



Appeal Decision

Site visit made on 27 July 2020

by S. Rennie BSc (Hons), BA (Hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 September 2020

Appeal Ref: APP/P1615/W/19/3243655

Little Orchard, Penmoel Lane, Woodcroft, Gloucestershire NP16 7LG

- 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 and Mrs Ford against the decision of Forest of Dean District Council.
- The application Ref P1312/19/FUL, dated 19 August 2019, was refused by notice dated 16 October 2019.
- The application sought planning permission for a revised scheme of P0083/15/FUL for alterations, and raising of ridge height on existing bungalow to form first floor living accommodation, to include a small, fixed shut and obscure glazed window to first floor bedroom (2) on the proposed West elevation, without complying with conditions attached to planning permission Ref P0871/15/FUL, dated 3 August 2015.
- The conditions in dispute are No 2 and No 5 which state that:
 - 2. The development hereby permitted shall be carried out in accordance with the approved plans listed in the table below.*
 - 5. Notwithstanding the submitted plans and drawing No WVBS/BF/02 revision C dated 9 June 2015 the windows to the bathroom, en-suite, wardrobe and bedroom 2 on the proposed West elevation shall be fixed shut and shall be fitted with obscure glazing.*
- The reason given for the conditions are:
 - 2. For the avoidance of doubt and in the interests of proper planning.*
 - 5. To safeguard the privacy of future occupants of the dwelling hereby permitted, in accordance with Core Strategy Policy CSP.1.*

Decision

1. The appeal is allowed and planning permission is granted for the revised scheme of P0083/15/FUL for alterations and raising of ridge height on the existing bungalow to form first floor living accommodation, to include a small, fixed shut and obscure glazed window to first floor bedroom (2) on the proposed West elevation at Little Orchard, Penmoel Lane, Woodcroft, Gloucestershire NP16 7LG, in accordance with the application Ref P1312/19/FUL dated 19 August 2019, without compliance with condition number 2 and 5, previously imposed on planning permission Ref P0871/15/FUL dated 3 August 2015, but subject to the following conditions:
 - 1) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order, 2015, (or any Order revoking or re-enacting that Order with or without modification), no window openings shall be formed at first floor level other than those hereby permitted.

- 2) Notwithstanding the submitted plans and drawing No WVBS/BF/02 revision C dated 9 June 2015, the windows to the bathroom, en-suite, wardrobe and Bedroom 2 on the proposed West elevation shall be fitted with obscure glazing. These windows shall be either fixed shut or be top-hung opening only, with the details of any top-hung opening windows to be used being first agreed in writing with the Local Planning Authority prior to their installation. The windows shall remain obscure glazed and shall be either fixed shut or be top hung opening windows as per that agreed in writing by the Local Planning Authority.

Background and Main Issue

2. The proposal is to remove two conditions on the original planning permission that relate to both the approved plans and also restrictions on rear first floor windows to be both obscure glazed and fixed shut. Revised conditions have been suggested, which would essentially allow for the window in the rear elevation serving bedroom No 2 to be clear glazed, and the same for a walk-in wardrobe window. Also, all the first floor rear elevation windows would be top-hung opening to allow for ventilation, leaving only a small gap.
3. There has been a similar proposal relating to these conditions submitted and refused previously by the Council, which was subsequently dismissed at appeal (ref: APP/P1615/W/15/3132542) which I have taken into consideration with this latest appeal, although I have noted that the boundary hedgerow has grown in height since this last appeal.

Reasons

4. The windows that are subject to the disputed condition are to the rear of the dwelling at first floor level, serving different rooms. All are currently fixed shut and obscure glazed as per the requirements of the disputed condition. The windows, if not obscured, would have a view across the garden of Little Orchard towards the boundary with the neighbouring property known as Bishton House. Along this boundary is a line of trees and hedges of a height which obscures much of the potential views possible of this neighbouring garden.
5. The actual house of Bishton House is set a significant distance from the dwelling at Little Orchard, to an extent that there would be no significant loss of privacy of occupants of this neighbouring property if they were in or around the house itself. I also note there is a first floor side elevation bedroom window which is clear glazed with views towards the dwelling at Bishton House, and so if the rear elevation windows were clear glazed also it would have no significant increase in overlooking impact towards this house.
6. However, as noted above, the rear windows would have views towards the boundary with the long rear garden of Bishton House, which appears relatively private currently. This distance to the boundary from the first floor rear elevation windows is not such that it would sufficiently mitigate overlooking impact. The views would be of the middle and end sections of the large Bishton House garden, but I have no substantive evidence before me that these sections are not important private spaces for the occupants of this neighbouring house.

