



Appeal Decision

Site visit made on 30 June 2020

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 July 2020

Appeal Ref: APP/B1740/W/20/3245744

7 Viney Road, Lymington SO41 8FF

- 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 Merry against the decision of New Forest District Council.
 - The application Ref 19/11320, dated 22 October 2019, was refused by notice dated 19 December 2019.
 - The application sought planning permission for a house; detached garage/store; demolition of existing without complying with a condition attached to planning permission Ref 19/10045, dated 14 March 2019.
 - The condition in dispute is No 5 which states that: The first floor windows on the rear (north-west) and side (south-west) elevations of the approved dwelling shall at all times be glazed with obscure glass and fixed shut. Those to the north east side elevation shall be obscure glazed.
 - The reason given for the condition is: To safeguard the privacy of the adjoining neighbouring properties in accordance with policy CS2 of the Local Plan for the New Forest District outside the National Park (Core Strategy).
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Decision

1. The appeal is allowed and planning permission is granted for a house; detached garage/store; demolition of existing at 7 Viney Road, Lymington SO41 8FF in accordance with the application Ref 19/11320 dated 22 October 2019, without compliance with condition number 5 previously imposed on planning permission Ref 19/10045 dated 14 March 2019 and subject to the following condition:
 - 1) The first floor windows on the side (south-west) elevation of the approved dwelling shall at all times be glazed with obscure glass and fixed shut. Those to the north east side elevation shall be obscure glazed. The aforementioned windows should be fitted with obscure glass with a minimum obscurity of level 3 glazing and not an applied film.

Preliminary Matters

2. Planning permission was granted for a replacement dwelling on this site under Application 18/10571 in 2018. This permission was varied by a further permission for a replacement dwelling (Council Reference 19/10045) and the submissions indicate that it is this latter permission which has been implemented and the dwelling constructed. A condition was attached to both permissions to require the obscure glazing and the fixing shut of some of the windows.

3. The application form, in relation to the appeal proposal, indicates that condition 7 of the original planning permission (18/10571) is sought to be varied. However, this is not the permission which has been implemented. Nevertheless, the further details on the application form make it clear that the intention of the application is to seek to vary the restriction so that the first floor south west windows would be obscured glazed and fixed shut but the north west first floor windows would not need to be restricted in this way.
4. The equivalent condition on planning permission 19/10045 is condition 5. While it does not appear that the appellant agreed to a different description to that on the application form, the Council in their committee report and on the decision notice (and it is assumed in the letter to neighbours and the Town Council) describe the proposal as "variation of condition 5 of planning permission 19/10045 to allow the side facing (SW) windows only to be obscure glazed and fixed shut". The representations respond on this basis. Subsequently, the appellant has used this description within the appeal form and made appeal submissions on this basis. In all these circumstances, I consider that the proposal is clear and that no party would be prejudiced by my consideration of the appeal proposal as concerning the variation of condition 5 of planning permission 19/10045.

Main Issue

5. The main issue is whether the condition which restricts the north west first floor windows to being obscure glazed and fixed shut is reasonable and necessary to protect the living conditions of the occupiers of Coppice Lee from any overlooking.

Reasons

6. The two windows in question are first floor windows that face north west at the back of the property. The windows light two separate rooms which are bedroom sized. These rooms also have side facing rooflights. Contrary to the condition at the present time, the windows are openable and clear glazed. This allowed me at my site visit to look from both windows to judge the potential for any overlooking. I also visited both properties to the rear, Sheepfold and Coppice Lee, to look back towards the windows.
7. The angle of the replacement property in the site, and in turn the two first floor windows, is such that any views towards Sheepfold are reasonably limited and oblique. I am satisfied that there is no unacceptable overlooking towards this property that would adversely affect the living conditions of the occupiers.
8. Coppice Lee is reasonably close to the rear of 7 Viney Road. It is a bungalow with windows to the side and rear, including those of the principal bedroom, as well as conservatories and outdoor amenity space. These windows and areas are, however, very well screened from all views by established and tall hedges.
9. The view from the first floor rear windows of No 7 includes views towards Coppice Lee. However, from these windows the hedge obscures to a very large extent the bungalow, including its windows, roof and outdoor spaces, such that the neighbouring property is largely imperceptible. At times of the year when leaves may not be present I am satisfied that the depth and nature of the hedge would still provide a good boundary screen. In these circumstances,

views from the windows do not overlook the neighbouring property to an unacceptable extent.

