



Appeal Decision

Site visit made on 15 June 2020

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 June 2020

Appeal Ref: APP/D0121/W/20/3248618

Marburg, 15 Southmead, Winscombe, North Somerset BS25 1LB

- 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 Andrew Blunsdon against the decision of North Somerset Council.
 - The application Ref 19/P/2570/FUH, dated 7 October 2019, was approved on 30 December 2019 and planning permission was granted subject to conditions.
 - The development permitted is a proposed dormer loft conversion and alterations to roof, extension to raised decking, new opaque canopy and reshaping of the north east corner of the existing dwelling.
 - The condition in dispute is No.4 which states that: *'Before the first occupation of the loft conversion and extension hereby permitted the windows on the rear elevation of the loft conversion serving the master bedroom[sic], first floor landing and first floor bedroom as well as the windows on the front elevation of the loft conversion serving the first floor master bedroom, first floor en-suite and first floor bathroom shall be fitted with obscure glazing. The obscure glazing used shall provide a degree of obscuration no less obscure than that which is provided by privacy level 3 of the Pilkington Group Limited textured glass range as defined in publication "Pilkington Decorative Glass Range" (published November 2017). These windows shall be non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) (or any Order revoking and re-enacting that Order, with or without modification), neither the obscure glazing nor the method of opening shall be subsequently altered without the prior written permission of the Local Planning Authority.'*
 - The reason given for the condition is: *'To protect the living conditions of occupiers of adjoining properties and in accordance with policies DM32 and DM38 of the North Somerset Sites and Policies Plan (Part 1) and the North Somerset Residential Design Guide SPD (Section 1: Protecting living conditions of neighbours).'*
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Decision

1. The appeal is allowed and the planning permission Ref 19/P/2570/FUH for a proposed dormer loft conversion and alterations to roof, extension to raised decking, new opaque canopy and reshaping of the north east corner of the existing dwelling at Marburg, 15 Southmead, Winscombe, North Somerset BS25 1LB granted on 30 December 2019 by North Somerset Council, is varied by deleting condition 4.

Procedural Matters and Background

2. For clarity and consistency, in my heading above I have taken the description of development from the decision notice. Planning permission was granted for

the dormer loft conversions and other alterations on 30 December 2019. Condition 4 requires certain first floor windows in the front and rear elevations to be obscure glazed and non-openable above 1.7m when measured from the internal floor height. The appeal seeks the removal of this condition, and specifically proposes clear glazing in the first floor rear elevation windows serving the bedroom, landing and master bedroom as well as the first floor front elevation window serving the master bedroom.

Main Issue

3. The main issue is whether the condition is reasonable or necessary in the interests of the living conditions of neighbouring occupiers, with particular regard to privacy.

Reasons

Living Conditions

4. Paragraph 55 of the National Planning Policy Framework (the Framework) advises that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Paragraph 54 stipulates that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions. It follows that if the development proposed would be acceptable in planning terms without such conditions, then they would normally fail the test of necessity.
5. Planning Practice Guidance¹ (PPG) states that the rigorous application of the 6 tests in the Framework can reduce the need for conditions and it is good practice to keep the number of conditions to a minimum wherever possible. As such, each condition imposed should pass all the tests.
6. The reason given for condition 4 on the decision notice is to protect the living conditions of occupiers of adjoining properties. Moreover, policies DM32 and DM38 of the North Somerset Council Development Management Policies, Sites and Policies Plan, Part 1, July 2016 (SPP) include criteria to prevent the design of extensions to dwellings from prejudicing the living conditions of occupiers of adjoining properties due to the loss of privacy. The supporting text indicates that these policies should, amongst other matters, be read in conjunction with the more detailed guidance in the Residential Design Guide – Section 1 Protecting living conditions of neighbours, Supplementary Planning Document, January 2013 (SPD).
7. Paragraph 3.1 of the SPD indicates that if a development results in a significant loss of privacy to neighbouring residents, then planning permission is likely to be refused. It follows that it does not rule out any changes to the existing levels of privacy or prevent any loss of privacy whatsoever, rather the degree of loss is relevant, and this should be significant. It goes on to outline some specific tests to establish whether there would be a significant loss of privacy. These include that there should be a minimum distance of 21 metres between a proposed upper floor window and existing habitable room windows. In addition, a distance of no less than 7 metres should normally be maintained between a proposed upper floor window and the rear boundary of the property

