
Appeal Decision

Site visit made on 14 July 2020

by S Shapland BSc (Hons) MSc CMILT MCIHT

an Inspector appointed by the Secretary of State

Decision date: 10 August 2020

Appeal Ref: APP/B1605/W/19/3243880
42B Suffolk Road, Cheltenham GL50 2AQ

- 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 Mrs Maria Mercati against the decision of Cheltenham Borough Council.
 - The application Ref 19/01746/FUL, dated 1 September 2019, was approved on 31 October 2019 and planning permission was granted subject to condition.
 - The development permitted is installation of first floor window without restrictions (retrospective).
 - The condition in dispute is No 1 which states that: *"The first floor window installed shall within 8 weeks of the date of this decision be amended so as to be non-opening and glazed with obscure glass to at least Pilkington Level 3 (or equivalent) and retained as such thereafter unless agreement is made in writing with the Local Planning Authority"*.
 - The reason given for the condition is *"to safeguard the amenities of adjacent properties, having regard to save policy CP4 of the Cheltenham Borough Local Plan (2006) and adopted policy SD14 of the Joint Core Strategy (2017)"*.
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Decision

1. The appeal is allowed and the planning permission Ref 19/01746/FUL for the installation of first floor window without restrictions (retrospective) at 42B Suffolk Road, Cheltenham GL50 2AQ granted on 31 October 2019 by Cheltenham Borough Council, is varied by deleting condition No 1.

Background and Main Issue

2. Retrospective planning permission for the installation of a new window on the first floor included a condition which required, within 8 weeks, that the window was amended so it was non-opening and obscured glazed. From the Council's statement it is indicated that this condition is necessary in order to protect the living conditions of neighbouring occupiers, with particular regard to privacy. The appellant objects to the condition, as they do not consider there is any harm which arises from having an unrestricted window in this location. As such it is not considered that the condition is reasonable or necessary. Taking the above background into account, the main issue is therefore whether the condition is reasonable or necessary in the interest of living conditions of neighbouring occupiers, having particular regard to privacy.

Reasons

3. The appeal site comprises a flat located above a retail unit, within a densely built up area. Surrounding the appeal site is a mixture of land uses, including residential, commercial, restaurants, cafes and bars. The window in question

faces east and looks out towards the rear gardens of a number of residential properties, including Nos 7,8 and 9 Gratton Street, and the rear of the neighbouring public house. It was apparent from my site visit that the predominant view from this window was of the flat roof rear element of the public house with glimpses of the rear courtyard.

4. The window does not look directly into any private residential gardens or directly face any windows in neighbouring properties. Whilst there were some oblique views of a number of residential gardens; the boundary structures and the distance of the window from these gardens diminishes the degree of overlooking, with only a small portion of the very rear of these gardens being visible. In a dense urban area like this, a degree of overlooking is to be expected and I do not find that this window if unrestricted would cause significant harm to the privacy of neighbouring occupiers.
5. I note that there have been a number of comments raised by third parties in respect of the original application, and their concerns in respect of the retrospective nature of the planning application. This is not a matter within the scope of this appeal which only relates to the condition. The principle of a window of this size in this location has been approved by the Council.
6. I conclude that the condition is not reasonable or necessary. The development without the condition would not adversely harm the living conditions of neighbouring occupiers, having particular regard to privacy. As such there would be compliance with Policy CP4 of the Cheltenham Borough Local Plan 2006 and Policy SD14 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2017, which seek, amongst other things, that development does not cause unacceptable harm to the amenity of adjoining land users.
7. For the reasons given above, I conclude that the appeal should succeed and I therefore delete condition No 1 from planning permission 19/01746/FUL.

S Shapland

INSPECTOR