



Appeal Decision

Site visit made on 14 July 2020 by C McDonagh BA (Hons), MA

by Susan Ashworth BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 July 2020

Appeal Ref: APP/R2330/D/20/3249285

15 Yew Tree Drive, Oswaldtwistle BB5 3AX

- 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 Kenny Goodliffe against the decision of Hyndburn Borough Council.
 - The application Ref 11/19/0250, dated 9 July 2019, was approved on 7 January 2020 and planning permission was granted subject to conditions.
 - The development permitted is a 2-storey side extension with single storey extension to front.
 - The condition in dispute is No.3 which states that: *The window on the rear elevation of the two storey side extension shown on approved drawing no. 14053 - 02 - C shall not be glazed otherwise than with obscured glass comprising obscurity level 4 or higher, or as otherwise agreed in writing by the Local Planning Authority. The obscure glazing or other approved arrangement shall be permanently retained as such.*
 - The reason given for the condition is: *To safeguard the amenity and privacy of the occupiers of nearby properties and to comply with Policy Env 7 of the Hyndburn Core Strategy.*
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Decision

1. The appeal is allowed and the planning permission Ref 11/19/0250 for a 2-storey side extension with single storey extension to front at 15 Yew Tree Drive, Oswaldtwistle BB5 3AX granted on 7 January 2020 by Hyndburn Borough Council is varied by deleting condition 3.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Background and Main Issue

3. As set out above, planning permission was granted in January 2020 for a two-storey side and single-storey front extension to the dwelling subject to conditions, including condition 3 which required that the rear facing first-floor window to the side extension should be fitted with obscure glazing. The dispute between the parties relates to this requirement.
4. The main issue is whether the condition is reasonable or necessary having regard to the living conditions, in particular the privacy, of the occupiers of 55 Laburnum Drive.

Reasons

5. 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.
6. 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.
7. The reason given for condition 3 on the decision notice is to protect the living conditions of occupiers of adjoining properties. This is clarified further in the Council's appeal questionnaire as being focused on occupiers of 55 Laburnum Drive with regards to overlooking from the first-floor rear bedroom of the approved side extension.
8. Policy ENV7 of the Hyndburn Borough Council Core Strategy states new development will be permitted only if it can be demonstrated that the material impacts arising by reason of overlooking, among others, will not give rise to unacceptable adverse impacts or loss of local amenity and can be properly controlled. My attention is also drawn to the Householder Design Guide Supplementary Planning Document (the SPD). This advises there should normally be a 21m distance between first floor windows and habitable rooms of neighbouring properties. While the neighbouring occupier considers that this distance should be increased to take account of the change in levels, this is not specified in the SPD.
9. I note that the submitted drawings state that the distance between the first-floor window subject to this appeal and the nearest habitable room window of 55 Laburnum Drive is 20.85m. While the occupiers of 55 Laburnum Drive dispute this distance, it does nevertheless fall short of the recommended separation distance in the SPD. In addition, given the drop in levels to No.55 and the relatively short rear garden to No 15, along with the various extensions to the appeal property which have brought it closer to the rear boundary, I acknowledge the concern expressed by the Council and the third party about the increased potential for overlooking from the first floor window in the extension.
10. However, the rear elevation of the appeal property already has un-obscured, first-floor windows closer to the habitable rooms and rear garden of 55 Laburnum Drive. The window subject to control through condition 3 is at a more oblique angle in terms of views towards the adjacent property and the presence of a tree helps partly screen any views in summer months. Accordingly, taking into account the existing degree of overlooking, I conclude that the proposal would not result in materially greater harm to the privacy and

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

thereby the living conditions of the occupiers of the adjacent property than exists at present.

11. Accordingly, I consider condition 3 is not necessary to achieve the objective of safeguarding the privacy of occupiers of No.55 Laburnum Drive. Therefore, it would not be necessary to impose such measures in order to comply with ENV7 of the Hyndburn Borough Council Core Strategy which seeks to avoid development which would cause unacceptable adverse impacts or loss of local amenity. Consequently, it would be unreasonable and would not meet the tests set out in the Framework.

Other matters

12. The occupiers of No.55 have drawn my attention to a window in the conservatory of the appeal site which faces onto their property, and the construction of an extension apparently built as permitted development. However, while I saw both on the site visit, these are not the matters before me in the consideration of this appeal, which is focused on the particulars of condition 3 of planning permission 11/19/0250.

Recommendation

13. For the reasons given above and having had regard to all other matters raised, I recommend that the appeal should be allowed, and the original planning permission should be varied by deleting condition 3.

C McDonagh

APPEAL PLANNING OFFICER

Inspector's Decision

14. I have considered all the submitted evidence and the Appeal Planning Officer's report. On that basis, I agree and conclude that the appeal should be allowed and that condition 3 imposed on planning permission 11/19/0250 granted on 7 January 2020 should be deleted.

S Ashworth

INSPECTOR