¹ Paragraph 018 Reference ID: 21a-018-20190723

- if it adjoins a neighbouring rear garden. The SPD states that the privacy of neighbouring properties will normally be preserved by observing these distances².
8. The Council suggest that the proposal fails the 7m test set out in the SPD as the property is within 7m of the boundaries to the north, east and west of the site³. Be that as it may, the SPD only refers to the 7m distance being maintained between an upper floor window and the rear boundary of the property, not all boundaries. The term boundary is singular rather than plural, and it relates to the rear boundary of the property in question. This is reinforced by illustration E in the SPD which shows the distance measured in the direction the window is facing, rather than to the sides.
 9. The appeal property is a detached dwelling which adjoins other residential properties on all sides and the Council do not specify which boundary they consider to constitute the rear boundary. Although the property lacks an obvious road frontage, it does not follow that as a result there is more than one rear boundary. Condition 4 relates only to upper floor windows that are north and south facing. Additionally, the Council has not disputed the labelling of the elevations of the property as front, rear and side on the submitted plans. On that basis the southern boundary represents the rear boundary which, due to the length of the rear garden at the appeal site, would maintain a considerable distance between the first floor windows in the rear elevation facing south towards 4 Apple Tree Drive. Therefore, this arrangement would fulfil the 7m test.
 10. Even if I were to accept that the northern boundary was also a rear boundary, the separation distance referred to by the Council⁴ relates to the existing front façade of the property rather than the position of the upper floor windows. These would be set further back from the façade. The scaled proposed block plan⁵ which shows the roof plan and position of the boundary suggests this would be approximately 7m for the closest en-suite window.
 11. The north facing first floor windows would, due to the intervening garden at Rivendell, allow for considerable separation between windows serving habitable rooms. Accordingly, there is little evidence to suggest that the use of plain glazing would result in a significant loss of privacy due to inter-visibility between the buildings.
 12. I accept that it is appropriate to also consider whether the proposal would cause significant overlooking to adjoining gardens. This is reinforced by the SPD which advises that windows should avoid the direct overlooking of neighbouring gardens. Due to the size of the rear garden at the appeal site, combined with the position of dwellings to the south, the first floor windows in the rear elevation are some distance from the gardens of those residences. Furthermore, as illustrated in the typical section plan and proposed rear elevation⁶, the configuration of the roof slope means that the height of the lower sills of the windows serving the bedroom, landing and master bedroom is relatively high. These factors would prevent intrusive views to the private rear

² Paragraph 3.2 SPD

³ Paragraph 4.7, Council's Appeal Statement

⁴ 4.23m, Appendix 3 Council's Appeal Statement

⁵ Proposed Block Plan Scale 1:200 15SM/Alts.Loft Conv./08

⁶ Drawings referenced 15SM/Alts.Loft.Conv./11 & 15SM/Alts.Loft Conv./04.

gardens of the properties located either side of 15 Southmead. On this basis there is no requirement for obscure glazing.

13. The four upper floor windows proposed in the front elevation facing north⁷ serve a bedroom, bathroom, en-suite bathroom and master bedroom respectively. These face towards the boundary and rear garden of Rivendell. However, condition 4 only relates to three of the windows, namely the master bedroom, first floor en-suite and first floor bathroom. The latter two are annotated as having opaque glazing on the proposed first floor layout plan, number 15SM/Alts.Loft Conv./06 and the master bedroom window in question is labelled as a non-opening panel, albeit that in the absence of a condition there is no guarantee that the opaque glazing and non-opening details would remain indefinitely.
14. The configuration of the dormer loft roof extension results in the bathroom and en-suite windows being set back from the northern edge of the footprint of the dwelling. In addition, the master bedroom window is set further back again, such that there is a reasonable degree of separation between the windows and the rear garden of Rivendell. Moreover, the return of the en-suite wall would limit the range of views from the master bedroom window, and the windows serving the bathroom and en-suite also have a relatively high sill level.
15. In combination these factors are sufficient, without obscure glazing, to prevent the significant loss of privacy to the adjacent occupiers when using their rear garden. Whilst it may be possible to glimpse parts of the rear garden of Rivendell from these windows, this would be a fairly typical relationship between dwellings and adjoining residential gardens found within a sub-urban environment and would not amount to a significant loss of privacy.
16. The Council point out that the presence of established vegetation along the northern boundary should not be relied upon to mitigate the impact of overlooking. However, it will be seen from my reasoning above that the presence of this hedgerow is not a determinative factor in my consideration of the likely impact on privacy. Nevertheless, its presence would further limit glimpses towards the garden of Rivendell.
17. Taking the above points together, it is not necessary to impose the restrictions in condition 4, as it would not have been necessary to refuse the permission without them. Furthermore, condition 4 would result in the largest south facing windows in the bedroom and master bedroom, as well as the only window serving the landing, being obscure glazed, which would prevent views to the garden of the appeal site. This would considerably diminish the quality of the living conditions of the occupants of the property. Given that I have found such measures would be unnecessary to safeguard the privacy of others, this would be unreasonable.
18. I have had regard to the concerns of local residents regarding the degree of impact of the proposal on the privacy of neighbours, but for the reasons outlined have reached a different view.
19. Accordingly, I consider condition 4 is not necessary to achieve the objective of safeguarding the privacy of occupiers of adjoining properties. Therefore, it would not be necessary to impose such measures in order to comply with

⁷ Drawing reference 15SM/Alts.Loft Conv./04.

policies DM32 and DM38 of the SPP which, in combination, and amongst other matters, seek a high quality of design for residential extensions that do not prejudice the living conditions of occupiers of adjoining properties. Consequently, it would be unreasonable to impose such restrictions which would diminish the living conditions of the occupiers of the appeal site.

Other matters

20. Local residents refer to other recent developments for new houses at Brooklands and very close to the appeal site entrance, the latter of which I observed to be under construction at my site visit. Nevertheless, on the evidence provided there are differences between the nature of the developments as they related to new dwellings as opposed to the dormer loft conversion of an existing dwelling. Furthermore, although little detail is provided, it is also likely that the configuration of those developments and the relationship with nearby houses would have been different. As such, it is not shown how either case is directly relevant to the application of the six tests for conditions in the scheme before me. Accordingly, they are of limited weight and in any event, I have determined the proposal on its own merits.

Conclusion

21. For the reasons given above I conclude that the appeal should succeed. I will vary the planning permission by deleting the disputed condition.

Helen O'Connor

Inspector