
Appeal Decision

Site visit made on 10 March 2020

by K A Taylor MSC URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th May 2020

Appeal Ref: APP/J1535/W/19/3243410

Green View, Bury Road, Waltham Abbey, London E4 7QL

- 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 & Mrs T Tomkins against the decision of Epping Forest District Council.
 - The application Ref EPF/1499/19, dated 12 June 2019, was refused by notice dated 8 August 2019.
 - The application sought planning permission for minor material amendment to EPF/0447/13 (Conversion of existing dwelling house and pool house into six self-contained flats. Extension of existing roof of dwelling by addition of front and rear dormer windows and a rear roof terrace area) without complying with a condition attached to planning permission Ref EPF/2416/16, dated 31 October 2016.
 - The condition in dispute is No 2 which state that: *The proposed window openings in the flank elevations at first floor level shall be fitted with obscured glass and have fixed frames to a height of 1.7 metres above the floor of the room in which the window is installed and shall be permanently retained in that condition.*
 - The reason given for the condition is: *To prevent overlooking and loss of privacy to the occupants of neighbouring properties, in accordance with the guidance contained within the National Planning Policy Framework and policy DBE9 of the adopted Local Plan and Alterations.*
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The Council have referred to Policy DM9 of the Epping Forest District Council Local Plan Submission Version, 2017 (LPSV) in their reason for refusal. I note that the LPSV is yet to be adopted, and in their evidence, the Council advise that there are unresolved objections to the plan. It is therefore subject to change and while I have not been made aware of the specific nature of unresolved objections, this limits the weight that I afford to this policy.

Background and Main Issue

3. The appeal site is a large detached property located within a predominantly residential area and within the Metropolitan Green Belt. I observed at the time of the site visit construction works are taking place to facilitate a conversion from a dwellinghouse into self-contained flats. Planning Permission in 2013 was

- refused¹ for a conversion of existing dwellinghouse and pool into six self-contained flats with other extensions but was subsequently allowed on appeal².
4. A minor material amendment application³ to (EPF/0447/13) was granted with conditions in 2016 for removing the existing hipped roof and to install a mansard roof set behind a newly created parapet with four front and four rear dormer windows and an inset roof terrace.
 5. The appellant now wants to vary condition 2 of the permission EPF/2416/16, which restricts the windows along the flank elevations at first floor being obscure glazed and fixed frames, these are identified on the plans as windows 'A, B, C, D, E, F, G and H'. This would mean removing condition 2, so that only one window 'A' would be obscure glazed and fixed, by replacing the condition with: *"The proposed window opening marked 'A' in the northern flank elevation at first floor level as shown on drawing no 481-02B, shall be fitted with obscured glass and have fixed frames to a height of 1.7 metres above the floor of the room in which the window is installed and shall be permanently retained in that condition"*.
 6. The main issue is therefore whether the condition in dispute is reasonable and necessary in regard to local and national planning policies and in the interests of the living conditions of neighbouring occupiers, with particular reference to overlooking and privacy.

Reasons

7. Policy DBE9 - loss of amenity of the Epping Forest District Council Local Plan (1998) and Alterations (2006), (LP) requires that a change or intensification use, extension or new development does not result in an excessive loss of amenity for neighbouring properties, including taking account of the factor of overlooking.
8. The National Planning Policy Framework (the Framework) at paragraph 127 (f), ensures development *'creates places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users'*. Although Policy DBE9 of the LP clearly pre-dates the Framework (2019), I consider that in seeking to prevent excessive loss of amenity for neighbouring properties is broadly consistent with paragraph 127.
9. The appeal site has two adjacent neighbouring dwellings, that being The Chelneys to the south and to the north The Berries. Both these properties are in close proximity to the boundaries of the appeal site. The identified windows of 'A-D' are along the northern flank whilst 'E-H' are on the southern flank.
10. The appellant contends that the windows do not face habitable windows and do not afford significant views of the adjoining properties. Despite there being no openings along the flank wall of The Chelneys, the windows positioned at 'E-H' would still have views over the rear garden area, particularly 'E' and 'F' would directly face over the garden. The existing hedge boundary treatment would provide only limited screening from any views out of the windows and the situation of overlooking is exacerbated by the position and height of the windows being at first floor level. As such, if those windows at 'E-H' were not

¹ EPF/0447/13 Refused 17/05/13

² APP/J1535/A/13/2207004 (28/01/2014)

³ EPF/2416/16

obscure glazed with fixed frames it would cause an unacceptable and significant loss of privacy, by way of excessive overlooking on to the garden areas of The Chelneys to the detriment of the living conditions of existing and future occupiers.

11. For those windows positioned along the northern flank 'A-D', I acknowledge that both the appellant and the Council consider that window 'A' causes significant harm and would remain obscure glazed with a fixed frame. I have no reason to disagree with this. However, in terms of 'B-D', I cannot be certain without substantive evidence that all the windows on the flank wall at The Berries are not habitable rooms. Moreover, as I observed on the site visit these windows have opening mechanisms and the appellants' evidence shows these are opening windows. This would likely result in direct overlooking into the properties (vice-versa) if windows were clear glazed and/or open.
12. Furthermore, window 'D' would clearly overlook the existing front garden area of The Berries. Therefore, if windows 'B-D' were not obscure glazed and fixed it would cause significant harm to the living conditions, by way of excessive overlooking and loss of privacy to the occupiers at The Berries.
13. Accordingly, I have had regard to the PPG⁴ and given that the condition mitigates the adverse effects of the development, I conclude that the condition limiting the windows 'A-H' is reasonable and necessary in the interests of the living conditions of neighbouring occupiers, with particular reference to overlooking and privacy. As such, I consider that the condition imposed by the Council in relation to the obscuring of glazing and permanent fixing of frames in the windows is reasonable in all other aspects and would ensure compliance with Policies DBE9 of the LP and Paragraph 127 of the Framework.

Conclusion

14. For the reasons given above I conclude that the appeal should be dismissed.

K A Taylor

INSPECTOR

⁴ Paragraph: 001 Reference ID: 21a-001-20140306 Revision date: 06 03 2014