



Appeal Decision

Site visit made on 16 August 2022

by G Bayliss BA (Hons) MA MA MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 08 September 2022

Appeal Ref: APP/F2415/D/22/3298589

Ashgrove House, 46 Old Mill Road, Broughton Astley LE9 6PQ

- 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 Vanessa Price against the decision of Harborough District Council.
 - The application Ref 21/01756/VAC, dated 29 September 2021, was refused by notice dated 21 February 2022.
 - The application sought planning permission for the demolition of existing rear extension and erection of a single storey rear extension, erection of a front porch and modifications to roof including a hip to gable loft conversion with raising of eaves and ridge height and insertion of rooflights, Ashgrove House, 46 Old Mill Road, Broughton Astley, Leicestershire without complying with conditions attached to planning permission Ref 21/00255/FUL, dated 7 May 2021.
 - The condition in dispute is No 2 which states that: "The development hereby permitted shall be carried out in accordance with the following approved plans:
Proposed Site Layout and Site Location Plan (Drawing No. 21001.A106.2)
Proposed Floor Plans (Drawing No.21001.A107.2)
Proposed Elevations (Drawing No.s 21001.A109.2 and A110.2)
Proposed Sections (Drawing No. 21001.A108.3)".
 - The reason given for the condition is: "For the avoidance of doubt and to ensure that the proposed development is carried out as approved".
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing rear extension and erection of a single storey rear extension, erection of a front porch and modifications to roof including a hip to gable loft conversion with raising of eaves and ridge height and insertion of rooflights, Ashgrove House, 46 Old Mill Road, Broughton Astley, Leicestershire in accordance with the application Ref.21/01756/VAC, dated 29 September 2021, without compliance with condition No 2 previously imposed on Planning Permission Ref. 21/00255/FUL, dated 7 May 2021, and subject to the attached schedule of conditions.

Preliminary Matters

2. The application subject to this appeal is made under Section 73A of the Planning Act. The development is largely complete and has been carried out without complying with conditions subject to which planning permission was granted, and an application has been made retrospectively. The application sought to vary Condition No 2 (approved plans) and Condition No 3 (materials). The Council raised no objection regarding Condition No 3 and

based on the evidence before me I have no reason to conclude otherwise. The area of dispute relates to the approved plans referenced in Condition No 2 and the appellant seeks its replacement with a condition specifying the plans that reflect the amended design.

3. The focus of the appeal is on the southernmost dormer window in the rear elevation, serving bedroom 6, which has been installed in place of an approved rooflight. The concern rests with its effect on the occupants of the neighbouring property at 42 Old Mill Road.
4. The plans on which the Council made its decision do not appear to be an accurate reflection of the development as carried out on the ground. In regard to this appeal, both rear dormers are shown on the plans sitting further away from the gables. As the Council was refusing the application it did not request amended plans, and none have been submitted during the course of this appeal. My decision is therefore based on the submitted drawings and any failure to accord with the approved plans is for the Council to pursue if it feels that this is necessary.

Main Issue

5. The main issue is the effect of the amended design on the living conditions of the residents of No 42, with particular reference to outlook and privacy.

Reasons

6. The appeal property is a modern, detached dwelling, sited within an established residential area. The dormer windows added to the rear elevation have introduced a level of overlooking which was previously not possible under the approved scheme.
7. The rear garden of No 42 is the main area of private open space, incorporating a paved area with seating and on my visit, I noted that the occupants had enjoyed a high degree of privacy. The construction of the southernmost dormer at 46 Old Mill Road, close to their boundary, has introduced a dominant and imposing feature. The occupants of No 42 would be very aware of being clearly overlooked whilst within their rear garden and would also experience a perception of overlooking, and I recognise that this would make them feel uncomfortable in using this space.
8. Although the main outlook from this dormer window is predominantly down the length of its garden, it was also very easy to look across the side and rear garden of No 42, even with the windows closed. When open, I was able to look out across the whole rear garden and see into the kitchen window. This view of the kitchen would be particularly apparent during darkness when, despite the distance between the dormer and dwelling, one would be able to see deeper into the room when the interior is likely to be illuminated. As such I consider that the dormer as constructed causes an unacceptable level of harm to their living conditions.
9. Paragraph 55 of the National Planning Policy Framework 2021 (the Framework) makes it clear that conditions can be used to make otherwise unacceptable development acceptable. The application of obscure glazing and fixing two windows permanently shut (leaving only the southern-most casement capable of being opened) would prevent views of the garden of No 42 from this dormer, whilst also allowing some ventilation. An appropriately worded condition would

