
Appeal Decision

Site visit made on 11 April 2022

by Mr Andre Pinto BA, MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 APRIL 2022

Appeal Ref: APP/H1840/D/21/3288819

Old School House, The Avenue, Birlingham, WR10 3AB

- 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 Nicholas Green against the decision of Wychavon District Council.
 - The application Ref 21/01956/HP, dated 10 August 2021, was refused by notice dated 15 October 2021.
 - The application sought planning permission for demolition of existing rear single storey extension and replacement with two storey new rear extension. Refurbishment of the building envelope including roof finishes and stone windows. Internal refurbishment and alterations works without complying with a condition attached to planning permission Ref 17/01047/HP, dated 16 August 2017.
 - The condition in dispute is No 5 which states that: before the first occupation of the extension hereby permitted the first-floor window on the rear elevation (east facing) shall be fitted with obscured glazing or equivalent and shall be permanently retained in that condition thereafter.
 - The reason given for the condition is: to protect the amenities of adjoining/nearby properties from unacceptable overlooking/loss of privacy and/or represent quality design in accordance with policy SWDP21 of the South Worcestershire Development Plan.
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. The planning permission granted for the demolition of existing rear single storey extension and replacement with two storey new rear extension, refurbishment of the building envelope including roof finishes and stone windows and internal refurbishment and alterations works includes a condition requiring the first-floor window on the rear elevation of the proposal (east facing) to be fitted with obscured glazing or equivalent and for it to be permanently retained thereafter.
3. The reason given for imposing the disputed condition is to protect the amenities of adjoining/nearby properties from unacceptable overlooking/loss of privacy and/or represent quality design in accordance with policy SWDP21 of the South Worcestershire Development Plan.
4. Taking the above background into account, the main issue is whether the proposed variation of Condition 5, to replace the obscure first floor window on the rear elevation of the proposal (east facing) with clear glazing, is reasonable

and necessary to safeguard the living conditions of existing and future residents of neighbouring properties, particularly with regard to overlooking.

Reasons

5. The appeal site is located in a prominent position, opposite the Church of St James the Great, close to the intersection between The Avenue and Whitehall Lane. Immediately adjacent to it, to the rear of the appeal site, is another residential dwelling: White Posts. White Posts consists of an "L" shaped two storey residential building which runs, in part, parallel to the appeal site. In addition to this, the vast majority of White Posts' garden backs directly onto the appeal site.
6. The layout of White Posts, in relation to the appeal site, does mean that a significant part of its existing garden would be overlooked by the first-floor window of the rear elevation of the Old School House were it not to be obscured. Furthermore, the same window, if not obscured, would also allow for fairly unobstructed views onto what appears to be a habitable room on the first floor of White Posts.
7. Policy SWDP21 of the South Worcestershire Development Plan (2016) does state that development should provide an adequate level of privacy, outlook, sunlight, and daylight, and should not be unduly overbearing.
8. This approach is in line with the National Planning Policy Framework (the Framework) which states, in paragraph 130, that planning decisions should ensure that development is safe, inclusive, and accessible and promotes health and well-being, with a high standard of amenity for existing and future users. The Framework, in paragraph 56, also states that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise, and reasonable in all other respects.
9. Due to the relative position of the appeal site in relation to White Posts and the elevated position of the east facing first floor window, the removal of Condition 5 would lead to a significant loss of adequate standards of amenity for existing and future users particularly in relation to overlooking.
10. The need to protect these standards, I find is necessary, relevant to planning and to the development to be permitted, enforceable, precise, and reasonable. Furthermore, no further evidence has been presented to me which would lead me to believe that Condition 5 would not be reasonable in all other respects.
11. Consequently, I consider that the removal of Condition 5 would result in significant harm to the living conditions of existing and future residents of neighbouring properties, particularly those of White Posts, in regard to overlooking.

Conclusion

12. For the reasons given above, I conclude the appeal should be dismissed.

Andre Pinto

INSPECTOR