



Appeal Decision

Site visit made on 15 September 2020

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 September 2020

Appeal Ref: APP/B1740/W/19/3243400

46 Fullerton Road, Pennington, Lymington SO41 9JN

- 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 Savin against the decision of New Forest District Council.
 - The application Ref 19/10832, dated 28 June 2019, was approved on 23 August 2019 and planning permission was granted subject to conditions.
 - The development permitted is a variation of condition 2 of planning permission 18/11673 to allow revised drawings PP.01B, PE0B and LP.01A.
 - The conditions in dispute are Nos 3 and 4 which state that:
'Condition 3: The first floor dormer windows on the rear elevation of the approved building shall be obscurely glazed and fixed shut at all times unless the parts that can be opened are more than 1.7m above the corresponding floor level. The aforementioned windows should be fitted with obscure glass with a minimum obscurity of level 3 glazing and not an applied film.'
Condition 4: No other windows or rooflights other than those hereby approved shall be inserted 19/10832 into the rear roofspace of the dwelling unless express planning permission has first been granted.'
 - The reason given for both the conditions is:
'To safeguard the privacy of the adjoining neighbouring properties in accordance with policy CS2 of the Local Plan for the New Forest District outside the National Park (Core Strategy).'
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Decision

1. The appeal is dismissed.

Procedural Matters

2. In determining the appeal, I have considered plans referenced Location Plan LP.01 Revision A; Proposed Elevations PE.01 Revision B and Proposed Plans PP.01 Revision B. These correspond with the approved plans listed in condition 2 of planning application reference 19/10832. At my site visit I observed that the first floor windows in the rear elevation of the dwelling constructed at the site differed from the size of windows shown on drawing PE.01 Revision B. Nevertheless, I have made by determination in relation to the submitted plans.
3. Since the Council made its decision the New Forest District Local Plan 2016-2036, Part 1 Planning Strategy, July 2020 (LP) has been adopted. Accordingly, the New Forest District Council Local Development Framework, Core Strategy October 2009 (CS) as referred to in the reasons for conditions 3 and 4 no longer forms part of the development plan. Policy ENV3 – Design quality and local distinctiveness replaces policy CS2 – Design quality of the CS and covers broadly similar territory to the superseded policy. So far as is relevant to the

appeal proposal, the policies are not fundamentally different. Both parties have been given the opportunity to comment on the change in policy circumstances. Therefore, I am satisfied that neither party would be prejudiced by my consideration of the LP.

Main Issue

4. The main issue is whether conditions 3 and 4 are necessary and reasonable having regard to the effect of the proposal on the living conditions of existing residents in Samber Close in relation to privacy.

Background

5. The planning history to the appeal site shows that planning permission was granted subject to conditions under reference 18/11673 for roof alterations and dormers in association with a new first floor, a single storey rear extension and a replacement garage. Subsequently, planning application reference 19/10832 sought to vary condition 2 of permission reference 18/11673 to substitute replacement approved plans.
6. In summary, the principal differences were that two windows were included within the rear first floor dormer instead of one, along with a slight increase in the overall roof height¹. The two windows in the rear dormer serve an en-suite bathroom and provide a second window to bedroom 2². This standalone permission was granted on 23 August 2019 subject to four conditions. Conditions 3 and 4 were imposed by the Council in order to protect the privacy of residents living in Samber Road. Condition 3 requires both the windows in the rear dormer to be obscurely glazed and fixed shut unless the openable parts are more than 1.7m above floor level. Condition 4 prevents any additional windows or rooflights in the rear roofspace of the dwelling. There were comparable conditions imposed on the original scheme reference 18/11673.
7. The appellant seeks to remove the restrictions imposed by conditions 3 and 4 on the basis that the measures are not necessary to protect the privacy of residents to the east. He considers that they impose unnecessary burdens that are unreasonable and would prevent him from installing clear glazing and/or additional fenestration. It is his view that conditions 3 and 4 fail to meet all 6 tests referred to in paragraph 55 of the National Planning Policy Framework (the Framework). The Council disagree and consider that the conditions are necessary to make the proposal acceptable in planning terms. This is essentially the central issue for my consideration.

Reasons

8. Paragraph 55 of the Framework states that planning conditions should be kept to a minimum and only imposed, amongst other matters, when they are necessary 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, in general terms, if a condition is wider in scope than is necessary to achieve the desired objective, it will fail the test of necessity. It further

¹ Paragraph 3, Authority's planning report for application reference 19/10832

² Drawing reference – Proposed Plans PP.01 Revision B, Proposed first floor plan

generally follows that requiring more than is necessary to make a proposal acceptable would be unreasonable.

