



Appeal Decision

Site Visit made on 8 June 2021

by J Williamson BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 July 2021

Appeal Ref: APP/K3415/W/21/3267176

9 Coppice Lane, Clifton Campville, Tamworth B79 0BG

- 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 Ms S Kerby against the decision of Lichfield District Council.
 - The application Ref 20/01228/FUL, dated 7 September 2020, was refused by notice dated 17 November 2020.
 - The application sought planning permission for extension of ground floor eaves and inclusion of loft columns without complying with a condition attached to planning permission Ref 17/01257/AMD, dated 6 November 2019.
 - The condition in dispute is No 1 (one), which states that: Before the dwelling is first occupied, the first floor side window as shown on drawing CL/01/06 Rev B shall be fitted with obscure glazing (to a minimum level 3) and fixed shut. The window shall thereafter be retained as such for the lifetime of the development.
 - The reason given for the condition is: To protect neighbour amenity and to limit overlooking, in accordance with the requirements of Policy BE1 of the Local Plan Strategy, Sustainable Design Supplementary Planning Document and National Planning Policy Framework.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Planning application Ref 17/01257/FUL granted planning permission (PP) for demolition of bungalow and erection of a 3-bedroom detached dwelling and associated works. The appellant subsequently applied for a non-material amendment (NMA) to the PP, for extension of ground floor eaves and inclusion of two columns, Ref 17/01257/AMD. The Council approved the NMA application and imposed a condition that was not attached to the original PP, which it has the power to do under s96A (3)(a) of the Town and Country Planning Act 1990 (the Act). Approval of an application made under s96A of the Act does not create a new PP; the decision is to be read in conjunction with the original PP. Therefore, notwithstanding the details provided in the header above, for the avoidance of doubt, the PP to which the outcome of the NMA application Ref 17/01257/AMD relates is PP Ref 17/01257/FUL.
3. Following determination of the NMA application, the appellant applied to the Council, application Ref 20/01228/FUL, to remove the said condition. The Council refused the application. The purpose of this appeal is to determine

whether the said condition should or should not be removed; it is not for me to opine on the legalities of the process by which the appeal before me has been arrived at.

Main Issue

4. The main issue is the effect on the living conditions of the existing occupiers of the neighbouring property number 7 Coppice Lane should the condition be removed or varied, having particular regard to privacy.

Reasons

5. The parties agree that PP Ref 17/01257/FUL has been implemented, and I observed that the appeal dwelling has been constructed. The dwelling is oriented at 90 deg to No. 7 Coppice Lane, such that the northern facing pane of a first-floor corner window positioned in the dwelling, which is of floor to ceiling height, faces the rear, southern facing elevation of No. 7 as well as overlooking the rear private outdoor amenity space of this neighbouring property. According to figures provided by the Council, which the appellant has not challenged, and I have no reason to do so either, the window is sited 17.4 m from the rear elevation of No. 7 and 5.4 m from the boundary between the 2 properties.
6. The rear elevation of No. 7 has several windows in it, at least 2 of which, one on the ground floor and one of the first floor, in my opinion are of a size, design and positioning which lead me to conclude that they are likely to serve habitable rooms. The first-floor plan of the appeal dwelling depicts the room which the window in question serves to be a study. A study is not defined in the Council's Sustainable Design Supplementary Planning Document (2015, updated 2019), (SPD), as a habitable room. I note that the Council consider the window in question to be a secondary window, due to it being the smallest of the 2 panes that make up the corner window. I agree with this conclusion.
7. However, given the extent of use of such rooms these days, as, for example, home offices, I consider the room could be used to a greater extent than some of the rooms defined as habitable rooms in the Council's SPD, ie playroom, kitchen and dining room. Furthermore, the window is relatively large. Therefore, I consider the use of the study could be potentially extensive; as such, and given the size of the window, I consider the opportunities for looking towards habitable room windows on the rear elevation of No. 7 and overlooking of the rear private outdoor amenity space of the property would also be extensive.
8. The SPD does not provide any guidance on distance standards between secondary room windows serving rooms that are not defined as habitable rooms in the SPD. However, I consider the position, size and design of the window and its proximity to habitable room windows on the rear elevation of No. 7 and its rear outdoor amenity space, would result in overlooking, should the condition be removed or varied, to an extent that would significantly harm the living conditions, in respect of privacy, of the existing occupiers of No. 7.
9. Consequently, I conclude that the proposal to remove or vary condition 1 (one) attached to NMA application Ref 17/01257/AMD, which is associated with PP Ref 17/01257/FUL, does not accord with policies CP3 and BE1 of the Lichfield District Local Plan Strategy 2008-2029, (2015), or sub-paragraph

- 127 (f) of the National Planning Policy Framework. Collectively, and among other things, these policies require development to protect and provide a high standard of living conditions for occupiers of existing neighbouring properties.
10. As noted above, a study is not defined as a habitable room in the SPD; additionally, the window in question is deemed to be a secondary window. Therefore, the relationship between the properties in question is not specifically advised upon in the SPD. For this reason, although I have borne in mind the guidance in the SPD in reaching my decision, I cannot conclude that removing or varying the condition of concern would not accord with specific guidance in the SPD.
11. I note that the appellant does not challenge the view that removing the condition would harm the living conditions of the existing occupiers of No. 7. The reasons the appellant considers the condition should be removed are because a) the said window did not form part of the initial description of development on NMA application Ref 17/01257/AMD, b) the window in question did form part of the original planning application, Ref 17/01257/FUL, and c) they should not be penalised because the Council missed the window when granting PP.
12. I have some sympathy with the appellant's reasoning, and I consider that the Council should have ensured that the floor and elevation drawings associated with PP Ref 17/01257/FUL corresponded. However, I also consider it to have been the responsibility of the appellant to have ensured that the plans they submitted were accurate in all respects. I therefore consider that the matters raised by the appellant do not justify the removal of the condition, and there are no other considerations that lead me to conclude other than in accordance with the development plan.

Conclusion

13. For the reasons outlined above, I conclude that the appeal is dismissed.

J Williamson

INSPECTOR