



Appeal Decision

Site Visit made on 23 February 2021

by Martin Small BA(Hons) BPI DipCM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th March 2021

Appeal Ref: APP/C1435/W/20/3259724

Tamarisk, Park View, Buxted, Uckfield, TN22 4LS

- 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 Christopher Andrews against the decision of Wealden District Council.
- The application Ref WD/2020/0765/F, dated 11 February 2020, was approved on 7 August 2020 and planning permission was granted subject to conditions.
- The development permitted is first floor extension with pitched roof.
- The condition in dispute is No 3 which states that: *"Prior to the first occupation of the extension hereby approved, the first floor windows in the north elevation shall be obscure glazed and shall be incapable of being opened and shall be retained as such thereafter"*.
- The reason given for the condition is: *"To safeguard the privacy of the occupiers of the adjoining property having regard to SPO2, SPO13 and WCS14 to the Wealden Core Strategy Local Plan 2013, Saved Policy EN27 of the adopted Wealden Local Plan 1998, coupled with the requirements of paragraph 127 of the National Planning Policy Framework 2019"*.

Decision

1. The appeal is dismissed.

Background and Main Issue

2. Planning permission has been granted for a first floor extension to the appeal property. The permission is subject to a condition requiring the windows in the north elevation to be obscure glazed and incapable of being opened. The Council considers this condition necessary to prevent harm to the living conditions of the occupiers of No 18 St Mary's Garth through overlooking and the consequent loss of privacy. The appellant seeks the removal of this condition contending that existing vegetation along the boundary between the appeal property and No 18 would prevent overlooking.
3. The main issue is therefore whether the condition is clearly justified and necessary with regard to the living conditions of the occupiers of No 18.

Reasons

4. The approved extension to the appeal property would have 2 windows in the northern elevation to a bedroom and dressing room. This elevation faces directly towards No 18 which is at a lower level than the appeal property. A substantial belt of mixed species vegetation including evergreen and deciduous trees forms the boundary between the properties.
5. At the time of my site visit, this vegetation provided privacy for No 18 and the appellant has demonstrated that only the roof of No 18 is visible from the

existing first floor window in the appeal property as a consequence. The view of No 18 from this first floor window is also partially obstructed by the existing single-storey extension to the appeal property.

6. However, the windows in the northern elevation of the proposed extension would be closer to No 18 and views from them would not be obstructed by the existing extension. Therefore, if the boundary vegetation was significantly reduced in height or removed, there would be direct views from the windows in the northern elevation of the proposed extension to windows in the rear elevation of No 18, including those serving bedrooms, and potentially of its rear garden. Notwithstanding the distance between the dwellings, this would result in a harmful loss of the privacy of the occupiers of No 18 which they are reasonably entitled to expect and enjoy in this low density area.
7. The trees along the boundary are protected by Tree Preservation Order (Buxted) No 15. However, there is no certainty that consent would not be granted for trimming or removing the trees should it be sought. The trees may also die or become diseased. Consequently, there is no guarantee that the trees would be retained for the lifetime of the proposed development.
8. The disputed condition therefore gives greater certainty of preventing overlooking and consequent loss of privacy. It is necessary to ensure compliance with saved Policies EN27 and HG10 of the Wealden Local Plan 1998 which seek to protect the living conditions of the occupiers of neighbouring dwellings. I am thus satisfied that the condition is clearly justified and necessary to safeguard the living conditions of the occupiers of No 18.
9. Case law has established that conditions should fulfil some planning purpose, fairly and reasonably relate to the development being proposed and not be 'Wednesbury' unreasonable¹. Paragraph 55 of the National Planning Policy Framework sets out that planning conditions should only be imposed where they comply with all of 6 tests. The disputed condition satisfies all these tests.
10. Whilst planning permission may have previously been granted for a first floor extension to the appeal property without the disputed condition, I must determine the appeal before me on its own merits.

Conclusion

11. For the reasons given above, the appeal is dismissed.

Martin Small

INSPECTOR

¹ Newbury DC vs SSE [1981] AC 578