
Appeal Decision

Site visit made on 2 June 2020

by David Murray BA (Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 June 2020

Appeal Ref: APP/X0360/W/20/3245425

7 Simons Lane, Wokingham, RG41 3HG.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr and Mrs Waters against the decision of Wokingham Borough Council.
- The application Ref. 192248, dated 15 August 2019, was approved on 28 November 2019 and planning permission was granted subject to conditions.
- The development permitted is the erection of a 4 bedroom house following demolition of the existing dwelling.
- The conditions in dispute are No's 6 and 7 which state that:
 - 6: Obscure glazing – all side windows in the development hereby permitted shall be fitted with obscured glass and shall be permanently so-retained. The windows shall be non-opening unless the parts of the window which can be opened are more than 1.7 metres above the finished floor level of the room in which the window is installed and shall be permanently so retained.
 - 7: Restriction of permitted development rights – 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 additional windows or similar openings shall be constructed in side elevations of the building hereby permitted except for any which may be shown on the approved drawing(s).
- The reason given for the conditions is:
 - (Both 6 and 7) - To safeguard the residential amenities of neighbouring properties. Relevant policy: Core Strategy policy CP3.

Decision

1. The appeal is allowed in part and planning permission is granted for the erection of a 4 bedroom house following demolition of the existing dwelling at 7 Simons Lane, Wokingham, RG41 3HG, in accordance with the application Ref.192248, dated 15 August 2019, and the plans submitted with it (as amended), with condition No. 6 amended and the other conditions previously imposed on the planning permission by the Council, as set out in the attached Schedule.

Preliminary matter

2. The planning application refers to the proposal as the erection of a 5 bedroom house whereas the decision letter refers to the erection of a 4 bedroom house.

I have used the latter description as that tallies with the plans considered by the Council.

Main Issue

3. The main issue is the effect of the development proposed without the conditions in dispute, on the living conditions of the occupiers of the adjoining dwellings.

Reasons

Background

4. At the moment, the appeal site comprises a detached chalet bungalow which lies in a residential area of similar properties. The planning permission granted by the Council is for the demolition of this property and its replacement by a new two storey property. Although the whole scheme for a replacement dwelling is before me, after assessing the factors set out in the officer report, and taking into account the objections expressed by neighbours, I see no reason to question the principle of the re-development or the details of the new property proposed other than the issue surrounding the fenestration of the new dwelling.
5. The main difference between the Council and the appellants is the nature of the proposed windows on the flank walls of the new building and potential subsequent changes and whether these should be regulated by conditions. In assessing this issue, I have borne in mind the national guidance on the imposition of planning conditions put forward in the National Planning Policy Framework (NPPF) and the Planning Practice Guidance (PPG).
6. I have also taken account of Policy CP3 of the Council's Core Strategy which deals with general principles of new development where part a) refers to the need for new development not to cause detriment to the amenity of adjoining land users to be acceptable. The Council also refers to the Borough Design Guide SPD but no specific guidance on ground floor windows is mentioned.

Effect on living conditions

7. From the appellant's statement it is clear that the application of condition 6 to first floor windows is not contested, and in any event, the two side facing windows to each flank wall of the new house proposed would be to ensuite where obscure glazing in such a window is the norm. I also note that a separate permission granted by the Council in 2019 (under ref. 182928) for the enlargement of the existing property on the appeal site with two storey extensions, was subject to conditions which required first floor side facing ensuite and roof light windows to be obscure glazed and have restricted opening.

Condition 6

8. Regarding the proposed ground floor windows and dealing with the relationship with the adjoining property No. 5 first, I noted at my site visit that this property is sited very close to the party boundary with the appeal site. On the flank wall of No. 5 there is a first floor window and a ground floor window both with frosted (obscure) glass and the latter has leaded strips in a diamond pattern. I also noted the existing fence along the party boundary which is of a

lower height in the vicinity of the window. I am not aware of the ownership of the fence, however, I have considered what exists and also borne in mind that the erection of a fence in this area up to 2m in height is 'permitted development'¹. Moreover, the surrounding ground level between the two properties is relatively flat.

9. In the proposed new house the two side windows to the lounge would be narrow secondary windows and would look towards the blank part of the side wall of no. 5. The proposed side door to the utility room would be sited opposite the window in No.5 where the fence is low but as the latter window has obscure glazing I am satisfied that this relationship would not result in a harmful degree of overlooking from the doorway. Finally, the secondary flank window to the kitchen proposed would have an aspect which would look towards the party boundary at a reasonable distance away and where the existing fence is of a similar height of the proposed window in this location.
10. In the specific circumstances of the site I find that the position and size of the ground floor side facing windows and door shown on the submitted plan, if glazed with clear glass, would not cause overlooking and a loss of privacy to the occupiers of the adjacent property at No. 5.
11. Turning now to the relationship with the other adjoining property No.9, I noted at the visit that the new house proposed and No.9 would be a similar distance away from the party boundary which at the moment has a fence of about head height, but alongside the rear conservatory at No.9 this is increased in height by trellis. The garage door proposed would look towards the fence and there would be only a limited aspect towards the ground floor side opening door/window at No.9. Likewise, the proposed window to the 'snug' and the flank secondary window to the family room would look mostly towards the fence as shown in the appellant's photographs submitted with the agent's statement. I find that the proposed ground floor flank windows and door would not cause overlooking and loss of amenity to the occupiers of No. 9 if these were glazed with clear glass.
12. Bringing these two aspects together, I do not consider that it is necessary on its planning merits that the ground floor doors and windows must be fitted with obscure glass in order to avoid detriment to the adjoining properties as indicated in Policy CP3. I conclude that the purpose of condition 6 to require obscure glazing, and to restrict the element that opens, is only necessary at first floor level where privacy is required in toilet/bathrooms and where views in and out should be controlled.
13. The appellants also allege that condition 6 fails the tests of conditions specified in national guidance on the grounds of *precision* in that it is not certain what degree of obscurity is needed. However, given the position and scale of the windows in the ensuite, in this case I do not consider that the level of obscurity needs to be specified in any more detail.