7. The proposal to allow clear glazing to the windows of Bedroom 2 and the wardrobe has already been considered under the 2016 appeal decision. This appeal decision concluded that there would be harmful overlooking of the Bishton House rear garden and that the need for clear glazing for these two windows for the occupants of Little Orchard did not outweigh this harm, considering the need for light with bedroom 2 having a second large clear glazed window for example.
8. The main difference in this appeal appears to be that the evergreen hedge has grown taller and the appellant states this would be maintained at a height of 2.4m minimum. The appellant has also suggested a condition requiring further planting to this boundary and also to ensure the height of the existing vegetation remain at 2.4m.
9. Whilst I accept that much of the possible views into the rear garden from the first floor rear elevation windows are currently obscured to a degree by this high hedgerow to the boundary it is my opinion that this may not always be the case. Firstly, there could still be some views into the garden even with the high hedge given the height of the windows. I am not persuaded by the evidence submitted and what I saw on site that the hedgerows maintained at 2.4m minimum would sufficiently screen views of the neighbour's garden.
10. Furthermore, the evergreen hedgerow that exists is not necessarily a permanent feature and some parts may die off or need to be removed for various reasons. I also consider that a condition to require the hedgerows to be maintained at a certain minimum height would be problematic to enforce and could also be difficult for the appellant to achieve at all times in the future. For these reasons a reliance on keeping a hedgerow to a certain minimum height to safeguard the privacy of the occupants of Bishton House when within their rear garden does not provide adequate long term certainty, even with the use of conditions.
11. Similarly, further planting could be effective, but there are no substantive details of what planting there would be and where this would best be positioned to help to mitigate the potential overlooking impact. In any case, I am not persuaded that a reliance on landscaping (existing and proposed) in this circumstance, where there is such a significant potential to harm the living conditions of neighbours, should be relied upon.
12. There are views from the side elevation window in Bedroom 2 (which is clear glazed) of some of the rear garden of Bishton House, albeit an angled view mostly. However, the rear elevation windows have a more direct view of a substantial extent of the rear garden of Bishton House which is not overlooked by the Bedroom 2 clear glazed window. Furthermore, there are some views of the boundary with Bishton House from the half-landing/staircase window on the west elevation also, but this window is lower than the first floor rear elevation windows and does not result in such a high level of potential overlooking. As such, allowing clear glazing in the rear elevation windows for bedroom 2 and the wardrobe would introduce a potentially much greater impact to the privacy of occupants of this neighbouring house than exists.
13. With specific regard to the wardrobe room, this may not be a primary habitable room though it is linked through to a main bedroom which, to my mind, increases the potential impact. In this layout I would regard the clear glazing of

- the wardrobe room window to likely result in a significant detrimental impact to privacy of the neighbours at Bishton House.
14. The appellant has drawn my attention to other planning cases where there have not been conditions for obscure windows included, for example. However, I have considered this appeal based on its individual circumstances and on its own merits. As such, these other examples have not altered my opinion on this issue.
 15. I understand that there would be some benefits such as improved light levels from allowing the two windows in question to be clear glazed. The appellant also states that having these obscure glazed windows is oppressive and should not be used on habitable rooms. However, there is a large second window to bedroom 2 and the other room is a wardrobe and so, to my mind, the use of obscure glazing to these windows does not result in any significant harmful impacts to the living conditions of the occupiers.
 16. Overall, as was the conclusion of the previous Inspector with the 2016 appeal, the harm to neighbour living conditions would significantly and demonstrably outweigh the benefits as set out by the appellant, even with the separation distance to the boundary. On the issue of clear glazing, the proposal would be contrary to Policy CSP.1 of the Forest of Dean Core Strategy, and Policies AP.1 and AP.4 of the Allocations Plan, which require development to safeguard the amenities of neighbouring properties, amongst other things.
 17. The appellant also proposed that all the first floor rear elevation windows be top-hung opening, rather than fixed shut as the original Condition 5 requires. It is clear from the Officers Report from the Council that a small opening for these windows as proposed by the appellant would not result in a significant loss of privacy for the neighbours at Bishton House, which I would agree with. This would be a very small gap and so not allowing full view of the neighbouring garden, whilst providing natural ventilation for these rooms. In this regard, this aspect of the proposal is in accordance with the policies set out in paragraph 16 above.
 18. Therefore, to conclude, there would be no detrimental impact from the installation of top hung windows if the gap created would be approximately as small as the appellant suggests, but there is the potential for significant overlooking harm to the living conditions of neighbours if the wardrobe and bedroom windows were to be clear glazed. A replacement condition (No 5 on the original Decision Notice) to reflect this conclusion can be imposed and so this appeal can be 'allowed', although I acknowledge this is not fully what the appellant has proposed with their application. This new condition is both necessary and reasonable to safeguard the living conditions of neighbours.
 19. As the development has been completed, I do not regard there to be any need for a replacement plans condition (Condition 2 on the original Decision Notice), or indeed any such condition at all. The additional plans and information submitted with this appeal relates primarily to the proposal to allow clear glazing to two of the windows, which I do not regard as acceptable, and so there is no need to include these as approved plans.
 20. I note the comments regarding previous communications from the Council and the lack of agreement to the conditions imposed before the original planning permission was granted. However, these matters have had no bearing on my

decision with this appeal, which is based on the conditions that were imposed and the current circumstances seen at the site, for example.

Conditions

21. The Planning Practice Guidance (PPG) makes it clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. The development appears to be fully implemented on site.
22. As such, there is no requirement to now impose conditions that the development would be carried out in accordance with approved plans, or a condition in relation to a time limit for implementation of the development. There is also no need for a condition in relation to materials.
23. The condition on the original approval relating to restricting further new first floor windows has been re-imposed, in the interest of safeguarding neighbour amenities.
24. Finally, as described above I have imposed a condition to restrict certain first floor windows to being obscure glazed, in the interests of safeguarding neighbour living conditions, but this does allow for these windows to be top-hung to enable some ventilation.

Conclusions

25. For the reasons set out above I conclude that the appeal should be allowed, in that the original condition No 5 has been replaced, although this does not result in there being no requirement for obscure glazing as I regard this as still necessary and reasonable to be required. The conditions are deleted and replaced with the new conditions as set out in Paragraph 1 above.

S. Rennie

INSPECTOR