



Appeal Decision

Site visit made on 24 May 2022

by Luke Simpson BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 June 2022

Appeal Ref: APP/K3605/W/21/3278032

6 Burwood Park Road, Hersham, Walton-On-Thames KT12 5LJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Ms Iryna Vyalkova against the decision of Elmbridge Borough Council.
 - The application Ref 2021/0432, dated 5 February 2021, was refused by notice dated 8 April 2021.
 - The application sought planning permission for Detached two-storey house with rooms in the roof space, dormer window and roof lights following demolition of existing single-storey house and detached garage without complying with a condition attached to planning permission Ref 2018/0405, dated 18 July 2018.
 - The condition in dispute is No 4 which states that: OBSCURE GLAZING The proposed rooflights and first floor side facing windows on the development hereby permitted shall be glazed with obscure glass and be non openable up to a minimum height of 1.7m above the floor levels of the rooms which they serve. Such glass shall be sufficiently obscure to prevent loss of privacy. The affixing of an obscure film will not be sufficient.
 - The reason given for the condition is: To preserve the reasonable privacy of neighbouring residents in accordance with Policy DM2 of the Elmbridge Development Management Plan 2015.
-

Decision

1. The appeal is allowed and planning permission is granted for Detached two-storey house with rooms in the roof space, dormer window and roof lights following demolition of existing single-storey house and detached garage at 6 Burwood Park Road, Hersham, Walton-On-Thames KT12 5LJ in accordance with the application Ref 2021/0432 made on the 05 February 2021 without complying with condition No 4 set out in planning permission Ref 2018/0405 granted on 18 July 2018 by Elmbridge Borough Council, but otherwise subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in strict accordance with the following list of approved plans: 01 Rev. A received on 07 February 2018 and 02 Rev. C, 03 Rev. C, 04 Rev. C, 05, 06 Rev. C, 07 Rev. C, 08 Rev. C, 09 Rev. C received on 05 April 2018.
 - 2) No development shall take place until samples of the materials to be used on the external faces and roof of the building have been submitted to and approved in writing by the Borough Council. Development shall be carried out in accordance with the approved details.

- 3) No part of the roof lights or first floor side facing windows hereby approved that is less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened. The first floor side facing windows hereby approved shall either be fitted with obscure glazing or be a minimum of 1.7m above floor level of the room in which they are installed, and these windows shall be retained as such in accordance with the approved details thereafter.
- 4) Before development takes place tree protection measures shall be installed and any further information provided in accordance with the submitted arboricultural information. The applicant shall arrange a pre-commencement meeting after the installation of the tree protection between the Borough Council and the applicant's project arboriculturist to allow inspection and verification of the protection measures.
- 5) In this condition "retained tree" means an existing tree, which is to be retained in accordance with the approved plans and particulars; and paragraphs (a) and (b) below shall have effect until the expiration of 5 years from the first occupation of the development. a)no retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be pruned other than in accordance with the approved plans and particulars, without the written approval of the Borough Council. Any pruning shall be carried out in accordance with British Standard 3998 (tree work) and in accordance with any supplied arboricultural method statement. b)if any retained tree is removed, uprooted or destroyed or dies, another tree shall be planted at the same place and that tree shall be of such size and species, and shall be planted at such time, as may be specified in writing by the Borough Council. c)tree protection shall be maintained in-situ and not moved or removed until all construction has finished and equipment, materials, or machinery are removed from site. d)any arboricultural protection information and plans submitted as part of the application, and listed in the approved plans condition, or submitted to meet a condition of consent shall be implemented and adhered to at all times during the construction process unless otherwise agreed in writing with the Borough Council. This shall include any requirement for arboricultural supervision and site monitoring. This condition may only fully be discharged on completion of the development subject to satisfactory written evidence of contemporaneous supervision and monitoring of tree protection throughout construction by the appointed arboriculturist.
- 6) The development shall be carried out in accordance with the conclusions and recommendations in Table 1 of the Bat Emergence Survey including any biodiversity enhancements by Surrey Wildlife Trust Ecology Services dated 22 May 2018.

Preliminary Matter

2. The main parties have had opportunity to comment on the revised National Planning Policy Framework 2021 (the Framework). I have had regard to it in this decision.

Background and Main Issue

3. The development has been carried out and the dwelling (No 6) constructed. Condition 4 of the planning permission reference 2018/0405 (the Original

Permission) has been breached. This condition requires that the rooflights and first floor side facing windows up to a maximum height of 1.7m are obscure glazed. The condition specifies that 'the affixing of obscure film will not be sufficient'. The evidence before me, including the observations made during my site visit, indicates that at least some of the windows have been fitted with an obscure film. As a result, the appellant has applied to vary the condition to remove reference to the affixing of obscure film.

