



Appeal Decision

Site Visit made on 10 May 2021

by Robin Buchanan BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 June 2021

Appeal Ref: APP/P1425/W/19/3241423

Hawthorn Cottage, The Street, Kingston, Lewes BN7 3NT

- 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 Dr Christopher Knapp against the decision of Lewes District Council.
 - The application Ref SDNP/19/02093/CND, dated 24 April 2019, was refused by notice dated 13 September 2019.
 - The application sought planning permission for the removal of a condition attached to the approval of a non-material amendment Ref SDNP/17/05243/NMA, dated 2 November 2017.
 - The condition in dispute is No 1 which states that: *'The new window will be non-opening and obscure glazed to a minimum of Level 3 obscurity'*.
 - The reason given for the condition is: *'Notwithstanding the representation received from the neighbour, the window will not allow overlooking or loss of privacy and will not have a material impact on the appearance of the development'*.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a two storey side extension and new bow window to front elevation (Amended Plans) at Hawthorn Cottage, The Street, Kingston, Lewes BN7 3NT in accordance with the terms of the planning permission Ref SDNP/17/02512/HOUS, dated 12 September 2017, as amended by the approval of a non-material amendment Ref SDNP/17/05243/NMA, dated 2 November 2017, subject to the following condition:
 - 1) Other than the window hereby approved, no windows, doors or other openings of any kind shall be inserted in the south west elevation of Hawthorn Cottage unless otherwise approved in writing by the local planning authority.

Background and Main Issue

2. The Council granted planning permission SDNP/17/02512/HOUS which included a two storey side extension to Hawthorn Cottage¹ (the original permission). Condition No 3 restricted the insertion of windows in the south west elevation to 'protect the privacy and residential amenity of neighbours'. The Council subsequently approved a non-material amendment SDNP/17/05243/NMA to allow a window in the first floor west elevation (the amendment). Condition No 1 includes that 'the new window shall be non-opening and obscure glazed' and referred to a representation received from a neighbour. In its decision

¹ Formerly known as 'Two Trees Cottage'

notice for the appeal application SDNP/19/02093/CND, the Council's reason for refusal refers to impact on 'neighbour amenity' and 'the reasonable enjoyment of adjoining homes'. Insofar as is relevant to this appeal the south west and west elevations of Hawthorn Cottage are one in the same (the side elevation).

3. On the evidence before me, the appellant carried out the development of the original permission, including a first floor window in the side elevation which was obscured glazed. The appellant subsequently replaced the obscured glass with clear glass. The appellant seeks 'the requirement for obscure glass to be removed'²; in essence, to retain the development in the original permission, as amended by the amendment to include a clear glazed first floor window in the side elevation without compliance with condition No 1 of the amendment.
4. At my site visit I was able to enter Hawthorn Cottage. I saw that the first floor window in situ in the side elevation is to a bedroom (the bedroom). It comprises three casements, two with top opening fanlights and a central one with a fixed fanlight (the window). All of the glass in the window is clear.
5. Taking this background into account, the main issue is whether the inclusion of the condition in dispute is necessary and reasonable, having regard to the effect of the window on the living conditions of the existing occupiers of the adjoining dwellings known as 'Russets', 'Rest Harrow' and 'The Post House', with particular regard to privacy. Given the Council's justification for condition No 1, that necessitates an assessment of the potential effect of altering or removing this condition.

Reasons

6. Hawthorn Cottage is a detached chalet bungalow. The side elevation is close to the common boundary with the adjoining bungalow Russets, which has a ground floor master bedroom window facing a driveway (the ground floor window). On the other side of the driveway is the rear garden of the house at Rest Harrow (the rear garden) and next to this is part of The Post House which has three first floor windows, including to a bedroom and a bathroom (the first floor windows). The window faces these three properties and there is therefore the potential for overlooking.
7. However, due to the relative difference in positioning and orientation between these respective properties and Hawthorn Cottage, the main perpendicular view from the window, including from the two small top opening fanlights even when open, is not directly towards any of these properties. Moreover, these main views are possible from only certain parts of the bedroom and, in particular, standing near or next to the window. Most normal domestic activity in this room, which is also unlikely to be mainly during daylight hours, will therefore result in limited or glimpsed views out, or none at all.
8. With regard to Russets, the linear distance between the window and the ground floor window is reasonably short. However, while blinds were closed at the time of my visit, the view down towards the ground floor window is sideways at a very steep oblique angle. Observation would therefore extend little beyond the plane of the ground floor window and not intrude significantly in-depth into the bedroom. Furthermore, while the space in front of Russets is the front garden,

² Application form

it is primarily used for car parking and as a turning area, rather than for more private domestic activity.

9. With regard to Rest Harrow, the distance between the window and the nearest part of the rear garden is relatively short. While the angle of view is therefore reasonably steep down towards this part of the rear garden, observation is nonetheless limited by the sideways outlook at an oblique angle. Furthermore, the rear garden is reasonably long and as a result the more private part, including closest to the rear elevation of Rest Harrow, is significantly further away, such that the view from the window therefore becomes increasingly more oblique and consequently more limited and less intrusive.
10. With regard to The Post House, the view from the window towards the first floor windows is at about the same, or similar, opposing level. However, the first floor windows are reasonably narrow in height and, combined with the oblique angle of view, this significantly reduces the extent of observation of these first floor windows and rooms. Moreover, The Post House is separated by a reasonable gap to the side elevation and the view from the window is therefore longer distance in nature and consequently not unduly intrusive.
11. On this main issue, I find that the window does not result in an unacceptable degree of overlooking or detrimental impact on neighbour amenity or reasonable enjoyment of these homes. It does not cause significant harm to the living conditions of the existing occupiers of Russets, Rest Harrow or The Post House, having regard to privacy. Consequently, it accords with Policies SD5 and SD31 of the South Downs Local Plan, July 2019. These policies include that development should avoid harmful impacts on surrounding uses, including detriment to the amenity of nearby residents by virtue of loss of privacy. It would also be consistent with the National Planning Policy Framework (Framework) paragraph 127(f) which seeks to ensure a high standard of amenity for existing users.

