
Appeal Decision

Site visit made on 6 June 2022

by Rachael Pipkin BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 June 2022

Appeal Ref: APP/Z1775/W/21/3283929

33 Castle Road, Southsea PO5 3DE

- 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 Mark Keene against the decision of Portsmouth City Council.
 - The application Ref 20/01206/PLAREG, dated 22 October 2020, was approved on 3 August 2021 and planning permission was granted subject to conditions.
 - The development permitted is described as 'application for clear glazing (1.7m above FFL) to the two rear first floor windows; variation in window size and design and surrounding brick detailing to front and rear elevations (part retrospective)'.
 - The condition in dispute is No 2 which states that: *All windows at first floor level on the rear (east facing) elevation of the extension hereby permitted under planning permission 19/01193/HOU shall be glazed with obscured glass (minimum obscuration level 3) up to a height of 1.7m above finished floor level and shall be non-opening below 1.7m above finish floor level. Both windows shall be permanently maintained in that condition.*
 - The reason given for the condition is: *To protect the privacy of adjoining properties and to prevent overlooking (actual and/or perceived) in accordance with policy PCS23 of the Portsmouth Plan.*
-

Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Mr Mark Keene against Portsmouth City Council. This application is the subject of a separate Decision.

Procedural Matter

3. The planning permission to which the disputed condition was attached has been implemented. I have proceeded to deal with the appeal on that basis.

Background and Main Issue

4. Planning permission¹ was granted in 2019 for alterations to the appeal property which included a two-storey rear extension. During construction of the extension, changes were made to the size and design of the windows, including the installation of clear glazing rather than obscured glazing to the rear facing first floor windows. A subsequent planning application² was submitted to regularise these changes.

¹ Council Ref: 19/01993/HOU

² Council Ref: 20/01206/PLAREG

5. During the course of the application, an amendment was made to change the glazing to the rear first floor windows from full clear-glazed first floor windows to obscured glazing to a height 1.7m above finished floor level, with clear glazing to the window above this. Planning permission was granted and the condition, which is the subject of this appeal, was imposed to secure obscured glazing and for the window to be non-opening below 1.7m above finished floor level.
6. The main issue is whether or not the condition is reasonable and necessary having regard to the effect of the development on the living conditions of adjoining neighbours, with particular regard to overlooking.

Reasons

7. The appellant is seeking to remove the disputed condition to provide openable and clearly glazed first floor bedroom windows in the extension to 33 Castle Road (No 33). These are sought to provide the appellant with outlook from this room, fresh air and daylight.
8. The extension aligns with the main rear elevation of the adjoining property at 31 Castle Road (No 31). This property has a rear addition within which there is a ground floor kitchen window. Due to the relationship between Nos 31 and 33 which are at an angle to each, the kitchen window is angled towards the rear elevation of No 33.
9. The first floor windows, if not obscurely glazed or fixed shut, would enable views into this kitchen window. Whilst such views were possible prior to the construction of the extension, the original windows were positioned further away from the kitchen window and less intrusive. Clear glazing and having these windows openable below 1.7m would result in an increase in overlooking of this kitchen window and subsequent loss of privacy for this adjoining neighbour.
10. Number 35 has a small garden with the main sitting out area positioned behind a single-storey rear addition. The first floor windows would enable views of the outdoor seating area which would cause a loss of privacy to these occupants. This area would have been previously overlooked by windows in the original rear elevation of No 33. However, the closer proximity of the windows in the extension, to this seating area would result in a greater sense of being overlooked, both actual and perceived, and loss of privacy.
11. I appreciate that within this built-up area properties are close together with small gardens and some overlooking of adjacent properties and gardens is commonplace. However, this does not justify increasing overlooking in the manner the proposal would do.
12. The internal layout of the appeal property has been reconfigured since planning permission was originally granted, with the rear part of the extension being used for a bedroom instead of a dressing room and bathroom. Whilst obscured glazing to a bedroom window is uncommon, the circumstances of the appeal property justify it.
13. I have been referred to developments at numbers 38, 67 and 71 Castle Road where extensions have been permitted without windows being obscurely glazed. However, I do not have full details of the relationship between these windows and the neighbouring property and cannot therefore conclude if the

circumstances are sufficiently similar. In any event, I must judge this proposal on its own planning merits.

14. My attention has additionally been drawn to two appeal decisions³ where conditions requiring obscured glazing were removed. However, these decisions would have been based on the unique circumstances relevant to those sites. Whilst these decisions indicate that such a condition can and has been removed through the appeal process they do not justify the removal of such a condition in the circumstances of the appeal before me.
15. The disputed condition addresses the harm arising from overlooking as the requirements for obscured glazing and fixed windows prevent clear views from the appeal property to neighbouring properties. For this reason, I conclude that the condition is both reasonable and necessary to ensure the scheme is acceptable in terms of its effect on the living conditions of occupants of Nos 31 and 35, with regard to privacy. This would accord with Policy PCS23 of the Portsmouth Plan 2012 which seeks the protection of amenity and the provision of a good standard of living environment for neighbouring occupiers.

Other Matters

16. It has been suggested that the use of obscured glazing would fail to preserve the conservation area in which the property lies. Whilst obscure glazing may not be a characteristic feature, as these windows are to the rear they would not unduly harm the character of the conservation area.
17. I am sympathetic to the personal circumstances of the appellant's family and in particular the need for natural light and fresh air to support their mental health and wellbeing. However, the windows, whilst providing very limited views, are nevertheless openable above 1.7m which provides ventilation and the obscured glass allows light into the room. Furthermore, it was the appellant's choice to reconfigure the internal layout to place the bedroom in the rear. It would be open to the appellant to revert to the original internal layout to address these wellbeing concerns. For these reasons, I therefore find that these personal matters are not sufficient to outweigh the harm to the living conditions of adjoining neighbours.

Conclusion

18. For the reasons set out above, I conclude that the appeal should be dismissed.

Rachael Pipkin

INSPECTOR

³ APP/H1840/D/18/3192719 and APP/M4320/A/07/2043194