



Appeal Decision

Site visit made on 8 December 2020

by Elaine Benson BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 February 2021

Appeal Ref: APP/B1930/W/20/3255191

1 Jersey Lane, St. Albans AL4 9AD

- 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 Huw Watkins against the decision of St Albans City Council.
 - The application Ref 5/20/0618, dated 11 March 2020, was refused by notice dated 25 June 2020.
 - The application sought planning permission for Removal of Condition 7 (removal of permitted development rights) and Variation of Conditions 2 (approved plans) and 6 (windows) to allow alterations to openings of planning permission 5/2019/2488 dated 31/12/2019 for demolition of side extension to existing property and construction of detached dwelling with associated parking and new access without complying with conditions attached to planning permission Ref 5/2019/2488, dated 31/12/2019.
 - The conditions in dispute are Nos 6 and 7. No 6 states that: The windows to be created in the first-floor elevation and rear facing rooflights facing towards No. 189 Marshalswick Lane shall be glazed in obscure glass and shall be non-opening below a height of 1.7 metres taken from internal finished floor level. The windows shall not thereafter be altered in any way without the prior written approval of the Local Planning Authority. Condition No 7 states: Notwithstanding the provisions of Classes A, B, C, D and E of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), there shall be no enlargement or extension of the dwelling(s) hereby permitted, including any additions or alterations to the roof, and no building or enclosure shall be constructed within the application site without the prior written permission of the Local Planning Authority.
 - The reasons given for the conditions are: Condition 6: To maintain the privacy of adjoining residents. To comply with Policy 72 of the St. Albans District Local Plan Review 1994 and Condition 7: To allow the Local Planning Authority to retain control of the development in the interests of residential amenity, the character of the area, visual amenity and to comply with Policies 69 and 70 of the St. Albans District Local Plan Review 1994 and the National Planning Policy Framework 2019.
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Decision

1. The appeal is allowed and planning permission is granted for removal of Condition 7 (removal of permitted development rights) and variation of Condition 6 (windows) to allow alterations to openings of planning permission 5/2019/2488 dated 31/12/2019 for demolition of side extension to existing property and construction of detached dwelling with associated parking and new access without complying with conditions attached to planning permission Ref 5/2019/2488, dated 31/12/2019 at 1 Jersey Lane, St. Albans, AL4 9AD in accordance with the terms of the application, Ref 5/20/0618, dated 11 March 2020, subject to the following conditions:

- 1) The development hereby permitted shall begin not later than 3 years from the date of 31/12/2019.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan, DNG No.'s R Rev. L, B1 Rev. B, SEC Rev. M, E1 Rev. M, SF Rev. M, E2 Rev. M, GF Rev. M, FF Rev. M.
- 3) The development hereby permitted shall not be commenced until drawings showing existing levels and proposed slab levels have been submitted to and approved in writing by the Local Planning Authority.
- 4) Prior to above ground construction works samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been approved in writing by the Local Planning Authority. Sample materials should be made available on site when discharging this condition. Development shall be carried out in accordance with the approved details.
- 5) Prior to the bringing into use of any part of the development hereby approved, a 1.8m high close boarded fence shall be erected along the properties side and rear boundaries.
- 6) The windows shown on the approved drawings as serving a dressing room and an en-suite bathroom in the first-floor rear elevation facing towards No. 189 Marshalswick Lane shall be glazed in obscure glass and non-opening below a height of 1.7 metres taken from the internal finished floor level. The windows shall not thereafter be altered in any way.
- 7) 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), no windows/dormer windows other than those expressly authorised by this permission shall be constructed on the rear elevation.
- 8) No trees shall be damaged or destroyed, or uprooted, felled, lopped or topped without the previous written consent of the Local Planning Authority until at least 5 years following the contractual practical completion of the permitted development. Any trees removed without such consent or dying or being severely damaged or becoming seriously diseased before the end of that period shall be replaced by trees of such size and species as may be agreed with the Local Planning Authority.
- 9) All existing hedges or hedgerows shall be retained, unless shown on the approved drawings as being removed. All hedges and hedgerows on and immediately adjoining the site shall be protected from damage for the duration of works on the site. This shall be to the satisfaction of the Local Planning Authority in accordance with relevant British Standards BS 5837 (2005). Any parts of hedges or hedgerows removed without the Local Planning Authority's consent or which die or become, in the opinion of the Local Planning Authority, seriously diseased or otherwise damaged within five years following contractual practical completion of the approved development shall be replaced as soon as is reasonably practicable and, in any case, by not later than the end of the first available planting season, with plants of such size and species and in such positions as may be agreed with the Authority.
- 10) Prior to commencement of landscaping works, details of both hard and soft landscape works shall have been submitted to and approved in writing by the

Local Planning Authority and these works shall be carried out as approved. These details shall include (a) proposed finished levels and contours; (b) means of enclosure; (c) car parking layouts; (d) other vehicles and pedestrian access and circulation areas; (e) hard surfacing materials; (f) minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, lighting etc); (g) existing trees to be retained; (h) existing hedgerows to be retained.

- 11) All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with a programme that has been previously agreed with the Local Planning Authority.
- 12) If within a period of five years from the date of the planting of any tree or plant, that tree or plant, or any tree or plant planted in replacement for it is removed, uprooted or destroyed or dies or becomes seriously damaged or defective, another tree or plant of the same species and size as that originally planted shall be planted at the same place, unless otherwise the Local Planning Authority gives its written consent to any variation. The tree or plant shall be planted within 3 months of felling/dying or if this period does not fall within the planting season by 31 January next.

