



Appeal Decisions

Site visit made on 15 June 2021

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 July 2021

Appeal A Ref: APP/V0510/C/21/3267365

Land known as 27a The Causeway, Burwell, Cambridge, Cambridgeshire CB25 0DU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr William Mark Lawton against an enforcement notice issued by East Cambridgeshire District Council.
- The enforcement notice was issued on 10 December 2020.
- The breach of planning control as alleged in the notice is: *Failure to comply with Conditions 1 and 13 of planning permission reference 18/00098/FUL which, on 17th of May 2018, approved the proposed demolition of existing garages and outbuildings and replacing with a detached 2/3 bed cottage and associated works as follows:-*
Condition 1 – Development shall be carried out in accordance with the drawings and documents listed below:
Plan ref: P6066-01 version A/B received 16th of March 2018.
Plan ref: P6066-02 Version B received 6th March 2018.
Plan ref: P6066-04 Version B received 6th March 2018.
Condition 13 - The first-floor windows in the north and south elevations of the hereby approved dwelling shall be glazed using obscure glass and any part of the windows that is less than 1.7m above the floor of the room in which it is installed shall be non-opening. The windows shall be permanently retained in that condition thereafter in perpetuity.
- The requirements of the notice are:-
 - i. Install the window on the side elevation serving the first-floor bedroom as per the approved plan P6066-02 Rev B of planning approval reference 18/00098/FUL.
 - ii. Replace the glazing in the existing first-floor bedroom window on the front (North) elevation with obscure glazing.
 - iii. Fix the existing first-floor bedroom window on the front (North) elevation so it is non-opening.
 - iv. Replace the glazing in the existing first-floor bedroom window on the rear (South) elevation with obscure glazing.
 - v. Fix the existing first-floor bedroom window on the rear (South) elevation so that it is non-opening.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought under ground (a) an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary decision: The appeal is dismissed and the enforcement notice upheld with corrections and variations.

Appeal B Ref: APP/V0510/W/21/3267361

27a The Causeway, Burwell, Cambridgeshire

- 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 Alan Nash of Bulana Homes Ltd against the decision of East Cambridgeshire District Council.
- The application Ref 20/01050/VAR, dated 22 September 2020, was refused by notice dated 23 November 2020.
- The application sought planning permission for the demolition of existing garages and outbuildings and replacing with a detached 2/3 bedroom cottage and associated works, without complying with conditions 1 and 13 attached to planning permission 18/00098/FUL dated 17 May 2018.
- The conditions in dispute are:-
 - No.1** which states, *"Development shall be carried out in accordance with the drawings and documents listed below Plan ref: P6066-01 version A/B received 16th of March 2018; Plan ref P6066-02 Version B received 6th March 2018 and Plan ref: P6066-04 Version B received 6th March 2018"*.
 - No.13** which states, *"The first-floor windows in the north and south elevations of the hereby approved dwelling shall be glazed using obscure glass and any part of the window that is less than 1.7m above the floor of the room in which it is installed shall be non-opening. The window shall be permanently retained in that condition thereafter in perpetuity"*.
- The reason given for condition 1 is *"To define the scope and extent of this permission"*.
- The reason given for condition 13 is *"To safeguard the residential amenity of neighbouring occupiers, in accordance with policy ENV2 of the East Cambridgeshire Local Plan 2015 and LP22 of the Submitted Local Plan 2017."*

Summary decision: The appeal is dismissed.

Procedural Matters

Dealing with the two appeals

1. In Appeal A, the deemed planning application (DPA) arising under the ground (a) appeal is for "the erection of a detached 2/3 bed cottage without complying the Conditions 1 and 13 being enforced against". This would effectively allow the built dwelling to retain the partially obscure glazed openable windows that have already been installed on the first floor.
2. Appeal B seeks to vary Conditions 1 and 13 of planning permission ref: 18/00098/FUL, such that if the appeal were granted it would bring what has been built in accordance with submitted revised plans.
3. As both appeals are effectively for the same development and the planning considerations are the same, I will deal with the planning merits of both appeals together.

The notice

4. Requirements (iii) and (v) of the notice require the replaced windows in the front and rear elevations to be fixed as non-opening. However, Condition 13 requires only the part of the window below 1.7 metres in height above the floor to be non-opening. The requirements need to reflect what the condition can allow. I shall correct the notice accordingly.

