



Appeal Decision

Site visit made on 23 March 2020

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 April 2020

Appeal Ref: APP/D0840/D/20/3244758

Ivy House, The Lizard Village, Helston, Cornwall TR12 7NQ

- 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 Ms Debra Kaatz against the decision of Cornwall Council.
 - The application Ref PA19/10104, dated 14 November 2019, was refused by notice dated 20 December 2019.
 - The application sought planning permission for a single storey side extension and garage extension without complying with a condition attached to planning permission Ref PA18/11129, dated 5 August 2019.
 - The condition in dispute is No 2 which states that: Within three months of the date of this planning permission the roof window and staircase window to the South East elevation as indicated in green on drawing number 1412-A1-PL02 Rev 3 (As Amended) received 31.05.2019 shall be obscure glazed and fixed closed. The window(s) shall be permanently retained in that condition thereafter.
 - The reason given for the condition is: To protect the privacy of the occupants of the nearby dwellings and in accordance with paragraph 127 of the National Planning Policy Framework 2019.
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Decision

1. The appeal is allowed and planning permission is granted for a single storey side extension and garage extension at Ivy House, The Lizard Village, Helston, Cornwall TR12 7NQ in accordance with the application Ref PA19/10104 dated 14 November 2019 without compliance with condition number 2 previously imposed on planning permission Ref PA18/11129 dated 5 August 2019 and subject to the following conditions:
 - 1) The window in the south east elevation adjoining the staircase as shown on plan 1412-A1-PL02 Rev 3 (as amended) shall be obscured glazed and fixed closed and thereafter permanently retained in this form.
 - 2) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no windows, rooflights, dormer windows, doors or other openings other than those expressly authorised by this permission shall be constructed to the south east elevation of the extension as shown on plan 1412-A1-PL02 Rev 3 (as amended).
 - 3) Within 6 months of the date of this planning permission the replacement wall indicated in pink on drawing number 1412-A1-PL02 Rev 3 (as

amended) forward of the two windows on the south east elevation shall be completed and shall be permanently retained in that condition thereafter.

Preliminary Matters

2. Planning permission was granted under reference PA17/10022 for an extension to Ivy House. Subsequently, an application to amend the proposal was approved with conditions under reference PA18/11129. The extension as built is subject to the conditions attached to this latter approval. Condition 2 of PA18/11129 refers to both the side window and the roof window in the south-east elevation and requires both to be obscure glazed and fixed shut. The appellant seeks to remove this condition so that the rooflight can be opened and be clear glass.
3. In the banner heading above, I have used the description of the development from the original permission as the proposal as specified on the decision notice for application PA18/11129 is not an act of development. This approval refers back to the original permission (PA17/10022). The approval under application PA18/11129 appears to incorporate a staircase to the upper area of the extension which would facilitate its use. This is, therefore, not an issue before me as this element has already been approved. As it is clear what is sought in the application the subject of this appeal, which concerns the rooflight the subject of condition 2, no one would be prejudiced by the use of the original description.

Main Issue

4. The main issue is whether it is necessary for the rooflight to be obscure glazed and fixed closed having regard to the living conditions of occupiers of adjoining properties, with particular regard to overlooking.

Reasons

5. Broadly to the south-east of Ivy House are areas of amenity space for the properties of Primrose Cottages. These areas have some sitting out space as well as outbuildings and the areas are generally screened from wider public view from the nearby roads. However, these areas are fairly well surrounded by buildings and there are a number of windows from adjoining properties, such as those in Primrose Cottages itself and Caerthillian, that would allow occupiers of these properties to look down towards this amenity space.
6. Additionally, there is the original side, ground floor window in the corner of Ivy House which would allow occupiers of that property to look directly towards the seating area of 1 Primrose Cottages. I viewed the proposal from this seating area at my site visit.
7. The extension to Ivy House has been constructed and includes a side window that is obscure glazed and fixed shut that lights the staircase to the upper floor area and a rooflight in the slope of the roof. At the present time the rooflight is openable and clear glazed. This rooflight adds a further window to an adjoining building surrounding the amenity areas of the properties in Primrose Cottages. However, as noted there are already quite a few windows that allow views down towards these areas.
8. At my site visit I also visited inside Ivy House including the upper area of the extension and looked through the rooflight. The upper area has restricted

headroom and the rooflight is positioned above the staircase. There are views from the rooflight looking out across the amenity spaces including towards the windows of Caerthillian and some of the outbuildings and associated areas below are visible. However, this view of the adjoining windows of the other properties is not entirely dissimilar to those views possible from within the amenity areas of Primrose Cottages.

