



Appeal Decision

Site visit made on 14 October 2020

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 19 October 2020

Appeal Ref: APP/Y3940/W/20/3255747

The Old Mill Annex, 33C Market Street, Bradford-on-Avon BA15 1LL

- 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 Mrs Zoe Balfre against the decision of Wiltshire Council.
 - The application Ref 19/08449/FUL, dated 16 August 2019, was approved on 15 January 2020 and planning permission was granted subject to conditions.
 - The development permitted is proposed insertion of five roof lights (replacement and enlargement of three existing windows) and new external flue (replacement of existing) and demolition of a single storey extension to create a garden.
 - The condition in dispute is No 3 which states: The roof lights in the eastern rear elevation of the development hereby approved shall be glazed with obscured glass to an obscurity level of not less than level three and the roof lights shall be permanently fixed shut to a height of no less than 1.7m above the finished first floor level prior to the first occupation of the development hereby permitted and thereafter, shall be permanently maintained in perpetuity.
 - The reason given for the condition is: in the interests of residential amenity and privacy.
-

Decision

1. The appeal is allowed and the planning permission Ref 19/08449/FUL for proposed insertion of five roof lights (replacement and enlargement of three existing windows) and new external flue (replacement of existing) and demolition of a single storey extension to create a garden, at The Old Mill Annexe, 33C Market Street, Bradford-on-Avon BA15 1LL, granted on 16 August 2019 by Wiltshire Council, is varied by deleting Condition 3.

Procedural Matters

2. The 2 rooflights subject of condition 3, labelled RL07 and RL08 on the plans, have already been installed. The rooflights are openable and clear glazed, albeit a film has been applied to RL07. Whilst this has informed my assessment below, my decision above is based on the previously approved plans.

Main Issue

3. The reason given for the condition lists 'residential amenity and privacy', which I interpret as meaning, residential amenity with respect to privacy. The main issue is therefore whether the disputed condition is necessary with particular regard to the privacy of occupants of adjacent dwellings.

Reasons

4. The Old Mill Annexe is a building comprising a ground floor, first floor and attic/second floor. It is located at around 18-19 metres to the rear of dwellings

which front Coppice Hill, and stands at a much higher level. Its east, or rear elevation, runs roughly parallel to the rear elevation of 6 Coppice Hill, and immediately abuts garden land attached to this dwelling.

5. Rooflight RL07 serves a small room at attic/second floor level, shown on the plans containing a toilet. Rooflight RL08 serves a larger room at first floor level shown on the plans containing an ensuite with the floor above removed to create a light well.
6. Insofar as Condition 3 requires installation of the rooflights at 'no less than 1.7m above the finished first floor level', it serves no useful purpose in relation to RL08, given that the rooflight could not possibly be installed any lower. Given that the toilet is located at attic/second floor level, the condition, as drafted, is also incapable of serving its intended purpose in relation to RL07. In this regard, it is clear that the Council's intention was in fact for RL07 to be installed 1.7 metres above the finished attic/second floor level.
7. Notwithstanding the above, it appears that RL07 has indeed been installed around 1.7m above the finished floor level of the room it serves. When taking into account the depth of the roof structure, and the thickness of the frame, the distance between the floor and the glazing is greater. This is also true, albeit to a lesser extent, when the rooflight is opened.
8. The parties do not agree the average UK height of an adult male. Taking a range between 5'9" and 5'10" however, 1.7m, which is roughly equivalent to 5'7", falls around or just above eye level. When also taking account of the depth of the roof structure, the thickness of the frame, and the elevated nature of the site, the only view out of the rooflight for an adult male of average height is of the sky. This is the case whether the rooflight is open or closed. When slightly elevated above average height with the rooflight open, a partial view of the chimney pots and stacks of dwellings to the rear of the appeal property is possible. On this basis, even a taller than average adult male would be unable to obtain more than a partial view of the roofs of dwellings to the rear when the rooflight was open. Thus, it makes little difference how the internal space is or might be used, as the limited nature of the view would not change in any significant way.
9. The Council has drawn attention to a photo taken from scaffolding erected to the rear of the dwelling. This shows the back gardens and main rear elevations of dwellings along Coppice Hill. The view shown however bears no relation to the nature or the extent of the view possible from RL07. Indeed, based on my findings above, the main rear elevations and back gardens of dwellings along Coppice Hill both are, and would not be visible from RL07, or therefore overlooked.
10. The distance between the first floor and RL08 is such that, when standing within what is shown on the plans as an ensuite, it is impossible to obtain anything other than a vertical view through it. Interested parties have nonetheless raised concern that horizontal views might be possible if the staircase wall was removed. This would however compromise the containment of the staircase, and would serve no other obvious purpose. As such it appears highly unlikely that this would ever occur. Just as unlikely is the possibility that the interior would undergo the further major reorganisation necessary for RL08 to serve a room. Even if did, as the rooflight would be located almost at floor level, it would need to be moved. As the Council states that permitted

development rights have been previously removed from the property, this would fall within the Council's control.

11. The Council's Design Guidance: House Alterations and Extensions Supplementary Planning Guidance 2004 (the SPG) advocates a 21m back to back separation distance between windows of habitable rooms. This general rule however presumes the existence of direct overlooking, which would not occur in this case. The rooflights are not otherwise intended to serve habitable rooms. There is therefore no conflict with the SPG in this regard.
12. In view of my findings above there is no necessity for either rooflight to be 'obscured', or to be fixed shut. This is because neither of these measures is required to safeguard the privacy of occupants of adjoining dwellings. There is also no need for a corrected requirement to be imposed in relation to the distance between the RL07 and the floor, given that this is otherwise adequately shown on the plans.
13. For the reasons outlined above I conclude that the disputed condition is unnecessary, and that its deletion would not give rise to any harm to the privacy of occupants of adjacent dwellings. I am therefore satisfied that in varying the planning permission in this way, the development would comply with Core Policy 57 of the Wiltshire Core Strategy 2015, insofar as this requires development to have regard to the compatibility of adjoining buildings and uses; and supporting guidance in the SPG.

Other Matters

14. The site is located in Bradford-on-Avon Conservation Area (the Conservation Area). Insofar as it relates this appeal, the significance of the Conservation Area resides in the historic layout of the town, and the collection and interrelationship of historic buildings and spaces it contains. Many of these buildings, including those to the rear of the site, are listed, and themselves partly draw significance from their historic developmental setting. Within this context the Old Mill Annexe is an appreciably old building, positioned tight within the dense layout of plots towards the centre of the settlement, within which it makes a generally positive contribution to its setting.
15. Insofar as Condition 3 is capable of operation, its bearing on the external appearance of the rooflights extends little further than requiring them to be fixed shut. In being openable, they would however be little different to any other rooflight. As such, deletion of Condition 3 would have little or no bearing on the effects of the development on the Conservation Area, or the settings of listed buildings. In neither regard therefore would deletion of Condition 3 give rise to any harm.

Conclusion

16. For the reasons set out above I conclude that the appeal should be allowed.

Benjamin Webb

INSPECTOR