



Appeal Decision

Site visit made on 17 March 2020

by Martin Small, BA (Hons), BPI, DipCM, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th April 2020

Appeal Ref: APP/Z3825/D/19/3242667

Wild Brook House, Rectory Lane, Pulborough, RH20 2AD

- 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 Micheal Comyn against the decision of Horsham District Council.
 - The application Ref: DC/19/1721 dated 21 August 2019, was refused by notice dated 17 October 2019.
 - The application sought planning permission for the installation of 3 No. new dormer roof windows to front elevation without complying with a condition attached to planning permission Ref: DC/19/0002, dated 29 March 2019.
 - The condition in dispute is No. 4 which states that: "The hereby approved dormer windows, as indicated on drawing no. PL-01 Rev A, shall be fitted with obscured glazing and shall be fixed shut. Once installed the obscured glazing and non-openable parts of those windows shall be retained permanently thereafter."
 - The reason given for the condition is: "To protect the privacy of adjacent occupiers in accordance with Policy 33 of the Horsham District Planning Framework (2015)."
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Decision

1. The appeal is allowed and planning permission is granted for the installation of 3 No. new dormer windows to front elevation at Wild Brook House, Rectory Lane, Pulborough, RH20 2AD in accordance with the application Ref: DC/19/1721 without compliance with condition number 4 previously imposed on Planning Permission Ref: DC/19/0002 dated 29 March 2019 but subject to the conditions set out below:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of Planning Permission DC/19/0002.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 1982 EX-01 Existing Floor Plans & Elevations Location & Block Plan and 1982 PCR-01 Proposed Floor Plans & Elevations Location & Block Plan.

Procedural Matter

2. The applicants are identified on the application form as Mr & Mrs M Comyn. However, the appellant is identified on the appeal form as Mr Micheal Comyn. I have therefore used this name for the appellant in the banner heading above.

Main Issue

3. The main issue is the effect of the proposed development on the living conditions of the occupiers of Downland Lodge, with particular regard to privacy.

Reasons

4. From the appellant's evidence, the closest point of the rear elevation of Downland Lodge is 23 m from the front elevation of the appeal property, increasing to 32 m due to the orientation of the properties relative to each other. The approved dormer windows would be set 1.3 m back from the front elevation. These measurements are based on a scaled plan and are not challenged by the Council. Although the occupiers of Downland Lodge query the provenance of these measurements, they do not provide alternative figures. I am therefore satisfied that these measurements are reasonably accurate.
5. The appellant draws my attention to the Horsham Design Guidance Advice Leaflet No.1 House Extensions (the Leaflet). This advises that in order to protect established privacy and amenity, *"the rear window to rear window distance between any habitable rooms (living rooms, bedrooms or dining rooms) should be no less than 21 metres in situations where the first-floor windows of separate properties face each other"*. However, Downland Lodge does not have any first-floor windows in the rear elevation.
6. Furthermore, the Leaflet explains that the guidance within it cannot be applied or may need to be modified where, amongst other things, there is a slope or the front of one property faces the back of another. Both of these are the case with the appeal property and Downland Lodge, with a fall in the land level between the properties. Therefore, whilst the distance between the two properties would exceed the minimum set out in the Leaflet, I give the guidance in the Leaflet little weight in my determination of this appeal.
7. I observed during my site visit that whilst Downland Lodge is positioned at a slight angle to the appeal property, there is a clear view from the existing rooflights in the appeal property of the rear elevation of Downland Lodge, including a conservatory and lounge window. However, as I also observed, at the distance between the properties although there would be views into the conservatory at the rear of Downland Lodge, views of the interior of the lounge of that property would be limited. Furthermore, with the relative levels of the two properties the view into the rear garden of Downland Lodge was obscured by the existing tall hedge along the rear boundary of the garden.
8. The glazed areas of the three dormers would be larger than the existing rooflights and vertical rather than sloped. The submitted drawing indicates that the cill level of the dormers would be lower than that of the existing rooflights such that the windows would project further forward. However, these differences would be slight and would not result in a material increase in the visibility of the rear elevation of Downland Lodge or the degree of overlooking. The existing roof lights serve the landing of the appeal property which provides access to the upper floor bedrooms and bathrooms and which therefore, whilst not a habitable room, is likely to experience a degree of activity during the day and evening.

