



Appeal Decision

Site visit made on 13 September 2022

by T J Burnham BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 September 2022

Appeal Ref: APP/M4510/D/22/3300534

7 Wellburn Park, Newcastle upon Tyne NE2 2JX

- 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 Mrs Sallam against the decision of Newcastle-upon-Tyne City Council.
 - The application Ref 2021/1829/02/RVC, dated 10 January 2022, was refused by notice dated 13 April 2022.
 - The application sought planning permission for erection of single storey glass extension to rear without complying with a condition attached to planning permission Ref 2021/1829/01/HOU, dated 11 November 2021.
 - The condition in dispute is No. 3 which states that: The window(s) to the southern elevation shall be glazed with obscure glass at all times.
 - The reason given for the condition is: In the interests of protecting the amenity of the occupiers of adjacent residential premises, in accordance with the National Planning Policy Framework and Policy DM23 of the Development and Allocations Plan.
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Decision

1. The appeal is allowed and planning permission is granted for erection of single storey glass extension to rear at 7 Wellburn Park in accordance with application Ref 2021/1829/02/RVC dated 10 January 2022 without compliance with condition number 3 previously imposed on planning permission Ref 21021/1829/01/HOU, dated 11 November 2021 and subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from 11 November 2021.
 - 2) The development to which this permission relates shall be carried out in accordance with the approved plans referenced: Location Plan, 91077-01, 91077-02, 91077-03 & 91077-04.

Background and Main Issue

2. Planning permission was previously granted for a single storey glass extension to the rear of the property. This application seeks to remove the requirement to provide obscure glazing to the southern, side elevation of the extension which is set off from but located in close proximity to the shared boundary with No. 8 Wellburn Park (No.8). The main issue therefore is whether the inclusion of standard clear glazing would have any unacceptable adverse impact on the living conditions of the occupiers of No.8 with particular regard to privacy.

Reasons

3. The glass extension would extend out to cover a large majority of the depth of the rear garden and would extend beyond the existing conservatory to the rear elevation of No.8.
4. However, the conservatory, which closely borders the shared boundary incorporates standard clear glazing to its elevations including those adjacent to the appeal property. Subsequently, given the reasonably low fencing along the boundary, it is possible to stand within the rear garden of the appeal property and have direct views into the conservatory.
5. Even accounting for the likely scenario that the glass extension would have more year-round use than the garden, given the existing situation, permitting standard clear glazing to the southern elevation of the glass extension would not result in any significant adverse impact on the privacy of the occupiers of No. 8 and would not therefore significantly harm their living conditions. The condition is not therefore necessary.
6. The proposal would not therefore conflict with Policy DM23 of the Development and Allocations Plan which amongst other things states that development will be required to provide a good standard of residential amenity for existing occupants of dwellings and maintain a good standard of privacy for all existing occupants of buildings. I have not identified conflict with policies CS15 and DM20 of the same plan which are before me.
7. The design guide¹ suggests that where a conservatory is to be located close to the boundary with a neighbouring property, the Council will usually require opaque glazing on the boundary elevation.
8. However, the use of the word 'usually' suggests that the inclusion of opaque glazing may not be necessary in all situations. Given the situation at the appeal site, I consider that this is such an occasion and I do not find conflict with the design guide.

Conditions

9. The Planning Practice Guidance makes it clear that decisions under Section 73 of the Town and Country Planning Act 1990 (as amended), (which I will refer to as 'the Act') should also repeat the relevant conditions from the original approval. The submissions of the appellant do not raise any issue with those other conditions. In accordance with the PPG guidance, I shall reimpose them unchanged apart from some minor changes to wording in the interests of clarity.
10. Section 73(5) of the Act states that permission must not be granted under this section for the development of land in England to the extent that it has an effect to change a condition subject to which a previous planning permission was granted by extending the time within which a development must be started. I have also therefore adjusted condition 1 accordingly.
11. The Framework sets out that conditions should be kept to a minimum and shall only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other

¹ Development Management – Extending Your Home – Updated February 2011.

respects. I have no evidence before me to indicate that the remaining two conditions would fail any of the tests and have included them on this basis.

Conclusion

12. There is nothing, including the provisions of the Framework² to indicate the appeal should be determined otherwise than in accordance with the development plan and the appeal is therefore allowed subject to the conditions.

T J Burnham

INSPECTOR

² National Planning Policy Framework 2021.