



Appeal Decision

Site visit made on 1 March 2022

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 March 2022

Appeal Ref: APP/W1525/W/21/3276937

56 School Road, Downham, Chelmsford CM11 1QN

- 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 Simon Easton against the decision of Chelmsford City Council.
 - The application Ref 18/01635/S73, dated 15 February 2021, was approved on 13 April 2021 and planning permission was granted subject to condition.
 - The development permitted is 'variation of condition 2 for approved planning permission 18/01635/FUL (Extension to front porch, with a ground floor side and front infill extension. First- floor side extension and a single storey rear extension. Other external alterations.) Alterations to ground floor front projection, alteration to first floor plan, changes to windows and doors, internal layout changes'.
 - The condition in dispute is No 1 which states that: 'Unless otherwise agreed in writing by the Local Planning Authority, within three months of the date of this planning permission, the first floor windows within the northern and southern elevations of the building as shown on drawings 2006/7 and 2006/8 shall be: a) obscured to a minimum level 3 obscurity level and b) Of a design not capable of being opened below a height of 1.7 m above finished floor level and shall remain so obscured and non openable'.
 - The reason given for the condition is: 'To safeguard the privacy of the occupiers of the adjacent property in accordance with Policy DM29 of the Chelmsford Local Plan'.
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Decision

1. The appeal is allowed and the planning permission Ref 18/01635/S73 for 'variation of condition 2 for approved planning permission 18/01635/FUL (Extension to front porch, with a ground floor side and front infill extension. First- floor side extension and a single storey rear extension. Other external alterations.) Alterations to ground floor front projection, alteration to first floor plan, changes to windows and doors, internal layout changes' at 56 School Road, Downham, Chelmsford CM11 1QN granted on 13 April 2021 by Chelmsford City Council, is varied by deleting condition 1 and substituting for it the following condition:
 - 1) The five south elevation windows at first floor level to the bathroom, Bedroom 2 and Bedroom 3 shown on plan references 2006/7 and 2006/8 dated January 2021 hereby permitted shall be removed within 28 days of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
 - (i) Within 2 months of the date of this decision a scheme for the obscure glazing and restricted opening of the five south elevation windows at first floor level to the bathroom, Bedroom 2 and Bedroom 3 shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.

- (ii) If within 4 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
- (iii) If an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- (iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.
- (v) Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.
- (vi) In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Preliminary Matter

2. The Council's decision notice refers to a variation of condition 2 of planning permission reference 18/01635/FUL (the Original Planning Permission) being granted. To clarify, the consent granted by the Council comprises a separate standalone planning permission which leaves the Original Planning Permission unaltered.

Background and Main Issue

3. Works were carried out to the appeal building other than in accordance with the Original Planning Permission, including the design, number and positioning of first floor windows on both side elevations. These did not accord with the approved plans referred to by condition 2 of the Original Planning Permission. The appellant therefore sought planning permission for the works carried out without complying with that condition under the provisions of section 73A of the Town and Country Planning Act 1990 (as amended). The Council approved that application under reference 18/01635/S73 ('the Approved Scheme') and issued a new decision notice which included a condition requiring alterations to be made to the first floor side elevation windows within three months of the date of that decision.
4. The appellant had not been consulted on that condition, and compliance with it would require all the side elevation windows presently installed at first floor level to be obscure glazed and fixed shut on account of their height. The appellant objects to the condition because they consider the first floor side elevation windows do not cause any unacceptable levels of overlooking. They have also referred to previous levels of overlooking from historic first floor side elevation windows and a rear balcony which no longer exist, and the windows approved by the Original Planning Permission, which are claimed to comprise fallback positions.
5. Taking the above into account the main issue is whether the condition is reasonable or necessary to safeguard the living conditions of the occupants of neighbouring properties, with particular regard to privacy.

