



Appeal Decision

Site Visit made on 23 August 2021

by T Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 September 2021

Appeal Ref: APP/M3835/W/21/3270438

84 Shirley Drive, Worthing, Sussex BN14 9BB

- 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 Luigi Maio against the decision of Worthing Borough Council.
 - The application Ref AWDM/1575/20, dated 30 September 2020, was approved on 9 February 2021 and planning permission was granted subject to conditions.
 - The development permitted is 'Variation of condition 2 of approved application AWDM/1210/16 to allow the windows in the rear dormer to open in case of emergency only'.
 - The condition in dispute is No 2 which states: The windows in the rear elevation of the dormer hereby permitted shall at all times be obscure-glazed and non-opening (except that part which is above 1.7 metres above the floor of the room in which the window is installed) and shall not subsequently be altered in any way. The windows subject to this condition are permitted to open only in cases of emergency for the purpose of emergency access and shall not be opened for any other purpose. The restrictor method of fixing the window shut (other than in cases of emergency access) shall be fitted within 6 weeks of the date of this decision and shall be retained as such thereafter.
 - The reason given for the condition is: To prevent overlooking and to comply with saved policy H18 of the Worthing Local Plan.
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Decision

1. The appeal is allowed and the planning permission Ref AWDM/1575/20 for 'Variation of condition 2 of approved application AWDM/1210/16 to allow the windows in the rear dormer to open in case of emergency only' at 84 Shirley Drive, Worthing, Sussex BN14 9BB granted on 9 February 2021 by Worthing Borough Council, is varied by deleting condition 2 and substituting it with the following condition: The windows in the rear elevation of the dormer hereby permitted shall at all times be obscure-glazed and shall not subsequently be altered in any way.

Preliminary Matters

2. A revised version of the National Planning Policy Framework (the Framework) was published in July 2021. The main parties were given the opportunity to comment on its relevance to the appeal proposal and I have had regard to it in reaching my decision.

Background and Main Issue

3. The Council previously granted planning permission AWDM/1210/16 for a rear dormer on the appeal site. Condition 2 of that permission required the windows in the rear elevation to, amongst other aspects, be non-opening. The appellant subsequently applied to the Council under Ref AWDM/1575/20 to vary that condition to allow the windows to open.

4. The Council's decision on that application was to grant planning permission with a varied condition from the original permission which, amongst other aspects, permits the windows to open only for the purpose of emergency access and not for any other purpose. The appeal has been made against that condition imposed on planning permission AWD/1575/20, granted by the Council on 9 February 2021, on the basis that the appellants wish to have fully openable windows in the existing rear dormer.
5. The main issue is whether it is necessary for the windows to be non-opening except in the case of emergency, having regard to the living conditions of adjoining occupiers, with particular regard to overlooking of 89 and 93 Offington Drive.

Reasons

6. The appeal site is located in a reasonably built-up residential area, near to the corner of Shirley Drive and Offington Drive. It is therefore situated in relatively close proximity to a number of properties and it backs on to the rear of Nos 89 and 93 Offington Drive.
7. The dormer windows face the dwelling's rear garden and, due to the site's position and orientation, towards the gardens and windows serving habitable rooms in Nos 89 and 93. However, views from the open dormer windows would involve angled rather than direct window-to-window views. In addition, there is a reasonable degree of separation to No 89's garden and lounge window, while boundary treatment and extensive soft landscaping provide a good level of screening and serve to further limit views. Although No 93 is closer to the site, the extensive soft landscaping along the shared boundary and the outbuilding at No 93 also provides a reasonable level of screening and limits opportunities for overlooking of No 93's garden and kitchen/dining area from the dormer windows. Furthermore, the existing obscure glazing – which the appellant indicates he is content to retain – not only prevents views out when the dormer windows are closed but, as I observed on my site visit, significantly restricts potential overlooking when the windows are open by further limiting the scope of views available of adjoining plots.
8. Allowing the unrestricted opening of the dormer windows would allow for some overlooking of adjoining properties and gardens. However, for the above reasons and with the retention of the obscure glazing, overlooking from the dormer windows when open would be limited and not significant, with the majority of views of Nos 89 and 93 involving restricted and oblique glimpses rather than direct, unimpeded and extensive views. This is also a residential area with several dwellings located in relatively close proximity. As such, a certain degree of mutual overlooking would not be unusual. Indeed, I observed on my site visit that the upper windows in some properties in the locality would allow for some views of neighbouring plots.
9. For the above reasons, I conclude that it is not necessary for the windows to be non-opening except in the case of emergency, having regard to the living conditions of adjoining occupiers, with particular regard to overlooking of 89 and 93 Offington Drive. Removing the restriction on the opening of the windows would therefore not conflict with Saved Policy H18 of the Worthing Local Plan (WLP) which sets out that development that would result in an unacceptable reduction in amenity for local residents will not be permitted.

10. My attention has also been drawn to WLP Saved Policy H16 which, amongst other things, sets out that extensions and alterations to dwellings will normally be permitted providing the proposal would not result in an unacceptable degree of overlooking. For the above reasons, removing the restriction on the opening of the windows would also not conflict with this policy.

Conclusion and Conditions

11. For the above reasons, the appeal is allowed and planning permission AWDM/1575/20 is varied by deleting condition 2 and substituting it with the above condition. This condition is necessary because the obscure glazing, as set out above, limits opportunities for overlooking of adjoining plots from the open windows to an acceptable level.

T Gethin

INSPECTOR