



Appeal Decision

Site visit made on 8 September 2021

by **Matthew Jones BA(Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 04 October 2021

Appeal Ref: APP/D1265/W/20/3264335

South Park, Park Homer Road, Colehill BH21 2SP

- 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 K Gould against the decision of Dorset Council.
 - The application Ref 3/19/2501/CONDR, dated 21 December 2019, was refused by notice dated 28 September 2020.
 - The application sought planning permission for the *'construction of one dwelling house with detached garage and new access revised proposal to that approved under application 03/1626 as amended by plans received 16.07.2004. at Windrush Park Homer Road Colehill Wimborne Dorset'* without complying with a condition attached to planning permission Ref 3/04/0973/FUL, dated 23 August 2004.
 - The condition in dispute is No 5 which states that: *'Both in the first instance and upon all subsequent occasions the dormer windows at first floor level on the north elevation shall be glazed with obscure glass and shall either be a fixed light or hung in such a way as to prevent the effect of obscure glazing being negated by reason of overlooking. Furthermore, notwithstanding the provision of the Town and Country Planning (General Permitted Development) Order 1995, or any subsequent re-enactment, no further fenestration or door shall be installed in the said elevation at first floor or upper ground floor level without express planning permission.'*
 - The reason given for the condition is : *'To preserve the amenity and privacy of the adjoining property'*.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Mr K Gould against Dorset Council. This application is the subject of a separate decision.

Procedural Matter

3. Since the appeal was submitted the Government has published a new National Planning Policy Framework (the Framework). The main parties have had the opportunity to provide comments on the revisions therein and I have therefore had regard to the new Framework without prejudice to the main parties.

Background and Main Issue

4. The appeal site comprises the detached dwelling South Park and its grounds. Constructed following permission granted in 2004 under Ref 3/04/0973/FUL, the house is formed of two intersecting wings on a north to south and east to west axis. Within the loft on the east side of the building is a bedroom with two dormers within each of the north and south roofslopes.

5. The dormers facing north (the Dormers) are restricted by condition 5 of Ref 3/04/0973/FUL to be obscure glazed with restricted opening, with the reason given so as to preserve the amenity and privacy of the adjoining property. The property in question, directly to the north, is the detached Park House, which has its rear elevation and principal, back garden space facing on to South Park.
6. The main issue therefore is the effect that removing condition 5 would have on the living conditions of neighbours within Park House with reference to privacy.

Reasons

7. Overlooking from the Dormers into the rear reaches of Park House's garden would be close range, but these areas are heavily screened by the substantial trees and shrubbery which line much of the boundary amid the two properties. Whilst this screening does not prevent overlooking towards the south east edge of Park House's grounds, this is a peripheral part of the property. Moreover, at my visit I observed that limited instances of overlooking between windows and neighbouring garden spaces are an established part of this area's character.
8. The boundary vegetation would also ensure that overlooking towards the rear elevation of Park House itself would be largely restricted to its first floor. Even then, views to the bedroom window on its west side and the porthole serving its bathroom would be highly filtered by the upper sections of the greenery. However, there is a clear break in the greenery which would allow overlooking towards the first-floor bedroom and associated balcony on the east side of Park House. This bedroom is served by a large, glazed opening which almost completely exposes it to its southward aspect. It is not currently overlooked.
9. The removal of the condition would introduce overlooking towards the bedroom at a similar elevation. I recognise that the distance between this room and the Dormers is significant at around 29m. However, the directness of the resultant overlooking, and the way it would infiltrate the all-encompassing aperture of the bedroom space, would create a pronounced overlooking effect, in spite of the distance involved. This would significantly diminish the privacy and sense of privacy experienced by residents within the affected room in my opinion.
10. The Dormers themselves serve a bedroom, and a secondary, guest bedroom at that. However, this situation is not guaranteed to remain. In any event, I do not prescribe to the view that such a 'secondary' status is a reliable indicator of a room's likely level of use nor the intensity of overlooking it may offer. Bedrooms can be a private refuge within the household and can serve a variety of daytime functions, such as child's play or home working.
11. Reference is made to appeal decisions and case law which rely on a 21m 'rule of thumb' distance, after which overlooking becomes acceptable. However, no specific appeal decisions or case law has been provided. Whilst I accept that this distance can be a useful indicator of tolerability, it is not a policy requirement here and I do not see it as a prescriptive threshold to be robustly applied to each situation. Rather, each case must be determined on its own planning merits, and on the basis of the individual circumstances of each site.
12. As such, removing condition 5 would have an unacceptable effect on the living conditions of neighbours within Park House, with reference to privacy. It would conflict with the residential amenity aims of Policy HE2 of the Christchurch and East Dorset Local Plan Core Strategy (adopted 2014) and the Framework.

Planning Balance

13. The scheme would improve access to light and enhanced air circulation within the roof accommodation of South Park and potentially modestly improve the energy efficiency of its use. However, these matters are of limited weight and do not outweigh the significant harm I attribute to the effect on the living conditions of the residents of Park House. As such, I find that the proposal would conflict with the development plan read as a whole and that there are no other considerations, including the Framework, that outweigh the conflict.

Conclusion

14. For the reasons outlined above, and taking all other matters raised into account, I conclude that the appeal should be dismissed.

Matthew Jones

INSPECTOR