



Appeal Decision

Site visit made on 6 April 2022

by Lynne Evans BA MA MRTPI MRICS

an Inspector appointed by the Secretary of State

Decision date: 4TH May 2022

Appeal Ref: APP/X1735/W21/3285896

35 Charlesworth Drive, Waterloooville PO7 6AX

- 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 Stacy Dugan against the decision of Havant Borough Council.
 - The application Ref: APP/21/00179 dated 16 February 2021, was approved on 16 July 2021 and planning permission was granted subject to conditions.
 - The development permitted is: Single storey front extension; removal of existing conservatory & replace with single storey rear extension; loft conversion including raising of ridge height, front and rear dormers and hip to gable with cladding on gable ends; demolition of existing garage; render to elevations and fenestration alterations.
 - The condition in dispute is No 4 which states that: Notwithstanding the provisions of any Town and Country Planning (General Permitted Development) Order 2015, prior to first occupation of the extension hereby permitted the window in the first floor rear dormer serving bedroom 1 on the rear elevation facing north and the first floor window serving the ensuite bathroom on the side elevation facing west shall be fitted with, to a height of no less than 1.7m above finished floor level, non-opening lights and textured glass which obscuration level is no less than Level 4 of the Pilkington Texture Glass scale (or equivalent) and retained as such thereafter.
 - The reason given for the condition is: In the interests of the amenities of the occupiers of nearby properties and having due regard to policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.
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Decision

1. The appeal is allowed and the planning permission Ref: APP/21/00179 for single storey front extension; removal of existing conservatory & replace with single storey rear extension; loft conversion including raising of ridge height, front and rear dormers and hip to gable with cladding on gable ends; demolition of existing garage; render to elevations and fenestration alterations at 35 Charlesworth Drive, Waterloooville PO7 6AX granted on 16 July 2021 by Havant Borough Council, is varied by deleting condition 4 and substituting for it the following condition:

Condition 4: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015, within 2 months of the date of this decision letter, the first floor window serving the ensuite bathroom on the side elevation facing west shall be fitted with, to a height of no less than 1.7m above finished floor level, non-opening lights and textured glass which obscuration level is no less than Level 4 of the Pilkington Texture Glass scale (or equivalent) and retained as such thereafter.

Procedural Matters

2. The appeal was made within six months of the grant of planning permission and falls to be considered under Section 79 (1) of the Act. The Council's decision to grant planning permission indicates that the principle of the proposed extensions, including at roof level, is acceptable and accords with relevant development plan policies. I have no reason to take a different view and I shall concentrate my consideration of the appeal on the condition in dispute.
3. The Appellant has made it clear in the appeal submission that he is seeking to vary the condition only in so far as it requires the glazing in the first floor rear window serving the bedroom to be in obscure glass and non-openable, and he is not seeking to vary the condition in so far as it relates to the bathroom window.
4. At the time of my site visit the works on site appeared to be largely complete and the rear bedroom window had been fitted with plain glass (not obscure). There was an obscure glazed window in the bathroom. However, it is not before me to determine whether this bathroom window is satisfactory in relation to the requirements of the relevant condition. I have therefore taken this into account in relation to the wording of any variation of the disputed condition.

Main Issue

5. The main issue in this appeal is whether the requirements of the condition are reasonable and necessary to protect the living conditions of the neighbours at No 1 Armstrong Close, with particular regard to overlooking and loss of privacy.

Reasons

6. The appeal property is situated fronting onto Charlesworth Drive, with a side return to Armstrong Close. The properties in the surrounding area are predominantly single storey with a number extended at roof level to provide first floor accommodation.
7. As stated in the Council's Borough Design Guide Supplementary Planning Document (2011) (SPD) at paragraph 5.06, *some overlooking of gardens from the upper floors of dwellings will be unavoidable in most urban and suburban housing layouts. However, the design should aim to mitigate these effects as far as possible by carefully designing the internal floor layout to concentrate habitable rooms away from adjacent properties where overlooking could be an issue. The council could also impose a planning condition as part of a planning consent, requiring obscurely glazed first floor bathroom or secondary windows to protect residential amenity.*
8. The Council's principal concern, as set out in its appeal statement, relates to the property to the rear of the appeal property at No 1 Armstrong Close. This is a bungalow, which sides onto the rear gardens of properties on Charlesworth Road. However, because of the layout of properties in Armstrong Close around the hammer head, No 1 Armstrong Close is set back from the appeal property and, apart from its front garden area, its side elevation and adjoining passageway adjoins the rear gardens of properties further along Charlesworth Drive. I understand from the Council that there is a bedroom window in this side elevation.

9. The SPD refers in Figure 5.1 to a 20m minimum distance between first floor habitable rooms, but there is no specific guidance for the situation in this particular case. I understand that the distance between windows is some 12m.
10. I agree that the side elevation of the neighbouring property at No 1 Armstrong Close can be seen from the rear facing window in the bedroom of the appeal property.
11. However, as a result of the staggered alignment between the two properties the opportunity for direct overlooking between windows is reduced. The distance together with the staggered alignment is further assisted by the intervening boundary treatments which further restrict open views between the windows. As a result of these factors, I do not consider that the use of clear glazing and openable windows in the rear bedroom window at the appeal property leads to a material harm to the living conditions of the neighbours at No 1 Armstrong Close, with particular regard to overlooking and loss of privacy.
12. There is, as approved and built, a front facing window to the bedroom, but that window is smaller and the rear facing window is in my view the principal window, in terms of both light and ventilation to that room.
13. For the reasons given above, I am satisfied that the variation of this condition to allow for the window at the rear of Bedroom 1 to have clear glazing and for the window to be openable does not materially and unacceptably harm the living conditions of the adjoining neighbours, particularly at No 1 Armstrong Close, with particular regard to overlooking and loss of privacy. The condition is neither reasonable nor necessary and its variation does not conflict with Policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011, the SPD and the National Planning Policy Framework and in particular Paragraph 130 f) all of which, amongst other things, require a high standard of design which respect the amenities of neighbouring occupiers.
14. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed. I shall vary the planning permission by deleting the disputed condition and reimposing a varied condition.

L J Evans

INSPECTOR