address this direct overlooking and loss of privacy. Although it would not address the perception of overlooking, I consider that this would not be of sufficient impact to justify the dismissal of the appeal.

10. Even taking into account the discrepancy that I have acknowledged between the position of the rear dormers on the submitted plans and the works carried out on site, I consider that with the condition suggested to obscure glaze and secure the windows, and with these works carried out, there would be no harm to the living conditions of the occupants of No 42.
11. Several other representations have been made regarding loss of privacy to other properties as a result of the installation of both rear dormers. However, due to the distance from these properties I do not consider that a similar level of harm has been caused as a result of the installation of the northern dormer.
12. Without any further mitigation, the dormer window would result in unacceptable harm to the living conditions of the residents of No 42 in terms of outlook and privacy. However, I am content that an appropriate condition could be imposed to require the dormer window in question to be obscure glazed and limiting the opening of the casements. I therefore conclude that the revised design, with the suggested conditions, would be in accordance with Policy GD8 of the Harborough Local Plan (2019), the Harborough District Council Development Management Supplementary Planning Document (2021), and the Framework which together seek to achieve a high standard of design and minimises impact on the living conditions of residents.

Conditions

13. The Planning Practice Guidance makes clear that decision notices for the grant of planning permission under Section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. As works have commenced at the site, it is not necessary to impose the statutory time limit condition.
14. In respect of the plans list condition, I have listed the approved plans which were the subject of this appeal, as it is necessary that the development reflects these, for the avoidance of doubt and in the interests of certainty. I have also referenced the dormer windows and solar panels in the materials condition as these do not match those materials used on the existing building.
15. I have given careful consideration to the wording of the condition in relation to the obscure glazing and opening restrictions on the dormer window to bedroom 6 in order to protect living conditions at No 42. I have taken both parties views into account. In this instance the attached condition will provide certainty of the works required and will address the matter in a timely fashion.

Conclusion

16. The proposal would be in accordance with the development plan as a whole and material considerations do not lead me to decide otherwise. For these reasons, and having regard to all other matters raised, I conclude that the appeal should be allowed.

G Bayliss

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans:

Proposed Site Layout and Site Location Plan (Drawing No. 21001.A106.2)

Proposed Floor Plans (Drawing No. 21001.A107.3)

Proposed Elevations (Drawing No.s 21001.A109.5 and A110.4)

Proposed Sections (Drawing No. 21001.A108.5).

- 2) All external materials used in the construction of the development hereby approved shall match in material, coursing, colour and texture those used on the existing building, except for the materials for the rear extension, front porch, solar panels and dormer windows which shall be as specified on the approved drawings.
- 3) Within three months from the date of this decision, the dormer window serving Bedroom 6 in the rear elevation of the building (Drawing No. 21001.A107.3) shall be permanently glazed with obscure glass (at a minimum of Level 3) only. The central and northernmost section of the window shall also be fitted with a permanently fixed light (non-opening), and the southernmost opening light shall be fitted with a window restrictor that limits the opening of the window to no more than 100mm from the central mullion. Thereafter, the window shall be permanently maintained with these restrictive features and shall not be replaced at any time with a window which deviates from these specifications.
- 4) Prior to the first use of the rooms in the roof, a group of three swift boxes or bricks, or combination thereof, shall be installed high up in the gable of the extended roof and thereafter retained in situ in perpetuity.