Background

5. Planning permission 18/00098/FUL was granted for the erection of a 2/3 bed cottage, following the demolition of existing garages and outbuildings. Condition 1 was a standard condition listing the plans that the dwelling was to be built in accordance with. Condition 13 was an additional stipulation requiring the first floor windows in the front (north) and rear (south) elevations of the dwelling to be obscure glazed and that any part of the windows less than 1.7 metres above the floor shall be non-opening, in order to safeguard the residential amenity of occupiers of neighbouring properties.
6. The approved drawings (listed in the banner heading above) show the internal layout of the dwelling was to comprise a bedroom, sitting room and open-plan kitchen dining room on the ground floor. Upstairs on the first-floor there was a bedroom at the front, a bathroom at the rear and in between, a dressing room accessed off the bedroom.
7. In addition to the stipulations of Condition 13, the approved drawings are clearly annotated to state that the front bedroom and rear bathroom windows are to be fitted with obscure glazing "to avoid any overlooking". The front bedroom window is also annotated to be "fixed shut".
8. The approved plans also show a second window to the bedroom, inserted in the side (west) elevation. There are no glazing or opening restrictions to this window and this would provide the bedroom with an outlook or view. Similarly, the dressing room window in the same side elevation has no restrictions. Both windows in this side elevation would look towards the blank side elevation of 29 The Causeway (No.29).
9. During construction of the dwelling, the appellant for Appeal B was concerned that because the two windows in the side (west) would not be obscure glazed, this would cause "near" overlooking. Consequently, he rearranged the layout of the first floor to provide 2 bedrooms upstairs. The rear bathroom is now a bedroom and the dressing room is now a family bathroom (with a fully obscure glazed top-hung opening window). The second window intended for the side elevation of the front bedroom has not been installed.
10. Furthermore, the windows that have been installed are of a different design to the approved sash-style windows. The installed windows are double side-hung casements. Most of the window is opaque glazed, with a strip of clear glazing at the top of the window. Both casements of both windows are fitted with restrictive openers that afford a limited opening of approximately 10cms.
11. The refused application, the subject of Appeal B, shows an alternative window design for the front and rear bedrooms, namely a double casement with a horizontal glazing bar 1.7 metres above the floor. The plans are annotated to describe that there would be obscure glazing below the glazing bar and clear glazing above it. The application did not include a second window in the side elevation of the front bedroom.

Appeal A on Ground (a), the Deemed Planning Application and Appeal B

Main Issues

12. Taking into account the Council's reasons for refusing the application and issuing the enforcement notice, and the reason for the imposition of Condition 13, I consider the main issues in this case are:-

The effect of the appeal development on the living conditions of:-

- existing and future occupiers with regard to outlook, and
- existing occupiers of neighbouring properties with regard to overlooking.

Living conditions with regards to outlook

13. This issue concerns what occupiers or users of the front and rear bedrooms of the appeal property experience by being inside an obscure glazed habitable room. On my visit I saw that the partially obscure glazed windows in each of the bedrooms prevented views out of the rooms. The clear glazed strip at the top of the windows did not afford any practical or meaningful outlook from them. As a result, the windows have created a poor and oppressive outlook for occupiers of each room. This was particularly the case in the front bedroom as it faces north and was darker than the south-facing and sunnier rear bedroom.
14. The plans submitted with the refused planning application would still provide partially obscure glazed windows to both these rooms, but below the glazing bar. This would be a very similar arrangement to that which currently exists and would not, in my view, improve the outlook for occupiers.
15. Even though bedrooms may be primarily used when it is dark and for sleeping in, they are still habitable rooms that should be afforded adequate outlook. The approved second window in the side elevation of the front bedroom would do this. I observed that the front bedroom was furnished with a child's cot and so appeared to be in use for a young child. This would indicate to me that a child/children would likely spend more time in the bedroom playing as they grow up.
16. The rear room was to be a bathroom. Having a single obscure glazed window to a non-habitable bathroom is a fairly typical arrangement to preserve the modesty and privacy of users. However, that situation has changed now that the room is a bedroom.
17. I acknowledge that in situations where there are overlooking and privacy issues, there can be a number of design solutions such as obscure glazing, high-level windows, rooflights and oriel-style windows, and these can be used alone or in combination. However, whatever solution is deemed appropriate would be guided by the intended uses of the rooms and their context and relationship with neighbouring properties.
18. I find that the windows that have been installed in both bedrooms have created a poor outlook that causes harm to the living conditions of existing and future occupiers of these rooms, even if the current occupiers are in agreement with the situation.

19. Accordingly, the appeal development is contrary to Policy ENV2 of the East Cambridgeshire Local Plan (2015) (ECLP). This seeks to ensure new development is designed to a high quality to ensure there is no significantly detrimental effect on the residential amenity of nearby occupiers and that occupiers and users of new buildings, especially dwellings, enjoy high standards of amenity.