Reasons

6. Five windows have been installed on the southern elevation of the appeal building at first floor level. The central window serves a bathroom and is obscure glazed and top hung with unrestricted opening. At present, when opened to a great extent, views of the side elevation of 54 School Road are possible, including a glazed door, window and side passage. Overlooking from this window would be rare on account of its obscure glazing and the extent to which this window would need to be opened to allow that level of overlooking, combined with the use of the room the window serves and the intervening boundary planting. However, the levels of overlooking possible from this window are clear enough to harm the living conditions of the occupants of 54 School Road on account of the resulting loss of privacy.
7. The appellant has suggested restrictors could be fitted to the bathroom window to prevent it from opening any more than 330mm, which I take to refer to the gap between its sill and the bottom rail. Provided this window remained obscure glazed, that level of restricted opening would be sufficient to prevent any unacceptable levels of overlooking from this window due to its position in relation to the shared boundary.
8. The four remaining windows on the southern elevation at first floor level are secondary windows to Bedroom 2 and Bedroom 3. These windows are of a tall and narrow loophole design comprising two panes. The lower panes are fixed shut and comprise obscure glazing, whereas the upper panes are openable by way of being top hung and are fitted with clear glazing. These narrow windows are positioned close to the corners of the bedrooms they serve, and as such views of 54 School Road are only readily available when standing close to those corners, which would not be a regular occurrence for secondary bedroom windows. There is boundary planting between the two properties, which further restricts overlooking from the windows, and I consider it likely that these windows would be fitted with lowered blinds some of the time for the comfort of occupants.
9. Notwithstanding the restricted nature of those views, the narrow windows serving Bedroom 2 and Bedroom 3 offer views into part of the private garden, side passage and a ground floor window and glazed door at 54 School Road to an extent which causes harm to the living conditions of the occupants of that property on account of the resulting loss of privacy. That unacceptable level of overlooking could be prevented by obscure glazing being fitted to the upper panes of those windows in addition to their opening being restricted. There would be no need for these windows to be fixed shut due to the distances between them and the shared boundary. The top hung upper panes of these windows could therefore be opened without resulting in any unacceptable levels of overlooking of 54 School Road. The appellant has suggested restrictors could be fitted to allow a maximum 180mm opening of the upper panes of these windows, which I consider to be appropriate.
10. The first floor northern side elevation windows comprise one top hung window serving an en suite, which is obscure glazed and unrestricted in its opening, and one narrow loophole style window serving Bedroom 4 of matching design to those serving Bedrooms 2 and 3. I noted that the en suite window would need to be opened beyond any normal extent to afford any views of the rear garden of 58 School Road. The size and positioning of the narrow window in

Bedroom 4 offers only very restricted views of the rear garden of 58 School Road due to the angles and distances involved and intervening boundary planting. The very restricted nature of any views of the rear garden of 58 School Road from the north elevation first floor windows do not cause any harm to the living conditions of the occupants of 58 School Road and the levels of overlooking from those windows are therefore acceptable.

11. In conclusion, it would not be reasonable or necessary to require the north facing first floor windows to be obscure glazed and fixed shut. It would also not be reasonable or necessary to require any of the south facing first floor windows to be fixed shut. It would, however, be reasonable and necessary to require the south facing first floor windows to be obscure glazed and of restricted opening to protect the living conditions of the occupants of 54 School Road with regard to privacy.

Other Matters

12. The appellant has claimed that the previous arrangement of first floor side elevation windows and a rear balcony acts as a fallback position, which would result in materially worse levels of overlooking compared to the existing arrangement of windows. I accept that the historic arrangement of windows and a balcony would appear to have resulted in opportunities for greater levels of overlooking into 54 School Road, but planning permission would be required to reinstate the previous arrangement of windows and a rear balcony due to the substantial changes made to the dwelling. The previous arrangement of windows and a rear balcony do not therefore comprise a genuine and realistic fallback position for comparison purposes.
13. It is also claimed that the Original Planning Permission, which was granted on 12 November 2018, acts as a fallback position. Condition 1 of the Original Planning Permission required that development to commence within 3 years of the date of the decision. There is no information before me to demonstrate this planning permission was implemented within that timescale. The information before me suggests that when works commenced at the appeal site they were in relation to development which is materially different to that authorised by the Original Planning Permission, necessitating the section 73A application for the Approved Scheme. Insufficient information has therefore been presented to demonstrate the Original Planning Permission would be capable of acting as a genuine and realistic fallback position for comparison purposes.

Conditions

14. As I have found a condition is only reasonable and necessary to control the glazing and opening of the south facing first floor windows to safeguard the privacy of occupiers of 54 School Road, I will replace the condition which is the subject of this appeal with one which only relates to those windows. The appellant has described a restrictive mechanism which could be fixed to the windows and explained that parts of those windows are already obscure glazed to obscurity level 4.
15. However, because those windows have already been installed, and because I have been provided with insufficient detailed information concerning such a restrictive mechanism and any obscure glazing which could be fitted to and retained in those windows, it is necessary for me to attach a condition which requires the approval of those details and their implementation within a

reasonable timescale. To be enforceable and accord with Paragraph 56 of the National Planning Policy Framework, the condition needs to require the removal of the windows if such details are not approved and implemented within those reasonable timescales, to protect the living conditions of the occupants of 54 School Road.

16. The appellant has advised that because the dwelling has been constructed with a timber frame, it is necessary for any restrictors to the bathroom window to have a manual override in case the window needs to be used as a means of escape during a fire. This would be a reasonable arrangement, which could be specified in the details of the restrictors to be required by the replacement condition and would not result in any unacceptable levels of overlooking.

Conclusion

17. For the reasons I have given, the planning permission should be varied as set out in the formal decision.

L Douglas

INSPECTOR