



Appeal Decision

Site visit made on 19 April 2022

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 April 2022

Appeal Ref: APP/D3125/W/21/3285397

**1 Graces Court, The Slade, Charlbury, Chipping Norton, Oxfordshire
OX7 3EG**

- 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 Mrs Victoria Carreras Jago against the decision of West Oxfordshire District Council.
 - The application Ref 21/00782/S73, dated 20 April 2021, was refused by notice dated 21 June 2021.
 - The application sought planning permission for erection of four dwellings with associated access and landscaping without complying with a condition attached to planning permission Ref 17/00832/FUL, dated 12 July 2017.
 - The condition in dispute is No 14 which states that: Before first occupation of any dwelling all bathroom/WC window(s) and all first floor windows in the west elevations of plots 1 and 2 shall be fitted with obscure glazing and shall be retained in that condition thereafter.
 - The reasons given for the condition are: To protect the privacy of the occupants of the proposed dwellings and the amenity of the adjacent properties.
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Decision

1. The appeal is dismissed.

Background and Main Issues

2. This appeal relates to a planning permission that allows the erection of 4 houses, which are now completed. The disputed condition requires all first floor windows in the rear of 2 of the houses to be fitted with obscured glazing. In effect, the appeal seeks to amend the condition to allow a single first floor bedroom window in the rear of the house on plot 1 to be fitted with clear glazing. On my visit, I saw the window is already clear glazed. Permission is not sought to allow the condition to be amended in respect of any of the other first floor windows in the west elevations.
3. Having regard to the stated reason for the disputed condition and the Council's refusal reasons, the main issue is whether the condition in respect of the subject bedroom window is necessary in order to ensure acceptable privacy for occupiers of 24 and 26 The Slade (Nos 24 and 26).

Reasons

4. The bedroom window subject of this appeal faces the appeal property's own back garden and rear boundary fence as well as directly towards the rear of Nos 24 and 26 and their back gardens. The appeal property lies on significantly

higher land than Nos 24 and 26 and part of a field provides a gap between the end of the back gardens.

5. Policies OS2, OS4 and H6 of the West Oxfordshire Local Plan 2018 (the LP) look to ensure development does not have a harmful impact on the living conditions in residential properties. In this respect, they are consistent with the provisions of the National Planning Policy Framework which looks to ensure development create places with a high standard of amenity for existing occupiers of property. However, these policies and the West Oxfordshire Design Guide 2016 contain no requirements or advice on minimum separate distances between new development and neighbouring properties so as to avoid harmful loss of privacy. The appellant refers to separation distance guidance produced by other nearby local authorities, but this is irrelevant to the assessment of this appeal. As such, the question as to whether the clear glazing would result in unacceptable harm is a matter of planning judgment based on the particular circumstances and the appeal property's relationship to Nos 24 and 26.
6. On my visit, I was able to look out of the bedroom window subject of this appeal. I saw that the appeal property's fence and the line of sapling trees along the rear boundary are of insufficient height to obstruct views from the window of Nos 24 and 26. Trees and bushes within the gap area provide partial screening, although the canopies of the taller trees are too high and the trunks too narrow to entirely block views. Moreover, the screening effect would be reduced during times of leaf-fall and the vegetation cannot be relied upon in perpetuity to interrupt views, particularly as it lies outside the appeal property boundaries.
7. There is a significant distance between the bedroom window and Nos 24 and 26 and so overlooking is not at close quarters. Nevertheless, from the window I could clearly see people standing in No 24's kitchen through its rear window. Also, I could see part of No 24's bedrooms through its first floor fenestration. Furthermore, due to the elevated height of the appeal property, the angle of vision as well as the lack of any significant rear boundary treatment at No 24, the bedroom window allows an outlook onto a significant part of No 24's modest back garden. Bearing in mind that there would have been no overlooking directly towards the rear of No 24 from first floor windows prior to the appeal property's construction, the loss of privacy caused by the development is quite intrusive.
8. Also on my visit I was able to look at the appeal property from No 24. The subject window is small and some distance away but nevertheless it is clearly seen in views out of No 24's rear windows and from large parts of its garden. As such, the occupiers of No 24 experience a sense of perceived overlooking, which undermines the enjoyment of their property.
9. Views from the subject window onto No 26 are less intrusive due to the screening effects of intervening vegetation. Nevertheless, it is beyond the control of the appellant whether this planting is retained and in the event it dies or is removed there would be sight from the window of No 26's back garden and rear elevation. In light of the height of the appeal property and the window above No 26, such views would cause a meaningful degree of actual and perceived overlooking.
10. Overlooking onto neighbouring properties is to be expected in areas where houses are close to each other and first floor windows at other nearby

dwelling provide views of Nos 24 and 26 back gardens. Also, it is common for houses to be positioned closer to each other than the appeal property and Nos 24 and 26. However, the positioning on higher land and the fact that the subject window faces directly towards the rear fenestration and back gardens means it has a particular outlook that is unacceptably intrusive.

11. The views of Nos 24 and 26 are only harmful when observers are stood close to the window in the appeal property. Moreover, the window serves a bedroom which is unlikely to be used as much during daylight hours than a living room. Nevertheless, it provides the potential for occupiers of the property to overlook from an elevated level parts of Nos 24 and 26, thereby significantly affecting the level of privacy. The condition does not require the window to be fixed but the stipulation for obscured glazing serves a purpose in reducing the likelihood of actual overlooking as well as the perception of being overlooked.
12. For these reasons, I conclude the disputed condition is necessary in order to ensure acceptable privacy for occupiers of Nos 24 and 26. As such, the development subject to the proposed revised condition in respect of the subject bedroom window would not accord with LP policies OS2, OS4 and H6. There is no justification to grant planning permission contrary to development plan policies and so I conclude the appeal should be dismissed.

Jonathan Edwards

INSPECTOR