



Appeal Decision

Site visit made on 26 July 2022

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 July 2022

Appeal Ref: APP/D0840/W/22/3290267

4 Station Court, Culver Road, Saltash, Cornwall PL12 4DR

- 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 Graham Thomas against the decision of Cornwall Council.
 - The application Ref PA21/09909, dated 24 September 2021, was refused by notice dated 22 November 2021.
 - The application sought planning permission for the construction of 6 residential apartments, together with car parking and associated site works without complying with a condition attached to planning permission Ref 05/00899/FUL, dated 7 October 2005.
 - The condition in dispute is No3 which states that: *'The window panels indicated with dots on the submitted plan, Drg.No. DS1142SK5A, shall be installed with obscure glazing and be fixed shut when first installed and shall remain so glazed and fixed shut throughout the lifetime of the development.'*
 - The reason given for the condition is: *'To protect the privacy of adjoining occupiers.'*
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Following the Council's decision, the Saltash Neighbourhood Development Plan (NDP) was made in March 2022 and now forms part of the development plan. Policy ENV3 refers to general design principles which are relevant to the proposal before me. As the main parties have had an opportunity to comment on the NDP as part of the appeal process, I am satisfied that no one will be prejudiced by this change to the policy context.

Background and Main Issue

3. Planning permission was granted for 6 residential apartments at the appeal site on 7 October 2005. Condition 3 requires certain window panels within the building to be obscure glazed and fixed shut. The appeal relates to two of the windows of flat 4, which is one of the six apartments. Drawing no. DS1142SK5A as referenced in condition 3 shows these first floor windows in the south west elevation as serving bedrooms and with the bottom panel of each window as obscure glazed (approximately half of each window).
4. The present internal layout differs from that shown in drawing no. DS1142SK5A such that the windows in question now serve the main living

space for flat 4 rather than bedrooms. Furthermore, the previous windows have been replaced and now have clear glazing in the lower panels. The proposal before me seeks the removal of condition 3 in respect of these two windows such that the clear glazing can be retained.

5. Therefore, the main issue is whether the condition in relation to the two window panels in question is reasonable or necessary in the interests of the living conditions of neighbouring occupiers at 28 Culver Road, with particular regard to the privacy of their outdoor space.

Reasons

6. Policy 12 of the Cornwall Local Plan, Strategic Policies 2010-2030, November 2016 (LP) states that the Council is committed to achieving high quality design and sets out fundamental design principles in that respect. These include policy 12.2a which seeks to protect individuals and property from overlooking and unreasonable loss of privacy. Essentially, the parties disagree as to whether the condition in question remains necessary in order to meet the requirements of policy 12.2a of the LP.
7. Paragraph 56 of the National Planning Policy Framework (the Framework) states that planning conditions should be kept to a minimum and only imposed, amongst other matters, when they are necessary and reasonable.
8. The two first floor windows face towards an area within the grounds of 28 Culver Road that is used as a patio. This area faces south-east and therefore, the level of sunlight combined with its proximity to the house provides a pleasant area for occupants to sit outside and relax. Hence, it would be reasonable to suppose that the occupants use the space for extended periods. This would be consistent with my observations, whereby I noted the presence of outside seating. Although there is a larger garden associated with No.28, this is generally northwest of the main house or is otherwise some distance from it, rendering it less conducive to sitting out.
9. The elevated height, relative proximity and orientation of the two windows in question serving flat 4, in the absence of mitigation, allow for a direct view overlooking the patio and outdoor space at No.28. Such a configuration is intrusive and therefore is likely to markedly diminish the degree of privacy enjoyed by the occupants of No.28 when using their outside space. The obscure glazing and fixed nature of the lower panels of the windows at flat 4 would assist in reducing the harm to privacy by limiting the extent of direct overlooking to this area.
10. There is no evidence to show that the physical relationship of the windows in the appeal building to No.28 has fundamentally altered since the original development was approved. Accordingly, condition 3 still serves a useful planning purpose and is necessary to ensure that the development safeguards a high standard of amenity for the users of No.28 in line with paragraph 130f) of the Framework. It would also be generally consistent with the advice contained in the Council's Domestic Alterations and Extensions Guide 2017 which advises that consideration of the impact on neighbours includes loss of privacy relating to both internal and external space.
11. In support of the proposal, the appellant indicates that he wishes to secure views towards the river. Nevertheless, the experience of occupants at No.28

using the space would still be likely to perceive the harmful impact. My attention is also drawn to vegetation on the boundary between the appeal site and No.28. I observed that this does presently provide some partial screening to the patio area. However, it is not shown that these trees are within the appeal site or control of the appellant. On that basis, their continued presence or height cannot be guaranteed. Hence, I am not sufficiently assured that this factor would render the obscure glazing required by condition 3 redundant.

12. The two windows in question now serve a main living area. I acknowledge that obscure glazing to windows serving this principal room would detract from the living conditions of the occupants of flat 4 to an extent. However, the layout of the flat is a matter that would normally rest within the control of the owner of the property, and it has changed from that approved. Whilst it is understandable why the appellant seeks to improve the outlook, there would be unacceptable knock-on effects to the living conditions of others living nearby. Moreover, the plan mentioned in condition 3 shows only the bottom half of the window as 'dotted'. Hence, on the face of it this allows clear glazing in the top panels of the windows that would facilitate views, albeit generally at a higher level. This represents a reasonable balance of interests in the circumstances.
13. Reference is made to other properties being just as close but not having a similar imposition, but none are specifically cited by the appellant. From my observations, it is evident that some of the buildings in the vicinity are longstanding and their configuration is likely to have evolved over some time. Moreover, I have had regard to a representation in support whereby a nearby occupant at Station Court states that they have a full view into the garden area in question due to a gap in the trees. Be that as it may, I do not consider that this represents adequate justification to exacerbate the situation and the historic situation does not detract from the fact that condition 3 was imposed on the original grant of consent for the appeal property. In any event, I am required to consider the disputed condition that is the subject of the appeal, and this primarily turns upon the specific relationship of the windows in question to their surroundings. Inevitably other windows in the area will be in a different position, height and/or orientation and thereby will relate to their context differently. As such, their presence would not lead me to find otherwise.
14. Accordingly, I find that condition 3 remains reasonable and necessary to protect the living conditions of those living at 28 Culver Road. Furthermore, I am satisfied that it meets the requirements for planning conditions set out in paragraph 56 of the Framework. The proposed removal or variation to the condition would result in unacceptable harm to the living conditions of those residents having particular regard to the privacy of their outdoor space. Therefore, it would be contrary to policy 12.2a of the LP. It would also run counter to the general design principles in ENV3 of the NDP, which states that development will be supported where it complies with policy 12 of the LP.

Conclusion

15. For the reasons given above I conclude that the appeal is dismissed, and the condition retained in its present form.

Helen O'Connor Inspector