Other Matters

12. The branches and foliage of the trees next to the window either side of the common boundary are about the same height or taller than the window and include evergreen species. As a result, I saw that these trees interfere with views from the window. This is likely to be most apparent during summer months when all of the trees would be in leaf. However, the trees are not permanent features and so have no material bearing on my decision.
13. I appreciate that the occupiers of Russets, Rest Harrow and The Post House may perceive that being able to see the window means that there must be unacceptable overlooking; moreover, may be aggrieved by the manner in which the window has come to exist in its present form. I also acknowledge that the appellant's bedroom has two other clear glazed and opening windows which do not face towards the ground floor window, the rear garden or first floor windows.
14. While I do not condone the appellant's actions, he is nonetheless entitled to seek retrospective planning permission for the window. The properties in this appeal have a reasonably tight knit juxtaposition to each other which is not unusual elsewhere in Kingston near the appeal site, with commensurate expectations for privacy, including that it may be prudent at times to take the normal precaution of closing blinds or curtains or in the appropriate use of the

most public parts of gardens. Moreover, it will be evident from my findings in the main issue above that while there is some intervisibility, the actual reciprocal views from the window are not in any event unduly intrusive for the reasons given and I have considered this appeal on its individual planning merits.

15. The appeal site is in the South Downs National Park (the NP), the Kingston Conservation Area (the CA) and The Post House is a listed building (the LB). The window faces towards The Post House and it is in the setting of the LB. The window is reasonably small and is within the built-up area of Kingston such that it does not have any meaningful context with the wider landscape and consequently causes no material harm to the NP. The window is therefore compatible with the first statutory purpose of the NP insofar as it conserves and enhances the natural beauty and cultural heritage of the NP.
16. The window is reasonably small and visually inconspicuous. It does not therefore have any meaningful effect on the setting of the LB, thus does not affect the special architectural or historic interest of the LB; for the same reasons nor does it adversely affect the character and appearance of the CA, which I note does not contain any 'important view' or other identified feature or designation in the vicinity of the appeal site³. Consequently, there would be no harm to, or loss of, the significance of these designated heritage assets. The window would therefore preserve the LB and its setting and would preserve the character and appearance of this part of the CA, and accordingly of the CA overall. I note that none of these 'landscape' or 'heritage' matters are in dispute between the main parties.
17. Some interested parties also objected because the window is not flush with the side elevation but has a curved projecting bay design. On the very limited evidence before me, I cannot be certain which design was approved by the Council in the amendment. However, the degree of projection is very small and therefore has a negligible effect on my consideration of the main issue above.

Conditions

18. Having regard to Planning Practice Guidance (PPG)⁴, my decision should set out all of the conditions imposed on the new permission and restate the conditions imposed on the original permission Ref SDNP/17/02512/HOUS, as amended by the approval of the non-material amendment Ref SDNP/17/05243/NMA, that remain relevant and continue to have effect. I have therefore considered these conditions and where necessary I have modified the wording in the interests of clarity and in light of the tests and advice in Framework paragraph 55 and in PPG.⁵
19. I have re-imposed condition No 3 of the original permission (as condition No 1) to ensure that the Council can consider the merits of any other proposal by the appellant (or a future owner of Hawthorn Cottage) to seek to increase the number of windows or other openings facing Russets, Rest Harrow or The Post House and which may otherwise have a harmful effect on the living conditions of the occupiers of these properties. On this basis, and with this condition, my decision will not therefore set a precedent, as some interested parties fear.

³ Council's Kingston Conservation Area Townscape Appraisal Map

⁴ Paragraph ID: 21a-040-20190723

⁵ Paragraph ID: 21a-003-20190723

20. I am satisfied that where I have modified the wording of this condition it does not materially alter the development subject to the original permission, or conflict with the description of development, and is a condition that could have been imposed on the original permission⁶. The development has been carried out and, on the evidence before me, there are no other undisputed conditions that are still subsisting or remain relevant and capable of taking effect. I have not therefore restated any such conditions.

Conclusion

21. As explained in my decision above, and having regard to the relevant tests of Framework paragraph 55 and related PPG⁷, I conclude that condition No 1 of SDNP/17/05243/NMA is not necessary or reasonable to make the development permitted under application SDNP/17/02512/HOUS, as amended by the non-material amendment SDNP/17/05243/NMA acceptable⁸. As such, condition No 1 serves no useful planning purpose and accordingly there is no clear justification for it.
22. For the reasons given above I conclude that the appeal should succeed and I shall exercise the powers transferred to me accordingly. I will grant a new planning permission without the disputed condition.

Robin Buchanan

INSPECTOR

⁶ Paragraph ID: 21a-040-20190723.

⁷ PPG paragraph 21a-003-20190723

⁸ Framework paragraph 54