



Appeal Decision

Site visit made on 21 October 2020

by Victor Callister BA(Hons) PGC(Oxon) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date:

Appeal Ref: APP/D3830/D/20/3251727

Lodge Cottage, South Avenue, Hurstpierpoint BN6 9QB

- 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 Colin Whelan against the decision of Mid Sussex District Council.
 - The application Ref DM/19/5180, dated 20 December 2019, was refused by notice dated 13 February 2020.
 - The application sought planning permission for alterations to existing roof to create additional bedroom in loft space without complying with a condition attached to planning permission Ref DM/19/1837, dated 10 July 2019.
 - The conditions in dispute is No 4 which states that: Prior to first use/occupation of the extension hereby permitted, the proposed windows on the rear elevation shall be glazed with obscured glass below a height of 1.7m above finished internal floor level. They shall be non-opening unless the parts of the window which can be opened are more than 1.7m above the floor of the room in which the window is installed.
 - The reason given for the condition is: To protect the amenities and privacy of the adjoining property and to accord with Policy DP26 of the Mid Sussex District Plan 2014-2031.
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Decision

1. The appeal is allowed and planning permission is granted for alterations to existing roof to create additional bedroom in loft at Lodge Cottage, South Avenue, Hurstpierpoint BN6 9QB in accordance with the application Ref DM/19/5180 dated 20 December 2019 without compliance with the conditions previously imposed on the planning permission Ref DM/19/1837 dated 10 July 2019.

Background and Main Issue

2. Planning permission was granted by Mid Sussex District Council (the Council) and subsequently implemented by the appellant without complying with condition 4, which requires the permitted windows on the rear elevation to be glazed with obscured glass and be non-opening below a height of 1.7m above finished internal floor level. It appears that the development was implemented while the planning application to not comply with this condition was being considered by the Council and was completed prior to their decision.
3. The Council considers that removal of the condition requiring obscured glazing and non-openable windows would cause material harm to the living conditions

of residential occupiers of the adjoining property at South Lodge with regard to overlooking and privacy. The appellant contends that the condition is not necessary and does not therefore meet one of the 'six tests' for conditions set out in the National Planning Policy Framework (the Framework) and Planning Practice Guidance (PPG).

4. Therefore, on the basis of the above and submitted evidence, I consider the main issue is whether the condition is necessary and reasonable in all other respects.

Reasons

5. The appeal property is adjoining to its neighbour at South Lodge and appears to have originally been an annex to this larger property, prior to an earlier subdivision to create semi-detached houses. Both properties are substantial and overlook each other's large gardens from the upper floor windows, doors and balconies to varying degrees. The second floor window that is the subject of this appeal is in similar size and form to second floor windows in the neighbouring property at South Lodge. However, the extended roof form within which it sits, is set further forward than the rear elevation of the neighbouring property at this point.
6. The window in question does, due to its position, size and orientation add to the overlooking of the garden of South Lodge, without, however, an apparent increase in the overlooking of this house itself, and with only a marginal oblique increase in the degree of overlooking of the terrace and pool area nearest to the house. This overlooking is in keeping with the semi-detached nature of the two houses and of a degree to be expected in a residential area of this type.
7. I acknowledge that the Council are concerned about the increase in overlooking that I have identified above, and the occupiers of South Lodge are likewise concerned about the impact that this has on their privacy. However, given the height, size, orientation of the new window and the distances involved, I do not find that the increase in overlooking of the garden, terrace and their amenities would amount to a significant loss of privacy.
8. I therefore find that the development, without complying with condition 4, does not result in excessive overlooking or loss of privacy causing unacceptable harm to the living conditions of neighbouring residential occupiers of South Lodge. As such it would be in accordance with Policy DP 26 of the Mid Sussex District Plan (2014-2031), which seeks to ensure that development is of a high quality design, thereby, respecting the living conditions of occupiers of neighbouring buildings.
9. I conclude that condition 4 is not necessary and therefore does not meet one of the 'six tests' for conditions set out in the Framework and PPG.

Other Matters

10. The site is located within the Hurstpierpoint Conservation area. However, in the light of my statutory duty¹, I note that the proposal relates to a development carried out without compliance with a condition and that no

¹ Under the Planning (Listed Buildings and Conservation Areas) Act 1990.

concern has been raised by the Council in this respect. I find the proposal would not result in any harm to heritage assets.

Conditions

11. I have determined the appeal based on the evidence before me and find the disputed condition fails one of the tests set out in paragraph 55 of the Framework.
12. The PPG makes clear that decision notices for the grant of planning permission under section 73 of the Town and Country Planning Act should also repeat the relevant conditions from the original planning permission. However, as construction of the development that is the subject of the original permission has been completed, it is not necessary to attach the original conditions.

Conclusion

13. For the reasons given above and having regard to all matters raised, the appeal is allowed.

Victor Callister

INSPECTOR