



Appeal Decision

Site visit made on 19 October 2021

by Jonathon Parsons MSc BSc(Hons) DipTP Cert(Urb) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th November 2021

Appeal Ref: APP/D1590/W/21/3270003

71 Chalkwell Esplanade, Westcliff-On-Sea, SS0 8JH

- 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 Mr and Mrs G Allison against the decision of Southend-on-sea Borough Council.
 - The application Ref 20/02066/AMDT, dated 3 December 2020, was refused by notice dated 4 February 2021.
 - The application sought planning permission for "demolish existing building and erect detached three storey dwellinghouse with amenity space to rear and layout parking to front" without complying with a condition attached to planning permission Ref 19/00390/FUL, dated 3 May 2019.
 - The condition in dispute is No 13 which states that: The proposed first floor flank windows of the dwelling shall only be glazed in obscure glass (the glass to be obscure to at least Level 4 on the Pilkington Levels of Privacy, or such equivalent as may be agreed in writing by the local planning authority) and fixed shut, except for any top hung fan light which shall be a minimum of 1.7 metres above internal floor level unless otherwise agreed in writing by the local planning authority. In the case of multiple or double glazed units at least one layer of glass in the relevant units shall be glazed in obscure glass to at least Level 4. The windows shall be retained as such in perpetuity thereafter.
 - The reason given for the condition is: To protect the privacy and environment of people in neighbouring residential properties, in accordance with the National Planning Policy Framework (NPPF), Core Strategy (2007) policy CP4, Development Management Document (2015) policy DM1 and the Design and Townscape Guide (2009).
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Decision

1. The appeal is allowed and planning permission is granted for "demolish existing building and erect detached three storey dwellinghouse with amenity space to rear and layout parking to front" at 71 Chalkwell Esplanade, Westcliff-On-Sea, SS10 8JH in accordance with the application Ref 20/02066/AMDT made on the 3 December 2020 without complying with conditions set out in planning permission Ref 19/00390/FUL granted on 3 May 2019 by the Southend-on-sea Borough Council, but otherwise subject to the following conditions on the attached Schedule A.

Background and Main Issue

2. Planning permission was granted for a detached contemporary style three storey dwelling which comprised extensive glazing, of floor to ceiling height, to

the front facing the sea. On the planning permission, a condition required flank windows to be obscure glazed to a certain specification. A new dwelling has now been built but the flank window of the first floor glazed frontage has not been obscure glazed. The proposal seeks to vary this condition to permit this window to be non-obscure.

3. The main issue is the effect of varying the condition, to retain this flank first floor window as non-obscure, on the living conditions of the occupiers of 73 Chalkwell Esplanade, having regard to privacy.

Reasons

4. The flank window is of floor to ceiling depth. It is positioned on the front corner of the dwelling and is a continuation of similar height glazing across the 1st floor façade. The glazing encloses a large open plan kitchen/dining/living room which opens out onto a small balcony facing onto the seaside.
5. The neighbouring detached dwelling at 73 Chalkwell Esplanade has a ground floor terrace mainly underneath a first floor balcony above. A room accesses the balcony. On the appeal dwelling, the flank window adjoins a dining room area of the frontage open plan room, and there would be views from it towards the neighbour's terrace and balcony. Evening sunsets could be viewed from this window. However, the layout of the open plan room and the large expanse of frontage glazing would not encourage viewing from this flank window. The best views of the seaside can be gained from the living space area of the open plan room because such an area is more expansive and better orientated. The internal layout is unlikely to change because the dining room is conveniently positioned close to the kitchen whilst the living area is close to the balcony attached to the front of the building.
6. Furthermore, the neighbour's terrace and balcony are not in a direct line of sight from the flank window because the window is positioned mainly forward of these features. Therefore, views would be limited and viewing the sunsets to the west does not entail looking down at the terrace or across to the balcony. Despite the hedge alongside the footway, the neighbour's ground floor terrace is also open to public view, especially from the open pedestrian gate leading into the front of the property. The neighbour's first floor balcony is also open to public view from people walking along the footway along the Esplanade.
7. Historically, there would also have been two first floor flank windows on the former dwelling on the appeal site. Although secondary in nature, these windows would have allowed opportunities to overlook the terrace and balcony, albeit that most viewing undertaken would be most likely of the sea and coast. Taking into account all these considerations, the neighbouring occupiers suffer no significant loss of privacy through direct overlooking.
8. As to perceived loss of privacy, residents of the neighbouring property face a large and deep window. However, fronts of properties along the esplanade are generally closely aligned and designed to gain views of the sea and coast. In so doing, they are often open to view from neighbours and people walking along pavements. Inter visibility between properties and public areas on the property frontages is a common feature. Therefore, perceived loss of privacy is not a sensitive issue or significant in this type of seaside-built environment.