Living conditions with regard to overlooking

20. The catches on the restrictive stays to both the front and rear windows can easily be undone and the windows fully openable, as the appellant demonstrated to me on my visit. Furthermore, the design of the windows incorporates a 'dummy' central mullion that is attached to one of the casements. This creates an unduly wide and unobstructed opening when both casements are open.
21. I saw that the front bedroom window looks towards and into the main rear garden of 29a The Causeway (No.29a), whose occupiers have objected. The garden of 31 The Causeway (No.31) is sited to the side of No.29a. It would be affected to a lesser degree due to the more oblique relationship of this garden to the appeal property and the orientation of the garden to No.31 itself.
22. The rear bedroom window, with a similar window design and restrictive stay mechanism, looks directly down into habitable ground-floor rooms of 25a The Causeway, which is sited close to the shared boundary with the appeal property.
23. Whilst the windows to both rooms are partially obscure glazed, which limits overlooking of these neighbouring properties to some extent, the fact remains the windows are not fixed closed and can easily be opened fully. This allows significant overlooking of these neighbouring properties which affects the privacy of existing occupiers to an unacceptable degree.
24. I acknowledge that with being the only windows to these bedrooms, they need to be capable of opening in event of emergency or fire. However, this situation has arisen as a result of the revision to the internal layout and changes to the use of the rooms.
25. It is unclear what the appellant means by "near" overlooking from the two approved side (flank) elevation windows for the dressing room and second window to the bedroom. I saw that the two approved side elevation windows would face the blank side elevation of No.29 and would not cause overlooking. This is reinforced by the Council's grant of planning permission for windows on this elevation and no restriction being placed on their glazing or opening.
26. The appellant refers to the adopted East Cambridgeshire Design Guide SPD and separation distances between windows and that it is not incumbent on developers of adjacent land to make up any shortfall in the separation distance. However, in my view, it is not appropriate to apply the guidance to this situation as the dwelling has already been approved and built, and its windows designed and conditions imposed to ensure there would be no adverse effect on the amenity of existing and neighbouring occupiers. In any

event, I have found that the windows that have been installed are unacceptable.

27. For the reasons above, I find the appeal development causes harm to the living conditions of occupiers of neighbouring properties. I am therefore satisfied that Conditions 1 and 13 are still necessary and accord with the tests in paragraph 55 of the National Planning Policy Framework. Accordingly the appeal development is contrary to Policy ENV2 of the ECLP, whose aims have been described above.

Conclusion for Appeals A & B

28. The appeal development would be contrary to the development plan and there are no other considerations which outweigh this finding.
29. Accordingly Appeal A fails on ground (a) and planning permission is refused for the deemed application. Appeal B and the request to vary Conditions 1 and 13 to allow what has been built with revisions is dismissed.

Appeal A on Ground (g)

30. An appeal on ground (g) is that the period specified for compliance with the notice falls short of what is reasonable. In all cases the test remains whether the compliance period is reasonable, which needs consideration of what must be done in practice to carry out the remedial steps and how much time is reasonable to allow for that purpose.
31. The notice gives 6 months for the affected windows to be replaced and a new window inserted in the side elevation of the front bedroom.
32. The appellant has a young family and considers the family would need to move into temporary accommodation while the works are carried out. For this reason he suggests 8 months.
33. From what I observed on my visit, the works would not appear to be particularly difficult, complex or lengthy, or require a large team of workers. Indeed it is not uncommon for replacement windows to be inserted in an entire house. In this case only 2 windows would need to be replaced. The creation of the new window in the side wall of the front bedroom would involve building works and would likely cause more disruption and mess. No further other evidence has been submitted to substantiate the need for 8 months.
34. In my view the nature of works would not necessitate the family having to move out of the property and find alternative accommodation while the works were undertaken. Even if the appellant and his family chose to move out, I still find 6 months is an appropriate time period for compliance that strikes a proportionate balance between remedying the breach and the interests of the appellant.
35. The Council recognises there may be some restrictions on finding temporary accommodation in the current Covid-19 pandemic and is willing to increase the compliance period to 8 months. In recognition of the Covid-19 situation, I too am willing to extend the compliance period to 8 months.

36. To this extent, the appeal on ground (g) succeeds and I shall vary the notice accordingly.

Conclusion

37. For the reasons given above I conclude that Appeal A fails on ground (a) and planning permission is refused on the application deemed to have been made. Appeal B is dismissed.

Formal Decisions

Appeal A: The Enforcement Appeal

38. It is directed that the enforcement notice:-

- be corrected in requirements (iii) and (v) by **deleting** "so it is non-opening" and **inserting** "so that any part of the window that is less than 1.7 metre above the floor is non-opening"
- be varied by extending the compliance period for each step (i) to (v) by **deleting** 6 months and **substituting** with 8 months.

39. Subject to these corrections and variations, the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B: The Planning Appeal

40. The appeal is dismissed.

K Stephens
INSPECTOR