9. Policy ENV3 of the LP requires new development to avoid unacceptable effects by reason of visual intrusion or overbearing impact, overlooking, shading, noise and light pollution or other adverse impacts on local character or residential amenity.
10. 46 Fullerton Road is a detached bungalow. The proposal would introduce an additional storey thereby increasing the overall height. Conditions 3 and 4 relate to the windows in the first floor rear dormer and rear roofslope of the property. These would face towards the rear of residential properties and gardens in Samber Close to the east. Nos 122-124 Samber Close adjoin the rear garden boundary with the appeal site and the intervening topography means that these dwellings and their rear gardens are set at a considerably lower level than the house at the appeal site. The respective levels would significantly influence the degree of impact arising from the proposed or additional windows in the rear elevation of the appeal building due to its elevated height. This would increase the potential to look down upon the rear gardens and elevations of Nos 122-124.
11. The high level of the dormer windows of the appeal property relative to No.123 would, in the absence of mitigation, allow for commanding and intrusive views towards its rear garden. At my site visit I observed that the property had a modest rear garden of limited depth. The overlooking would be most acutely experienced at a patio area close to the house, which is likely to be used more intensively and for sitting out. Therefore, the overlooking would be to a degree that would be incompatible with the level of privacy that occupants might reasonably anticipate for a private rear garden space.
12. I acknowledge that the angle and alignment of the windows in the rear elevation of the proposal relative to 122 and 124 Samber Close, combined with the separation distance would be sufficient to protect the privacy of the rear elevations and gardens of those properties. Nevertheless, this would not overcome or address the harm identified in relation to No.123.
13. Accordingly, clear glazing in the dormer windows or additional fenestration in the roof space of the appeal site would, due to the reduction in privacy, unacceptably compromise the ability of residents at No.123 to enjoy their rear garden. Moreover, obscure glazing of the proposed windows would not unreasonably diminish the living conditions experienced in the appeal building given that they relate to a bathroom and a secondary bedroom window. The wording of condition 3 allows for some opening of the windows, albeit restricted to that above 1.7m from floor level. This would provide for ventilation to counteract the effects of condensation and damp.
14. On this basis, the requirements for obscure glazing and limited opening for the two windows proposed, in addition to a restriction on further fenestration in the rear roof slope, would mitigate this harm and strike a reasonable balance between safeguarding the privacy of nearby residents and allowing the appellant to extend and improve his property.
15. Therefore, the imposition of conditions 3 and 4 in these circumstances accords with Planning Practice Guidance which states that when used properly, conditions can enable development to proceed where it would otherwise have

- been necessary to refuse planning permission, by mitigating the adverse effects³. Furthermore, it is consistent with paragraph 127 f) of the Framework which, amongst other things, states that planning decisions should ensure that developments have a high standard of amenity for existing and future users.
16. The submitted site layout⁴ illustrates that a distance of over 26 metres would be maintained between the windows in the rear dormer and the nearest property at 123 Samber Close. This separation would avoid intrusive levels of direct inter-visibility between the windows at the appeal property and those in the rear elevations of Nos 122-124. It also accords with the general 'rule of thumb' of 20-21 metres often used by Councils for window to window separation. Nevertheless, due to the combination of the topography and orientation of the dormer windows, it does not fully overcome the concerns I have outlined regarding the relationship of the development with the rear gardens of Nos 123.
 17. Reference is made to mutual overlooking between properties at Fullerton Road and Samber Close as well as between adjoining properties in Samber Close. Be that as it may, based on the evidence submitted and my general observations of the area, it is not shown that there are similar configurations of the topography combined with the orientation of windows that would be directly comparable to the scheme before me.
 18. Specific reference is made to a planning permission at 24 Fullerton Road⁵ granted without conditions similar to Nos 3 and 4. No.24 is located some distance to the south of the appeal site where I observed the respective differences in level appeared less pronounced. This reduces the relevance of the example to the present case and therefore, it attracts limited weight. In any event, I have determined the proposal on its own merits.
 19. My attention is drawn to permitted development rights normally afforded to householders under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the Order). Under certain circumstances this may allow for a dormer window or rooflight in a dwelling without the need for specific planning permission. Nevertheless, it is not shown that permitted development rights would extend to cover the appeal proposal. The general existence of such rights in circumstances other than the one before me, is of limited weight and I am required to consider the impact of the proposal with reference to the policies in the development plan.
 20. The appellant considers that adding further windows to the box dormer would improve its appearance and provides an indicative elevation⁶. However, neither party suggests that the visual impact of the two dormer windows shown on plan reference PE.01 Revision B would be objectionable, and I have little basis to disagree. Moreover, this would not be sufficient justification to permit a development that would be harmful to the privacy of nearby residents.
 21. Therefore, I find that conditions 3 and 4 are necessary to safeguard the living conditions of nearby residents at 123 Samber Close to prevent an otherwise unacceptable effect on their privacy. To do otherwise would conflict with policy ENV3 of the LP and the Framework. It follows that conditions 3 and 4 are

³ Paragraph: 001 Reference ID: 21a-001-20140306

⁴ Location Plan LP.01 Revision A

⁵ Appendix B, Appellant's Statement of Case, reference 14/11198

⁶ Page 5, Appellant's Statement of Case, Proposed Rear Elevation

necessary to make the development acceptable in planning terms. Furthermore, both conditions impose proportionate restrictions to enable the development to proceed and consequently, are reasonable. Hence, I find that conditions 3 and 4 meet the requisite tests in paragraph 55 of the Framework and ought to be retained.

Conclusion

22. Therefore, for the reasons given above, the appeal is dismissed. Accordingly, permission reference 19/10832 approved on 23 August 2019 remains unaltered with conditions 3 and 4 subsisting.

Helen O'Connor

Inspector