to the condition in dispute as that being attached to this permission. The resulting two dwellings are numbered 2, which is referred to as 'Latham House', and 2A, which is referred to as 'Fletcher House' under the planning conditions attached to this permission. The disputed condition refers to 'Fletcher House', which appears to me to have been substantially completed.
6. Condition 11 of planning permission ref DC/2018/01822 is very similar to Condition 10 imposed on the development permitted on appeal, in that the condition relates to the *'first floor en-suite and dressing room windows to Bedroom 2 in the north elevation'*. Condition 2 of planning permission

ref DC/2018/01822 refers to amended plans from the development permitted on appeal. These amended plans indicate that the en-suite and dressing room to Bedroom 2 are to be provided. However, the internal layout of the bedroom has been altered to create a larger room without the dressing room and en-suite. The Council has not indicated that this is unlawful, albeit that the Council has suggested that it had initially been carried out without the appropriate consent. The window that has been installed to Bedroom 2 is over 2 metres wide and one metre deep, being split into 4 units with 2 of them side opening. It is the only window that serves that room. Whilst it is more likely to be used for views than if it served a dressing room and en-suite, it is exceptional to expect such a window to be obscure glazed.

7. At my site visit I observed the views from the window. The adjacent garden and side elevation of the single storey dwelling at 3 Fishermans Close are screened by a thick hedge on the boundary. On the other side of this hedge is a driveway between it and the side of the building. The layout of the appeal site is such that the window is set about 11 metres away from this boundary hedge, separated from it by a paved area used for parking and turning vehicles. There does not seem to me to be any likelihood that the hedge would be removed, as it is located a sufficient distance from the windows of the appeal dwelling to ensure that it does not cause any significant harm to daylight or sunlight reaching those windows. Even if it were reduced in height, it would still offer some screening between the window and the adjacent property, and there is also a timber fence along this boundary. I therefore find that the privacy at 3 Fishermans Close is not unacceptably compromised by views from the window.
8. Policy HC4 of the Local Plan for Sefton, April 2017, has been referred to by the Council but it specifically states that it relates to house extensions, houses in multiple occupation and flats. Strictly speaking, it does not apply to new houses. However, as the permission could be considered to relate to an alteration, I have taken it into consideration. Paragraph c iv seeks to ensure that alterations and extensions do not result in a significant loss of privacy for neighbouring residents.
9. The New Housing Supplementary Planning Document (SPD) June 2018 has been referred to by the appellant. It indicates in paragraph 4.4 that, to preserve the privacy of nearby residents' gardens, new build houses should be located at least 10.5 metres away from the rear gardens of properties opposite. The SPD is dated after the date of the original appeal decision, which is 19 April 2018, and therefore it would have been unlikely that it would have been taken into account in that decision. As such, it represents a material change in circumstances from when the planning condition was first imposed. It is dated after the Local Plan and I have been given limited information as to how it relates to the development plan. However, the Council has indicated that its standards are applied when considering new housing and it gives an indication of what the Council considers to be an acceptable separation distance to ensure that the privacy of neighbouring residents would be adequately protected.
10. The Council has acknowledged that the interface distance between the window and boundary of 3 Fishermans Close meets the minimum required distance in the SPD. In terms of point 4.1 of the SPD, regarding low density development, it appears to me to refer to the requirement to respect the density, height, layout and character of the surrounding area rather than matters of

overlooking. Therefore, I find that there is compliance with the SPD in respect of recommended privacy distances.

Conclusions

11. I find that the development with the window that has been installed in Bedroom 2 does not have a significant adverse effect on the living conditions of the occupants of 3 Fishermans Close. Therefore, Condition 11 is neither reasonable nor necessary to safeguard the amenities of occupiers of that property and the development complies with Local Plan Policy HC4, as it does not result in a significant loss of privacy for neighbouring residents with the window that has been installed in Bedroom 2.
12. For the reasons given above, and having regard to all relevant matters raised, I conclude that the appeal should succeed. I will grant a new planning permission without the disputed condition but retaining the relevant other conditions from the previous permission that still apply.

Conditions

13. I have considered the conditions suggested by the Council should the appeal succeed. 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. As I have limited information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those suggested by the Council that I consider remain relevant, but I have modified them where necessary. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
14. A condition referring to the plans is necessary to provide certainty to those details that have not been discharged, and this should allow for the changes that have been carried out to the internal layout of Bedroom 2 that the Council has indicated that it has subsequently approved. A condition regarding sustainable drainage is necessary in the interests of flood prevention. Conditions to control permitted development are necessary to protect the living conditions of neighbouring occupants. A condition regarding landscaping is necessary to safeguard the character and appearance of the area. For the reasons given, I have found that the condition suggested by the Council regarding the window to Bedroom 2 is unnecessary.

M J Whitehead

INSPECTOR