Main Issues

2. The variation of Condition 2 to refer to revised drawings, including alterations to the internal layout, was approved by the Council. Conditions 6 and 7 were reimposed unchanged. This decision therefore focusses on the conditions which remain in dispute.
3. In respect of Condition 6 the main issue is whether it is reasonable and necessary for the rear bedroom window and the rear rooflights to be fully or partially obscure-glazed and non-opening to protect the privacy of neighbouring occupiers.
4. With regard to Condition 7 the main issue is whether the disputed condition is reasonable or necessary in the light of national policy and guidance and any relevant local policy in order to protect: residential amenity, specifically the living conditions of the future occupiers of the new dwellinghouse; the character of the area and visual amenity.

Reasons

5. The Council approved the rear-facing window to a bedroom at first floor level subject to it being openable and clear-glazed only above a height of 1.7m measured from the finished floor level. This window would face onto the furthest and least private part of the garden at No 189 which contains the neighbour's outbuilding. This garden is already extensively overlooked from the properties that surround it. Under these circumstances I consider that there would be no unacceptable loss of privacy to No 189 and therefore no need for this window to be fixed closed and obscure glazed. The other first-floor rear windows would not light habitable spaces and are closer to No 189. They should remain both obscure-glazed and non-opening below 1.7m. Condition 6 is amended accordingly.
6. The appellant identifies an ambiguity in the wording of Condition 6 which he considers could be read as requiring that the window be both obscure-glazed

- and non-opening up to 1.7m, or as requiring that the window be entirely obscure-glazed, but non-opening up to 1.7m. For the avoidance of doubt the condition has been amended to indicate that it should be both obscurely glazed and fixed shut only up to a height of 1.7m.
7. The angle at which the rear rooflights would be set into the roof slope would ensure that there would be no direct views over neighbouring gardens. Furthermore, views of the garden at 189 Marshalswick Lane (No 189) would be obscured by the lower part of the roof. I conclude that it is unnecessary and unreasonable to require them to be non-openable and obscure-glazed and reference to the rooflights should be removed from Condition 6.
 8. The appeal application also sought to vary Condition 6 as it refers to 'first-floor windows'. There is no dispute that it is unnecessary to obscurely glaze the front or side facing windows in order to maintain the privacy of adjoining residents. The condition is therefore amended to refer only to the rear windows at first-floor level.
 9. For those reasons set out, Condition 6 is varied to remove ambiguities in its wording, to remove reference to the rooflights and to allow the window serving the rear bedroom to be openable and clear-glazed.
 10. Condition 7 relates to the removal of permitted development (PD) rights. The condition was originally imposed to enable the Council to retain control over the development in the interests of residential amenity, the character of the area, and visual amenity. This condition has been varied to permit the erection of a porch under Class D, but its other provisions were reimposed. However, as the condition states that there shall be no enlargement or extension of the dwelling hereby permitted, the appellant considers that it remains ambiguous as to whether a porch could be built under Class D.
 11. The National Planning Policy Framework (the Framework) states that planning conditions should not be used to restrict national PD rights unless there is a clear justification to do so. Furthermore, the Planning Practice Guidance (PPG) states that conditions restricting the future use of permitted development rights or changes of use may not pass the test of reasonableness or necessity. The scope of such conditions needs to be precisely defined, by reference to the relevant provisions in the Town and Country Planning (General Permitted Development) (England) Order 2015, so that it is clear exactly which rights have been limited or withdrawn. It further advises that blanket removal of freedoms to carry out small scale domestic and nondomestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity.
 12. The Council justifies the removal of Classes A and E PD rights relating to the erection of extensions and outbuildings because there is only 5m between the rear elevation of the new dwelling and the new boundary. It considers that a reduced garden size resulting from such development would harm the living conditions of future occupiers. However, the provisions of these Classes take into account houses with smaller gardens. I am not convinced by the evidence that the 5m deep garden represents an 'exceptional circumstance' justifying the removal of these rights.
 13. The officer's report justifies the removal of Class B and Class C PD rights because additional rear-facing dormer windows and or rooflights would cause

unacceptable overlooking of No 189's garden which the development has been designed to prevent. Overlooking from rooflights is addressed above. However, the unrestricted erection of dormer windows in the rear elevation of the approved house would significantly increase overlooking of adjacent gardens, due to their height and location. This amounts to an exceptional circumstance. Whilst I have deleted the blanket removal of PD rights, protection from harmful overlooking from rear dormer windows is prevented by a replacement Condition 7.

14. There is little evidence to show how the Council considers Condition 7 to be necessary in the interest of the character of the area and visual amenity. I am satisfied that the imposition of this condition is unreasonable and unnecessary for the stated reasons. In respect of Condition 7, there is no clear justification such as to justify the wholesale removal of PD rights.
15. The variation and or removal of the two conditions as described above would create no conflict with Policies 69, 70 and 72 of the St. Albans District Local Plan Review 1994. They would be consistent with the provisions of the Framework.
16. The guidance in the PPG makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant. The reasons for imposing the restated conditions are those indicated on the decision reference No. 5/2019/24388. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.

Conclusion

17. For the reasons given above I conclude that the appeal should succeed. I will grant a new planning permission without the disputed conditions but substituting others and restating those undisputed conditions that are still subsisting and capable of taking effect.

Elaine Benson

INSPECTOR