
Appeal Decision

Site visit made on 17 August 2020 by Hilary Senior BA (Hons) MCD MRTPI

by Susan Ashworth BA (Hons) BPL MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 18 September 2020

Appeal Ref: APP/M0933/W/19/3240080

10 Black Dyke Road, Arnside, Cumbria LA5 0HH

- 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 F Wood against the decision of South Lakeland District Council.
 - The application Ref SL/2019/0660, dated 9 August 2019, was approved on 7 October 2019 and planning permission was granted subject to conditions.
 - The development permitted is single storey extension and access ramp.
 - The condition in dispute is No 4 which states that: Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification) prior to the first occupation of the development hereby permitted, the new window in the northwest elevation shall be inwards opening and shall be permanently glazed with obscured glass to a degree sufficient to conceal or hide the features of all physical objects from view. The window shall be retained and maintained in that condition at all times.
 - The reason given for the condition is: To safeguard the amenity of the neighbouring residents in accordance with Policy DM2 of the Development Management Policies Development Plan Document and Policy CS8.10 of the South Lakeland Core Strategy.
-

Decision

1. The appeal is allowed and the planning permission Ref SL/2019/0660 for a single storey extension and access ramp at 10 Black Dyke Road, Arnside, Cumbria LA5 0HH granted on 7 October 2019 by South Lakeland District 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.

Procedural Matters

3. The description of development in the banner heading and formal decision above is the description used by the Council in their decision notice rather than that stated on the application form, as it more accurately describes the development.
4. I note the Council's suggestion that the incorrect certificate may have been submitted with the original application. However, be that as it may, I am satisfied that occupiers of immediately neighbouring property were notified of

the application and appeal and have had the opportunity to comment on it. Accordingly, I am satisfied that the neighbouring occupier is not prejudiced by my consideration of the appeal.

Background and Main Issue

5. 10 Black Dyke Road is a detached bungalow, at the end of a row of similar properties, set back from the highway and served by a private access road with substantial landscaping. The property had a large window to the elevation facing No 9. That window served a dining room and, from all I have read, was fitted with clear glass.
6. Planning permission was granted for a single storey rear extension and an access ramp to the front of No 10 Black Dyke Road in August 2019 subject to various conditions including a condition, No 4, which required the side elevation window to be inward opening and obscure glazed. The window to which the condition referred would serve a bedroom in what was the original dining room. It is smaller in size than the original window.
7. On the site visit it was noted that the alterations to the property have commenced.
8. The main issue is whether the disputed condition 4 is necessary and reasonable having regard to the effect of the development on the living conditions of the occupiers of 9 Black Dyke Road.

Reasons

9. The layout of the dwellings means that the driveway of 9 Black Dyke Road lies immediately adjacent to the side elevation of No 10. At the time of my visit vehicles were parked on this driveway, near the side window. I did however note that this arrangement is similar for all the properties on the row of bungalows. The windows on the side elevations of the nearby properties also appeared to be fitted with clear glazing.
10. Given that the original window served a habitable room, and was fitted with clear glazing, the smaller proposed window would not cause additional harm to the living conditions of the occupiers of the neighbouring property as a result of overlooking. Furthermore, whilst I have taken the Council's comments into account, I have no reason to find that the alterations to the window would unduly impact on any future changes to the side elevation of No 9. Moreover, given the limited size of the room the installation of an obscure glazed window would make the proposed bedroom an unpleasant living space to be in. As such it is neither reasonable nor necessary for the window to be fitted with obscure glass.
11. I note the Council's concern that due to the proximity of the driveway, the occupiers of No 10 could be subject to noise, fumes and nuisance from cars on the driveway, particularly if engines were left running. However, this would be the case even if the window were inward opening as required by the condition. Moreover, the potential for noise and nuisance already exists as a result of the layout of the dwellings.
12. I acknowledge that if the window were to open outwards it would extend, an albeit limited extent, over the driveway. However, given the width and length of the driveway, I am not convinced that it would unduly affect the use of the

space and thereby significantly harm the living conditions of the adjoining residents. Whilst an open window would encroach over land within the neighbour's ownership this is a private matter rather than a planning one.

13. Moreover, on the basis of the evidence before me, permission would not have been required to change the internal layout of the original dwelling, including changing the dining room to a bedroom. Similarly, the original dwelling had a side facing window which could have been altered in the manner suggested in this proposal without planning permission. Therefore, whilst I acknowledge that the rear extension may have led to the re-arrangement of internal rooms, I am unconvinced the condition is reasonable.
14. Consequently, for the reasons set out above, the lack of obscure glazing and the ability to open the window outwards would not cause significant harm to the living conditions of the occupiers of 9 Black Dyke Road. As such the proposal without compliance with the condition would accord with Policy DM2 of the Development Management Policies Development Plan Document (DMPDPD) which seek to ensure that developments consider all potential users needs in terms of the design and layout.
15. Although not forming part of the reason for the condition, the Council has also drawn my attention to Policy DM1 of the DMPDPD which requires that development ensures acceptable levels of amenity for existing, neighbouring and future occupiers. For the above reasons the proposal would also comply with this condition.
16. Accordingly, Condition 4 is not considered reasonable or necessary and as such it does not meet the tests set out in paragraph 55 of the Framework. As such it should be deleted.
17. I have taken into consideration the Council's suggested alternative condition requiring the window to be obscure glass and emergency opening only. However, I am unconvinced such a condition would be enforceable and for the reasons set out above would be also be unnecessary.

Conclusion and Recommendation

18. For the reasons given above and having regard to all other matters raised, I recommend that the appeal is allowed and condition 4 deleted.

Hilary Senior

APPEAL PLANNING OFFICER

Inspector's Decision

19. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the appeal is allowed.

Susan Ashworth

INSPECTOR