10. The hedge which provides the screen is within the ownership of Coppice Lee. It is therefore not possible to attach a planning condition to any approval that would ensure its retention or future management. However, the hedge provides a screen for the benefit of the occupiers of Coppice Lee and it seems to me that there would be no need for these occupiers to remove or reduce the hedge and potentially allow some views towards their property. The hedge appears to have been in place for some time and is similar to other hedges which separate properties in the area to help to maintain privacy.
11. I have no detailed evidence to believe that the hedge, which is tall, appears healthy and is made up of a number of separate plants, would not continue to provide a natural screen for the foreseeable future. The hedge is of such a height that even if it was lowered to some extent, in all likelihood, it would still be of a sufficient height to provide a satisfactory level of screening for the occupants of Coppice Lee from views from the windows of No 7.
12. The outbuilding, within the garden of No 7 and which is sited along the back of Coppice Lee, has recently been constructed. Concerns have been expressed that the hedge was cut back as part of these works and this may have harmed the health of the hedge. I have taken this into account, however, the most important part of the hedge in terms of addressing any overlooking is within the corner of the garden of Coppice Lee and this is away from the side of the outbuilding. In these circumstances, I do not consider that the erection of the outbuilding and related works is an issue that could lead me to a different conclusion on the potential overlooking from the windows.
13. I have carefully considered the objections of the adjoining residents and the representations of the Town Council. I can appreciate the concern that allowing the two windows to be openable and clear glazed would be contrary to the original scheme and could, in theory, lead to a diminution of amenity for the adjoining occupiers. However, based on my assessment, and after looking from both the windows and from the adjoining properties, I am satisfied that the present situation provides an acceptable relationship between the sites. For the foreseeable future, I have found no clear reason why the hedge would not continue to provide a natural screen that would protect the living conditions of the occupiers of Coppice Lee.
14. All planning conditions must meet the tests set out in the National Planning Policy Framework. Because the windows do not lead to unacceptable overlooking, the requirement for them to be obscure glazed and fixed shut does not meet the test of necessity. Consequently, the requirement is also not reasonable in the circumstances of this case.
15. In the light of the above analysis, I conclude that the condition which restricts the north west first floor windows to being obscured glazed and fixed shut is not reasonable or necessary to protect the living conditions of the occupiers of Coppice Lee from any unacceptable overlooking. As a consequence, there is no conflict with Policy CS2 of the New Forest District (outside the National Park) Core Strategy (adopted 2009) and Policy 13 of the emerging New Forest Local Plan Review 2016-2036 Part 1: Planning Strategy which seeks, amongst other things, that development shall not cause unacceptable effects by reason of overlooking.

Conditions

16. I have had regard to the replacement conditions recommended by both the appellant and the Council if I was minded to allow the appeal. It is necessary to protect the living conditions of the adjoining occupiers for the first floor windows in the south west elevation to be obscured glazed and fixed shut and for the windows in the north east elevation to be obscured glazed. The suggestion that the windows in the south west elevation could be allowed to be opened in an emergency is not precise so I have deleted that element of the draft wording.
17. Also, the suggested condition by the appellant that the windows in the north west elevation could be obscured glazed and fixed shut if the hedge was to be removed or lowered below 2m is not necessary or precise in the circumstances.
18. The other conditions which were attached to the planning permission relate to issues with the construction of the dwelling and do not concern on-going maintenance or retention issues. Consequently, as the dwelling is built I do not consider that it is necessary that they be attached to any new permission.

Conclusion

19. In the light of the above, I conclude that the appeal should succeed and I will grant a new planning permission with a replacement condition removing the restriction in respect of the north west windows.

David Wyborn

INSPECTOR