4. As such, the main issue is whether Condition 4 is reasonable and necessary in order to protect the living conditions of the neighbouring occupiers and in particular: those of 4 and 8 Burwood Road (No 4 and No 8), with particular regard to privacy.

Reasons

5. The side elevations of No 6 are located in close proximity to the neighbouring residential properties to either side at No 4 and No 8. Each neighbouring property has windows which face towards the windows in the side elevations of No 6. The first floor bathroom and landing windows facing No 4 are all non-opening and have been fitted with a film such that it is not possible to obtain a view of this neighbouring property from the first floor of No 4. Neither are views possible from any rooflights given that they are all above eye level. As such, there is no loss of privacy to neighbouring occupiers to this side.
6. The windows in the elevation facing No. 8 all appear to be above what would typically be expected to be 'eye level' (over 1.7m). Indeed, when I visited the property, it was not possible to obtain a view of neighbouring windows at No 8 from the first floor of the property. For the same reason, views into the neighbouring property are not possible through the windows at second floor level.
7. As such, the development does not result in any harmful loss of privacy to the occupiers of No 4 or No 8. For the same reasons it does not result in a harmful loss of privacy to any other neighbouring property to either side.
8. The appellant does not dispute the need for the condition for the purpose of protecting the privacy of neighbouring occupiers. She does however consider that there is no need for the prescription that 'the affixing of obscure film will not be sufficient' in protecting privacy.
9. The evidence before me indicates that the rationale for the Council's imposition of this wording is that film installed for the purpose of obscure glazing can be easily removed, in contrast to purpose-made obscure glass which cannot. I consider that the condition can be revised in such a way that it ensures that the film/obscure glazing should be retained. This would ensure that if it were to be removed for any reason then the Council would have the option of taking enforcement action. Indeed, the number of neighbour representations received indicates that the Council would be notified if the film were to be removed for any reason. As such, the stipulation that the obscure glazing is retained in situ would be enforceable.
10. I also consider that the term 'obscure glazing' is sufficient to encompass a film applied to a window. As such, the revised condition will refer to 'obscure glazing' but without the Council's previous preclusion with regard to the use of 'obscure film'.

11. The existing condition also states that 'such glass [obscure glazing] shall be sufficiently obscure to prevent loss of privacy'. This terminology is too subjective and for that reason is unlikely to be enforceable. In order to ensure that the glazing would meet these aims the Council could have required details (or a sample) to be submitted and approved in writing prior to installation. However, in this case the development has already been carried out and I am satisfied that the obscure glazing film is sufficient to prevent any loss of privacy to neighbouring occupiers. As such, the revised condition removes the terminology above.
12. Condition 4 requires that the approved roof lights are all obscure glazed. However, based on my site visit observations it is not necessary that windows above 1.7m are obscure glazed. This is because it is not possible to obtain views towards neighbouring windows from these roof lights. As such, the wording of Condition 4 should also be modified such that it is more clear which windows the obscure glazing requirement applies to (those that are below 1.7m above floor level).
13. For the reasons outlined above, the condition (which precludes the option of utilising a film as obscure glazing) is neither reasonable nor necessary in order to safeguard the privacy of neighbouring occupiers. However, a substitute condition which requires obscure glazing and high level windows but removes the preclusion of obscure film, is considered reasonable and necessary. Subject to this condition, the development would comply with Local Plan ¹Policy DM2, which requires that development protects the living conditions of adjoining occupiers with particular regard to privacy.
14. The substituted condition would also ensure that the development complies with Framework Paragraph 130, which requires a high standard of amenity for existing users.

Conditions

15. I have concluded that Condition 4 as attached to the Original Permission is neither reasonable nor necessary. I have substituted this condition (See condition No 3). The substitute condition meets the tests set out within the Framework and is enforceable, precise, relevant, necessary and reasonable in all other respects.
16. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant (even noting that some relate to pre-commencement requirements). In the event that some have in fact been discharged (which is likely given that the development has been completed), that is a matter which can be addressed by the parties. I have removed the time limit condition given that the development has clearly commenced.

¹ Elmbridge Local Plan – Development Management Plan (April 2015)

Conclusion

17. For the reasons given above, I conclude that the appeal should be allowed. I grant a new planning permission substituting disputed condition 4 and restating those undisputed conditions that are still subsisting and capable of taking effect.

Luke Simpson

INSPECTOR