9. I acknowledge the historical relationship of the appeal property to Downland Lodge and that the rear elevation of the latter is not currently overlooked other than by the roof lights in the appeal property. Therefore, whilst a degree of overlooking may generally be expected in a built-up area, the occupiers of Downland Lodge are entitled to have a reasonable expectation of privacy.
10. However, having seen for myself the existing degree of visibility of the rear elevation of Downland Lodge from the appeal property, I am satisfied that the use of unobscured glazing or opening windows in the approved dormers would not result in significantly harmful additional overlooking and consequent loss of privacy. I have no evidence that noise levels would be significantly increased by open windows on the front elevation of the appeal property such that the provision of such windows would prevent the quiet peaceful enjoyment of Downland Lodge by its occupiers.
11. I therefore conclude that the use of unobscured glazing or opening windows would not be materially harmful to the living conditions of the occupiers of Downland Lodge. Accordingly, I find no conflict with Policy 33 of the Horsham District Planning Framework (excluding South Downs National Park) (2015) which sets out that developments will be required to *"Ensure that it is designed to avoid unacceptable harm to the amenity of the occupiers/users of nearby property and land, for example through overlooking..."*. Furthermore, I find no conflict with paragraph 127 f) of the National Planning Policy Framework (the Framework), which requires planning decisions to ensure that developments create places with a high standard of amenity for existing and future users.
12. As a consequence, I conclude that Condition 4 of planning permission Ref DC/19/0002 is not necessary to ensure compliance with national and local policy or otherwise to make the development acceptable. It therefore fails to satisfy all six tests for conditions set out in paragraph 55 of the Framework.

Other Matters

13. I acknowledge that the appeal property already benefits from south-facing dormer windows which provide light to, ventilation for and an escape route from the upper floor rooms of the appeal property. However, as I have concluded that the use of unobscured glazing and opening windows would not be materially harmful to the living conditions of the occupiers of Downland Lodge, it is not necessary for the appellants to demonstrate a need to undertake the approved development without compliance with condition 4 of the planning permission.
14. I note that Pulborough Parish Council objected to the proposal, but the grounds for that objection are not specified. I am therefore only able to give little weight to the objection.
15. From the evidence before me, the boundary of the Pulborough Conservation Area is contiguous with the southern boundary of the rear garden of the appeal property. With regard to the definition of 'setting' in the Glossary to the Framework, the appeal property is within the setting of the Conservation Area. The Framework sets out that heritage assets should be conserved in a manner appropriate to their significance, which can be affected by development within their setting.

16. I have not been provided with any character appraisal or management plan or other information as to the special architectural or historic interest of the Conservation Area. However, I observed during my site visit that the part of the Conservation Area along Lower Street adjacent to the appeal site comprises predominantly 19th and 20th century commercial and residential properties. The dormer windows are proposed in the northern elevation of the appeal property, facing away from the Conservation Area. As they would not protrude above the ridgeline of the property, they would not intrude into views into or from the Conservation Area. Consequently, they would not adversely affect the significance of the Conservation Area visually or in other ways.

Conclusion

17. For the reasons given above, and having regard to the other matters raised, I conclude that the appeal should be allowed. I will grant a new planning permission without the disputed condition. Furthermore, as the proposed materials are shown on the submitted drawing 1982 PCR-01, the condition requiring materials to match those of the existing dwelling is not necessary. I shall, however, retain the conditions setting out the standard time limit for commencement and requiring compliance with the approved plans, amended in the light of the proposal before me, which remain relevant.

Martin Small

INSPECTOR