



Appeal Decision

Site visit made on 13 August 2020

by Christopher Miell MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st August 2020

Appeal Ref: APP/U1105/D/20/3249068

The Old Post Office, Luppitt, Honiton, Devon EX14 4RT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by G Russell against the decision of East Devon District Council.
 - The application Ref 19/2689/VAR, dated 4 December 2019, was refused by notice dated 31 January 2020.
 - The application sought planning permission for revised design to previously approved applications 18/1003/LBC and 18/1005/FUL without complying with a condition attached to planning permission Ref 19/1406/FUL, dated 18 September 2019.
 - The condition in dispute is No 3 which states that: *"The ground floor window within the rear extension facing to the South East shall be removed within three months of the date of this decision and the extension thereafter retained in accordance with the elevations and floorplans indicated on drawing number ROPO/17/1 J received on 25.06.2019"*.
 - The reason given for the condition is: *"To reflect the proposal and in the interests of the privacy and amenity of the neighbouring property in accordance with Policy D1 (Design and Local Distinctiveness) of the East Devon Local Plan 2013-2031"*.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appellant's agent explains that the red line location plan submitted with the planning application is based on the title plan¹ held by HM Land Registry. However, he contends that the title plan does not accurately reflect the extent of the appellant's land ownership. To this regard, he states that the owner of the appeal site has submitted an application to HM Land Registry to update the title plan, but no further details have been provided as part of this appeal.
3. Whilst this may be the case, it is not for the planning system to resolve precise boundary disputes between parties owing to the location of shared boundaries. For the avoidance of doubt, I have determined the appeal on the basis of the submitted plans.
4. Should this boundary dispute be resolved, the appellant could submit a planning application to the Council with a revised location plan showing the extent of their updated land ownership.

¹ HM Land Registry - Title Number: DN660959

Background and Main Issue

5. Planning permission² was granted on 5 June 2018 for alterations and extensions to the appeal property, which included the erection of a single storey rear extension. The Council explain that the works to the property were not undertaken in accordance with the approved plans. Therefore, in June 2019 the appellant submitted a planning application³ for revised proposals, which sought planning permission for the unlawful works. The Council granted planning permission for the revised works on 18 September 2019. However, the permission is subject to a condition which requires the removal of a window that has been installed on the side facing elevation of the rear extension, contrary to the approved plans.
6. The Council explain that the condition is necessary to safeguard the privacy and amenity of the occupiers of the neighbouring property, known as 'Town Cottage'. The appellant disputes the acceptability of the condition and seeks its removal from the permission.
7. Therefore, the main issue in this appeal is whether the condition is reasonable and necessary in the interests of protecting the living conditions of the neighbouring occupiers of Town Cottage, in respect of privacy.

Reasons

8. The appeal site is a two-storey semi-detached dwelling situated within the settlement of Luppitt. The appeal site is situated on a hill, where the land slopes downwards in a southerly direction towards the neighbouring property, Town Cottage. Consequently, the finished floor level of the single storey extension occupies an elevated position in relation to the rear garden of the neighbouring property.
9. At the time of my site visit, the single storey rear extension appeared complete and the window on the side facing elevation of the rear extension remained in situ. The window has clear glazing and serves a kitchen area. Therefore, owing to the use of the room, as a matter of fact and degree, I consider that the window will be used on a frequent basis by the occupiers of the appeal property.
10. From the kitchen window there are direct views over a strip of garden land, which is located between the side facing elevation of the rear extension and an existing timber fence. There is shrubbery in front of the fence which provides additional screening.
11. On my site visit, it appeared that this section of garden land formed part of the rear garden of the appeal property. However, the land in question appears to be located outside of the red line, as shown on the submitted location plan, and, in this context, the land would form part of the garden of Town Cottage. If this were the case, the existing kitchen window would provide occupiers of the appeal property with clear and unobstructed views into the neighbouring garden from an elevated position, which would cause significant harm to the occupiers of Town Cottage, in respect of privacy.

² Council Ref: 18/1005/FUL

³ Council Ref: 19/1406/FUL

12. In addition to the above, the Council explain that the existing fence that has been erected in this location does not benefit from planning permission. This has not been disputed by the appellant and no substantive evidence, such as a certificate pursuant to Section 191/192 of the Town and Country Planning Act 1990, has been put forward to demonstrate that the existing fence is lawful.
13. Consequently, due to the uncertainty in relation to the site boundary and the lawfulness of the existing fencing, I am unable to conclude that the retention of the existing window would not cause significant harm to the living conditions of the occupiers of Town Cottage, in respect of privacy.
14. The appellant points out that the rear garden of Town Cottage is already overlooked by the rearward facing first floor windows of the appeal property. However, the view of the rear garden from the first-floor windows would be from an oblique angle, whereas the retention of the window would allow direct views from a sideward facing position. In any event, existing overlooking does not provide justification to allow further harm, which would result from the retention of the window.
15. I recognise that the existing shrubbery provides a degree of screening, but given its location in front of the fence, it is unclear whether the shrubbery is located on land within the appellant's ownership. Therefore, this is not a matter on which this appeal turns.
16. For the above reasons, I conclude that the condition is reasonable and necessary to safeguard the privacy of the occupiers of Town Cottage. The condition accords with Policy D1 of the East Devon Local Plan 2013 to 2031 (Adopted January 2016) which, amongst other things, states that proposals will only be permitted where they do not adversely affect the amenity of occupiers of adjoining residential properties.

Other Matters

17. The appeal property is a Grade II listed building. The design and positioning of the window on the side elevation of the rear extension would preserve the special architectural and historic interest of the listed building.
18. The appeal site is located within an Area of Outstanding Natural Beauty (the 'AONB'). The window is located to the side of the host building and would assimilate into the built-up context of Luppitt. As such, the development would have a neutral impact upon and thus conserves the natural beauty of the AONB.
19. However, these are matters of neutral consequence in the overall planning balance.

Conclusion

20. I have taken into account all other considerations, but none outweigh the conclusions I have reached and I dismiss the appeal.

Christopher Miell

INSPECTOR