Condition 7

14. This condition in effect removes the 'permitted development rights' to install other windows and openings in the side walls of the new house, when built and occupied, without the need for express planning permission. National guidance

¹ As set out in Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended.

is that the withdrawal of such rights should not be imposed except where justified in exceptional circumstances.

15. The condition could be amended just to refer to further side windows and openings at first floor level. However, my assessment of the potential harm of overlooking under condition 6 above was in respect of the actual size and position of the windows put forward in the submitted scheme. In the absence of condition 7 substantial changes could be made to the fenestration on the side elevations of the new house resulting in direct overlooking of the neighbouring properties, or a greater perception of being overlooked, and loss of privacy felt by the occupiers of these properties. This would undermine the detailed analysis of the appeal scheme and the relationship with adjoining properties and negate the relevant requirement of the development plan in Policy CP3.
16. On the individual merits of this case, I am satisfied that there is clear and reasonable justification for the imposition of condition 7 as imposed.

Other matters

17. Representations from local people refer to a possible business activity being carried out at the property but only the application before me for the erection of a new dwelling can be assessed. A neighbour also objects to the proposal under the Party Wall Act but this is not a consideration that can be taken into account under the Planning Acts.

Conclusion

18. For the reasons given above I conclude that the appeal should succeed in part. I will grant a new planning permission but amend one of the disputed conditions as described above and restate those undisputed conditions that are still subsisting and capable of taking effect.

David Murray

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) This permission is in respect of the submitted application plans and drawings numbered Letter from AA Environmental Ltd dated 15 October 2018, Site Location Plan (PA001 Rev A), Existing Block Plan (PA002 Rev A), Existing Elevations (PA004 Rev D), Existing Floor Plans (PA007 Rev A) received by the local planning authority on 22nd August 2019, Planning, Design and Access Statement dated August 2019 received by the local planning authority on 6th September 2019 and Proposed Block Plan (PA003 Rev B), Proposed Front Elevations (PA005 RevB), Proposed Side Elevations (PA006 Rev B), Proposed Ground Floor Plan (PA008Rev B) Proposed First Floor Plan (PA009 Rev B), Proposed Parking and Roof Plan(PA0010 Rev B) received by the local planning authority on 23rd October 2019. The development shall be carried out in accordance with the approved details unless other minor variations are agreed in writing after the date of this permission and before implementation with the Local Planning Authority.
- 3) 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), the garage accommodation on the site identified on the approved plans shall be kept available for the parking of vehicles ancillary to the residential use of the site at all times. It shall not be used for any business nor as habitable space.
- 4) No part of any building(s) hereby permitted shall be occupied or used until the vehicle parking space has been provided in accordance with the approved plans. The vehicle parking space shall be permanently maintained and remain available for the parking of vehicles at all times.
- 5) No building shall be occupied until the vehicular access has been surfaced with a permeable and bonded material across the entire width of the access for a distance of 5 metres measured from the carriageway edge.
- 6) All side windows at first floor level and above in the development hereby permitted shall be fitted with obscured glass and shall be permanently so-retained. The windows shall be non-opening unless the parts of the window which can be opened are more than 1.7 metres above the finished floor level of the room in which the window is installed and shall be permanently so-retained.
- 7) 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 additional windows or similar openings shall be constructed in side elevations of the building hereby permitted except for any which may be shown on the approved drawing(s).
- 8) Prior to occupation of the development, two bird or bat boxes, bricks or tiles are to be installed on or around the building under the supervision of a suitably qualified ecologist. A brief letter report confirming that the boxes, bricks or tiles have been installed, including a simple plan showing

their location and photographs of the boxes, bricks or tiles in situ, is to be submitted to and approved in writing by the Council.

- 9) No construction shall take place until details of the drainage system for the site have been submitted to and approved in writing by the Local Planning Authority. The details shall include how the site currently drains and will be drained after proposed development with consideration to SuDS.
- 10) The dwelling hereby approved shall be used as a single dwellinghouse and the dwelling shall remain in use as a single dwellinghouse and not be used, sold or sub-let as separate dwellings.
- 11) Notwithstanding the provisions of Classes A, B, C, D and E of Part 1 of the Second Schedule 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 buildings, enlargement or alterations permitted shall be carried out without the express permission in writing of the local planning authority.