9. For all these reasons, retaining the flank window as non-obscure, does not harm the living conditions of the occupiers of the neighbouring property, having regard to privacy. Accordingly, the scheme complies with Policies KP2 and CP4 of the Southend-on-sea Core Strategy 2007 and Policies DM1 and DM3 of the Southend-on-sea Development Management Document (2015). The scheme would comply with the development plan taken as a whole and planning permission should be granted. There are no material considerations of importance and weight to outweigh that finding.

Conditions

10. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. Both the Council and appellant have provided information on discharge of conditions on the previous planning permission following a request.
11. The planning conditions on the original permitted development have been considered. Given the retrospective nature of the development, conditions requiring time commencement for building works, adherence to approved plans and implementation in accordance with approved materials are not necessary. In the interests of the living conditions of residents, a condition preventing use of roof areas as balconies other than those designated on the approved plans is necessary. To ensure sustainable housing design, conditions are necessary to ensure adherence to approved details on on-site renewable sources and following submission and approval of details, water efficient measures, in accordance with the relevant policy justification.
12. Space has been laid out for the parking and manoeuvring of two vehicles and therefore, a modified condition ensuring retention is only required. The provision and retention of approved refuse and recycling storage areas is necessary in the interests of the visual appearance of the site. There is no relevant policy justification before me to condition an optional building regulation M4(2) requirement for accessible and adaptable dwelling, and thus, such a condition has not been imposed. Appropriate frontage landscaping has been carried out and therefore, a condition replacing dead or dying specimens is only required.
13. As the dwelling is built, no construction hour condition is required. There is no clear justification to remove permitted development rights and therefore, a condition removing such rights in respect of the dwelling is not necessary. Finally, the condition requiring obscure glazing of the first floor window is required to be varied given the comments made in the reasoning. Given the first floor flank windows on the other neighbouring property, the obscure glazing requirement has been retained. However, the condition has not specified an obscure specification as this would be overly prescriptive and unreasonable.

Conclusion

14. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

Jonathon Parsons

Inspector

Schedule A

- 1) Other than the areas labelled as balcony and terrace on the approved plans, the first floor flat roof of the dwelling shall not be used as a balcony, roof garden or similar amenity area or for any other purpose unless otherwise agreed in writing by the local planning authority. The roof can however be used for the purposes of maintenance or to escape in an emergency.
- 2) The energy scheme, incorporating on site renewable sources, approved under discharge of condition 5 of planning permission 19/00390/FUL, shall be implemented in accordance with its details, for the lifetime of the development.
- 3) The dwelling, hereby permitted, shall be fitted with water design measures, to limit internal water consumption to 105 litres per person per day (lpd) (110 lpd when including external water consumption), and such measures shall be retained in perpetuity.
- 4) The frontage hard surfaced area shall be permanently retained solely for the two vehicular parking spaces by the occupiers of the development and their visitors.
- 5) Within 2 months of the date of this decision, a scheme detailing refuse and recycling storage areas to serve the development, shall be submitted to the local planning authority for approval. The approved scheme shall be implemented in accordance with its details and within three months of the date of the written approval of the scheme.
- 6) Pursuant to the approved landscaping scheme under discharge of condition 10 of planning permission 19/00390/FUL, any trees or shrubs dying, removed or severely damaged or diseased within five years of planting shall be replaced with others of similar size and species.
- 7) The first floor flank windows facing 69 Chalkwell Esplanade shall only be glazed in obscure glass and fixed shut, except for any top hung fan light which shall be a minimum of 1.7 metres above internal floor level unless otherwise agreed in writing by the local planning authority. The windows shall be retained as such in perpetuity.