



Appeal Decision

Site visit made on 28 September 2021

by J Williamson BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 December 2021

Appeal Ref: APP/P3420/W/21/3273110

Woodside, Mucklestone Wood Lane, Loggerheads, Newcastle Under Lyme TF9 4ED

- 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 G Adams against the decision of Newcastle Under Lyme Borough Council.
 - The application Ref 21/00011/FUL, dated 19 January 2021, was approved on 9 March 2021 and planning permission was granted subject to conditions.
 - The development permitted is replacement garage and carport extended with alterations, removal of front bays and associated roofs, rear extension and internal/external alterations.
 - The condition in dispute is No. 3 which states that: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and/or re-enacting that Order) the northernmost window and central window on the west elevation facing No.1 Derwent Drive shall be non-opening and glazed with obscure glass and shall be permanently maintained thereafter as non-opening and obscure glazed.
 - The reason given for the condition is: To safeguard the amenities of the adjoining premises from overlooking and loss of privacy in accordance with the aims and objectives of the National Planning Policy Framework 2019.
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Decision

1. The appeal is allowed, and planning permission is granted for replacement garage and carport extended with alterations, removal of front bays and associated roofs, rear extension and internal/external alterations, at Woodside, Mucklestone Wood Lane, Loggerheads, Newcastle Under Lyme TF9 4ED, subject to the following conditions:
 - 1) The development shall be completed in accordance with the following approved plans: A109-A1, A101-A1-R1, A121-A1-R1.
 - 2) The external surfaces of the development hereby permitted shall be constructed in the materials specified on the approved plans.
 - 3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), the northernmost window on the westerly facing elevation of the appeal property, which directly faces number 1 Derwent Drive, shall be non-opening and glazed with obscure glass. Details of the obscured glass shall be submitted to and approved in writing by the Local Planning Authority prior to the glass being installed. The window shall be secured as specified in this condition and glazed in accordance with the approved details, prior to the kitchen/living area shown on the approved plans

being brought into use. Thereafter, the window shall be retained as such for the lifetime of the development.

- 4) The development shall be completed adhering to the tree protection measures and ground construction methods outlined in the Arboricultural Report produced by ACS Consulting, dated February 2020, and the associated drawing Ref ARB/4108/Y/200.

Preliminary Matters

2. Notwithstanding the description given on the appeal form (which refers to varying condition 4 of application Ref 19/00972/FUL), the appellant indicates in the grounds of appeal that the appeal is against condition 3 of the Council's most recent decision Ref 21/00011/FUL, which states: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order (or any Order revoking and/or re-enacting that Order) the northernmost window and central window on the west elevation facing No. 1 Derwent Drive (1DD)¹ shall be non-opening and glazed with obscure glass and shall be permanently maintained thereafter as non-opening and obscure glazed. The reason given for the condition is: To safeguard the amenities of the adjoining premises from overlooking and loss of privacy in accordance with the aims and objectives of the National Planning Policy Framework 2019. The Council's statement also indicates that the appeal lodged is against condition 3 on planning permission Ref 21/00011/FUL.
3. In both instances, therefore, the reason given for the condition is the same, ie to protect the living conditions of existing occupiers of No. 1 Derwent Drive (1DD). Consequently, the main issue would be the same in either case. Additionally, the occupants of 1DD were given the opportunity to comment on both applications, which they did; and their main concern on both occasions was the same, ie loss of privacy.
4. The 2 main parties were contacted to ascertain their views regarding the Planning Inspectorate determining the appeal based on it being against condition 3 on approved application Ref 21/00011/FUL, and whether they considered anyone would be prejudiced should the appeal be determined on this basis. The Council confirmed that it was satisfied the appeal could be determined on this basis without anyone being prejudiced. The appellant did not respond. In the circumstances as outlined (and notwithstanding the details in the banner heading which reflect the appeal form), I am satisfied that no one would be prejudiced if the appeal was determined based on condition 3 of approved application Ref 21/00011/FUL, rather than condition 4 of approved application Ref 19/00972/FUL. I have therefore determined the appeal on this basis.
5. I observed that the development has begun and much of the work has been completed, including the rear extension. I have made my decision taking account of this.
6. Following the submission of the appeal a revised National Planning Policy Framework (the Framework) was published. Whilst some content has been added and paragraph numbers changed, the substance of the Framework with

¹ My abbreviation.

respect to the main issue of this case has not. I have taken account of the revised Framework in my decision.

7. I note the comments made by all parties in respect of condition 4 on approved application 19/00972/FUL. Suffice for me to state at the outset that planning permission Ref 19/00972/FUL would be subject to the conditions as worded, irrespective of any discussions that occurred between parties prior to the application being determined.

Main Issue

8. The main issue is the effect that removing or varying the condition would have on the living conditions of the occupiers of 1DD, with respect to privacy.