9. To look more directly down, out of the rooflight, at my site visit it was necessary to lean forward into the recessed and boxed area of the rooflight, and then lean over the banister and the staircase. In this position I was able to see some of the more private seating areas, particularly those associated with 1 Primrose Cottages. While it may always be possible to look out of the rooflight in this way, and even taking into account the potential different heights of occupiers of Ivy House, I consider that given the position and height of the rooflight, and its arrangement within the roof space, this would not be easily achieved and therefore it would unlikely to be a regular occurrence.
10. I have taken into account the concerns of the local residents and the Parish Council regarding overlooking from the rooflight and the circumstances set out in the representations. However, given the existing mutual intervisibility between the outside amenity spaces and the other windows of surrounding properties, the provision of a rooflight into the roof slope of the extension to Ivy House in its present form has not added materially, in terms of an objective planning assessment, to overlooking or to the perception of overlooking of these areas. Furthermore, I am also satisfied that the views from the rooflight do not unduly add to overlooking towards the windows of other properties surrounding this area as views of these windows are already generally available from the existing outside areas.
11. I appreciate that local residents make the case that circumstances have not changed since the Council attached the planning condition to the earlier approval and that the condition has not been complied with. However, I am required to consider the proposal on its merits based on the evidence before me and, in particular, I have been able to make an assessment by looking out of the rooflight.
12. In the light of the above analysis, I conclude that the requirement that the rooflight be obscure glazed and fixed closed is not necessary to protect the living conditions of the occupiers of adjoining properties, in particular with regard to overlooking. It therefore follows that removal of this requirement would not conflict with Policies 12 and 13 of the Cornwall Local Plan: Strategic Policies 2010-2030 and the National Planning Policy Framework (the Framework) which seek, notably, that development proposals should protect individuals and property from overlooking and unreasonable loss of privacy.

Conditions

13. The effect of a grant of permission under section 73 is to create a new permission. The Council has indicated in the questionnaire that it does not consider that any conditions need to be imposed on this new permission. However, 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. It is also necessary for me to consider the conditions

against the requirements in paragraph 55 of the Framework if they are to be attached to the new permission.

14. It is not necessary for a condition specifying the approved plans as the extension has been built. Condition 2 of permission PA18/11129 is sought to be amended and I have concluded that the requirement for the rooflight to be obscured glazed and fixed closed is not necessary. However, the staircase window is positioned in an elevated part of the side wall and very close to the side boundary. While this window is partially obscured by a wall, the stairs would allow occupiers of Ivy House to look directly out of the window if not obscured glazed and closed. I therefore consider it necessary to reimpose these requirements in a condition.
15. I also consider that exceptionally it is necessary to remove permitted development rights for further openings to the south east elevation so that if further openings were proposed it would be possible to ensure through their position and design that they would not lead to an unneighbourly relationship. I have no clear evidence before me to demonstrate that exceptionally the removal of permitted development rights should be extended to the north east elevation of the extension.
16. A condition requiring the development to only be used for ancillary purposes to the main house is not necessary as the proposal is for an extension and if the space was not used as approved, such that planning permission was required, this could be investigated and action taken, if expedient.
17. In terms of the condition attached to PA18/11129 regarding the wall in proximity to the south east elevation, its provision and retention appears to be necessary to assist with preserving the amenities of residents of the adjoining properties and therefore I will attach the same condition to the approval.

Conclusion

18. Having regard to the above, and taking all other matters into account, I conclude that the appeal should be allowed and permission granted subject to the recommended conditions.

David Wyborn

INSPECTOR