



Appeal Decision

Site visit made on 28 July 2020 by S Witherley

Decision by Chris Preston BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 August 2020

Appeal Ref: APP/H0738/W/20/3250017

24 Hardy Grove, Billingham TS23 3GN

- 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 Nigel Williams against the decision of Stockton on Tees Borough Council.
 - The application, Ref 20/0095/FUL, dated 15 January 2020, was approved on 5 March 2020 and planning permission was granted subject to conditions.
 - The development permitted is: Single storey rear extension.
 - The condition in dispute is Condition Number 4 which states: Notwithstanding the submitted details, the hereby approved extension at 24 Hardy Grove, shall be commenced and completed in conjunction with the extension approved at 26 Hardy Grove (Application 20/0028/FUL).
 - The reason given for the condition is: To avoid any overbearing and overshadowing impact occurring from only the development at the host dwelling being completed.
-

Decision

1. The appeal is allowed and planning permission Ref 20/0095/FUL, dated 15 January 2020, for the single storey rear extension, at 24 Hardy Grove, Billingham TS23 3GN, granted on 5 March 2020, by Stockton on Tees Borough Council, is varied by deleting condition (4).

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. Planning permission was granted in March 2020 for a single storey rear extension. Attached to that permission were a number of conditions, including condition (4) which requires that the rear extension shall be commenced and completed in conjunction with the extension approved at No. 26 Hardy Grove under planning application 20/0028/FUL. Paragraph 55 of the National Planning Policy Framework (the Framework) states that 'Planning conditions should only be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development permitted, enforceable, precise and reasonable in all other aspects'.
 4. The appellant contends that the restriction imposed by condition (4) is unreasonable, and unnecessary and does not meet the 6 tests. Consequently, he requests that the condition is deleted.
-

5. Against that background, the main issue is, whether condition (4) is necessary and reasonable, particularly having regard to the effect that removing it would have on the living conditions of the neighbouring occupiers at No. 26 Hardy Grove.

Reasons for the Recommendation

6. No. 24 is a detached dwelling located at the head of a cul-de-sac. The site sits at a slight angle to its neighbour at No. 26 resulting in the rear elevation being slightly proud and the rear garden running at an angle behind No. 26.
7. The Council have noted that the overall development would accord with the relevant planning policies contained within the Stockton-on-Tees Borough Council Local Plan (2019) (LP) and guidance contained within the Stockton-on-Tees Borough Council Supplementary Planning Guidance Note 2 *Householder Extension Guide* (2004) (SPG2) subject to conditions.
8. The condition subject to this appeal was attached to address the Council's concerns regarding the impact the proposal would have on the living conditions of the neighbouring occupiers in terms of its overbearing and overshadowing impact and to accord with the requirements of the SPG2.
9. No. 26 has a utility window nearest to the shared boundary and both parties agree that this window does not service a habitable room. The Council consider, however, that the kitchen window located mid-way along the rear elevation is a habitable room, and thus in order to assess whether the proposal would have any adverse impacts on the living conditions of the neighbouring occupiers assessed whether it would exceed a '60—degree line' as set out in the SPG2.
10. Despite no definitive evidence from either party that the neighbouring kitchen window services a habitable room, I have nevertheless considered both parties evidence from this position. The Council's report notes that the proposal would contravene the 60-degree line by approximately 0.5 metres, whilst the appellant has provided clear evidence illustrating that the 60- degree line would not be contravened. From this and from what I saw on site, it is clear that the proposal would not exceed beyond the 60-degree line.
11. Moreover, having regard to the separation distance from the proposal and the kitchen window and conservatory at No. 26, along with the height of the existing close boarded boundary fence, the proposal, as a result of its size, positioning and the open aspect of the rear gardens would not unduly affect the living conditions of the neighbouring occupiers by way of overbearing and overshadowing impact. Additionally, as a result of the proposal's design and height, it would only be partially visible from above the existing boundary fence and this would not be to an extent that would result in a harmful increase in the loss of outlook, daylight and sunlight.
12. Taking these considerations into account I am satisfied that the proposed development would not significantly affect the living conditions of the occupiers of No. 26 and accordingly does not conflict with the guidance contained in the SPG2 which requires rear extensions to avoid unacceptable impacts on neighbouring living conditions.

13. Removing condition (4) would not result in a development that would conflict with the requirements of Policies 3 and 8 of the LP that seeks proposals to achieve a good standard of amenity for all existing and future residents of land and buildings. I therefore conclude that the disputed condition is not reasonable and is not necessary to protect the living conditions of occupiers of the neighbouring property.
14. In addition, whilst not a matter raised directly by the appellant I have concerns over whether the terms of the condition are reasonable, having regard to advice set out in the Planning Practice Guidance (PPG) and whether it is reasonable to impose a restriction based on the actions of neighbouring homeowners. The PPG is clear that conditions requiring development to be carried out in its entirety i.e. completed, should not be imposed¹.
15. In this case, the condition not only requires the development at the appeal site to be completed but also that of the neighbouring dwelling. The circumstances of the neighbouring residents are out of control of the appellants who are not in a position to guarantee that the neighbouring extension is completed. Even if both extensions were commenced at the same time circumstances beyond the control of the appellants could lead to delay or the failure to complete the neighbouring extension. That could be due to any number of reasons which may affect the circumstances of those living next door.
16. That could lead to unforeseen consequences whereby the appellants had committed to substantial outlay to construct their extension only to be prevented from occupying it as a result of matters out of their control. Consequently, I am not satisfied that it is reasonable to impose such a condition. In circumstances where neighbouring extensions are genuinely only acceptable if built together a planning obligation is the more appropriate way of securing completion of both developments, whereby, both homeowners commit to a contractual position of erecting and completing the development at the same time. That cannot be achieved under condition due to the inability of 'tying in' third-party agreement. However, my views in that regard are to some extent secondary because of my conclusion that the condition is unnecessary based on the lack of harm to neighbouring living conditions if the condition was removed.

Conclusion

17. For the reasons given above I conclude that the appeal should succeed, and that the new planning permission should be varied by deleting condition (4).

S Witherley

APPEAL PLANNING OFFICER

Inspector's Decision

18. I have considered all the submitted evidence and the Appeal Planning Officer's report and, on that basis, agree that the appeal should succeed as set out above.

Chris Preston INSPECTOR

¹ Paragraph:005 Reference ID:21a-005-20190723