Reasons

9. The development has a western facing elevation with 3 window openings in it that serve an open-plan kitchen/living area. The appeal property only has one floor level and therefore all 3 windows are at the same height. The northernmost window is positioned directly opposite the plot of 1DD. The central window is also directly opposite the plot of 1DD, though it is sited close to the side boundary between numbers 1 and 3DD. The most southerly window is positioned directly opposite the plot of 3DD.
10. There is a difference in ground levels between the appeal site and 1 and 3DD, the ground level at the appeal site being higher. Consequently, the internal floor area of the appeal property and the height of the 3 windows of concern are higher than they would be if the ground levels of the respective sites were the same.
11. There is a patio to the rear of 1DD, and there are French doors on an eastern facing elevation of the property which currently serve a bedroom. I note that the existing occupiers of 1DD suggest that this room could become a main living room in the future. For the purposes of my assessment, I consider bedrooms and living rooms to be habitable rooms which require the same level of privacy, as both are used for private matters.
12. The distance between the western facing elevation of the appeal property and the eastern facing elevation of 1DD is around 6-7 m. There is a timber fence around 1.7 m high sited along the rear boundary between the 2 properties. There is also a timber shed and arbour erected in the rear garden of 1DD, sited adjacent to the rear boundary. Hence, they are positioned between the respective western and eastern facing elevations of the 2 properties. The shed and arbour are both higher than the boundary fence, and the roof ridges of both are higher than the sills of the 3 windows.
13. The combination of fence, shed and arbour restricts the views of the rear patio area and French doors of 1DD from all 3 windows of concern. However, there is still a view from the northernmost window over the fence, between the shed and arbour, across the rear patio area and of the French doors. Given the short distance between the elevations of the respective properties, I consider the northernmost window on the westerly facing elevation of the appeal property would significantly harm the privacy levels of occupiers of the neighbouring property 1DD.

14. As noted, the central window is sited close to the boundary between 1 and 3 DD. The shed in the rear garden of 1DD is positioned mainly in front of the central window. There is an acute angle between the central window and both the rear patio area and French doors of 1DD. I am therefore of the opinion that the view from the central window does not significantly harm the privacy levels of the occupiers of 1DD.
15. Given the position of the most southerly window relative to the plot of 1DD, (ie it does not directly face it), the very acute angle between it and the patio area and French doors of 1DD and the presence of a high hedge, shrubs, and trees along the rear boundary of 3DD, I consider the most southerly window has very little effect on the privacy levels of the existing occupiers of 1DD.
16. In light of the above, I consider that if the most southerly and central windows on the western facing elevation of the appeal property were opening and clear glazed, the impact of the proposal on the living conditions of the existing occupiers of 1DD would not be harmed. However, I also consider that if the northernmost window was opening and clear glazed, there would be overlooking of the rear patio and French doors of 1DD to an extent that would be unacceptable and harmful to the living conditions of occupiers of 1DD. Therefore, removing condition 3 on approved application Ref 21/00011/FUL would result in significant harm to the living conditions of existing occupiers of 1DD.
17. However, I consider that the living conditions of the occupiers of 1DD would be protected to a satisfactory degree if condition 3 was varied, in a manner as proposed, ie requiring the northernmost window to be non-opening and obscurely glazed. I therefore conclude that, subject to such a variation of the condition, the development would not harm the living conditions of existing occupiers of 1DD in respect of privacy. As such, the development accords with sub paragraph 130 (f) of the Framework, which requires development to ensure the living conditions of existing and future users are of a high standard.

Other Matters

18. The existing occupiers of 1DD suggest that noise levels at the rear of their property would increase if opening windows are permitted at the appeal site in rooms occupied most of the day. Although the level of noise may increase from existing levels, I consider it to be unlikely that the usual day-to-day use of the property would result in noise disturbance of an unacceptable level.
19. The existing occupiers of 1DD have also expressed concern regarding potential overlooking from the outside area that would be adjacent to the bi-fold doors on the northern elevation of the kitchen area of the appeal property. However, I am satisfied that the boundary fence would ensure there would be no significant overlooking of the private outdoor space associated with 1DD from the said outside area at the appeal property.
20. The existing occupants of 1DD state that all 3 window openings on the western facing elevation of the appeal property have been fitted with opening lights, and the central window has been fitted with clear glazing. Though this may be the case, the appeal is allowed subject to the approved plans and the conditions attached; not the details of how it may currently have been constructed.

21. Given the existing boundary fence, hedge, shrubs and trees, and the distance between the western facing elevation of the appeal property and the eastern facing elevation of 3DD, I consider that the living conditions of occupiers of 3DD would not be harmed.

Conditions

22. The suggested condition has been considered in light of advice contained in the Planning Practice Guidance, (PPG), the tests within the Framework and parties' comments. For the purposes of clarity and precision and to adhere to relevant policy and guidance, I have amended the suggested condition; additionally, I have attached similar conditions to those attached to the original permission.
23. I have attached a condition specifying the approved plans for the avoidance of doubt, as revisions have been made. A condition specifying materials to be used on the exterior of the property is attached to protect the character and appearance of the area. I have attached a condition requiring the most northerly window on the western facing elevation of the appeal property to be non-opening and obscurely glazed, to ensure the living conditions of the existing occupiers of 1DD are satisfactory. Given the variety of obscure glazing available, the details of the obscure glazing are to be approved by the Council and implemented accordingly. A condition requiring the development to be completed in accordance with specified tree protection and ground construction measures is attached to protect the future well-being of trees on site, in the interest of the character and appearance of the area.

Conclusion

24. For the reasons outlined above, I conclude that the appeal is allowed, subject to the conditions listed.

J Williamson

INSPECTOR