The Planning Inspectorate

Appeal Decision

Site visit made on 12 October 2020

by Andrew Bremford BSc (Hons) MRICS

an Inspector appointed by the Secretary of State

Decision date: 22 October 2020

Appeal Ref: APP/K3605/D/20/3244590
64 Annett Road, Walton-On-Thames KT12 2JS

- 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 Mr James Nagioff against the decision of Elmbridge Borough Council.
- The application Ref 2019/2269, dated 15 August 2019, was refused by notice dated 29 October 2019.
- The application sought planning permission for hip-to-gable roof extension with front and side roof lights including side dormer without complying with conditions attached to planning permission Ref 2018/2441, dated 10 October 2018.
- The conditions in dispute are Nos 2 and 4 which state that:
  2) The development hereby permitted shall be carried out in strict accordance with the following list of approved plans: 101 received on 8th August 2018, 670-50 Rev. A received on 15th August 2018 and 102 Rev. A received on 1st September 2018.
  4) The new rooflight on the south-east roofslope of the development hereby permitted shall be glazed with obscure glass and fitted with non-opening, and subsequently maintained in this form. Such glass shall be sufficiently obscure to prevent loss of privacy. The affixing of an obscure film will not be sufficient.
- The reasons given for the conditions are:
  2) To ensure that the development is carried out in a satisfactory manner.
  4) To preserve the reasonable privacy of neighbouring residents in accordance with Policy DM2 of the Elmbridge Development Management Plan 2015.

Decision

1. The appeal is dismissed.

Background and Main Issue

2. In approving the planning permission[1], the Council imposed condition 4 which required that the rooflight on the south-east roof slope be glazed with obscure glass and fixed shut. The condition also stipulates that the affixing of an obscure film will not be sufficient. The reason for the condition was to protect the privacy of the occupiers of neighbouring properties. Condition 2 required the development to be carried out in strict accordance with the approved plans to ensure that it was carried out in a satisfactory manner.

3. The plan[2] submitted in support of the appeal proposal indicates that the aforementioned rooflight is 'clear glazed and opening 600mm down from the

[1] Reference: 2018/2441
[2] 'Proposed Plans & Elevations, Site & Elevation Plan', drawing number 102 revision C.

ridge; Cill height 1200mm from FFL; 1640mm x 940mm'. I saw that the rooflight is openable and is glazed with clear glass to which an obscure film has been applied. The proposal seeks to remove condition 4, thereby not requiring the rooflight to be glazed with obscure glass and not fixed shut. It also seeks to vary condition 2 to allow the proposal in accordance with the submitted plan.

4. The main issue is, therefore, whether it is necessary for the rooflight to be obscure glazed and fixed shut to protect the living conditions of the occupiers of neighbouring properties, with regard to privacy.

Reasons

5. The rear gardens of the neighbouring properties, Nos 58, 60 and 62 Annett Road, by virtue of tall perimeter boundary fencing, are private amenity spaces.

6. As a result of its elevated position and cill height, when in the open position, the rooflight affords an overt and invasive view of the rear gardens of Nos 58, 60 and 62 without having to lean out of the window. The view is at an oblique angle but is of most of the useable rear garden areas of the neighbouring properties. Thus, even with obscure film, when in the open position, notwithstanding the distances involved, the rooflight affords relatively extensive and mostly uninterrupted views into the private rear gardens of the neighbouring properties from the second floor room.

7. The views from the rooflight provide a greater level of overlooking towards the gardens of the aforementioned neighbouring properties than exists from the rear facing bedroom windows. This is because the bedroom windows face towards the rear garden of the appeal property and as a result of their position and lower level mainly overlook only the rear part of the garden area of No 62.

8. The rooflight also affords an oblique view towards a side window in the flank elevation of No 62. The evidence indicates that the window serves a landing. Thus, although the side landing window is clear glazed, taking into account that it does not serve a habitable room there is no significant loss of privacy to the occupiers of No 62 as a result of overlooking.

9. However, for the reasons outlined above, the rooflight without the benefit of being obscure glazed and fixed shut allows unrestricted views into the outside private amenity spaces of Nos 58, 60 and 62, resulting in unacceptable loss of privacy for the occupiers. Therefore, the rooflight without the benefit of being obscure glazed and fixed shut fails to accord with Policy DM2 of the Elmbridge Local Plan Development Management Plan (2015) and the Elmbridge Design and Character Supplementary Planning Document (2012) which, amongst other things, seek to protect the living conditions of the occupiers of neighbouring properties. Conditions 2 and 4 are therefore reasonable and necessary in the interests of protecting the living conditions of the occupiers of neighbouring properties.

Conclusion

10. For the reasons given above, I conclude that the appeal should be dismissed.

Andrew Bremford

INSPECTOR