



Appeal Decision

Site visit made on 4 October 2022

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 October 2022

Appeal Ref: APP/M1710/W/21/3287653

Well House, 63 Wellhouse Road, Beech, Alton GU34 4AQ

- 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 Mr Philip Osmond against the decision of East Hampshire District Council.
 - The application Ref 55498/005, dated 31 August 2021, was refused by notice dated 26 October 2021.
 - The application sought planning permission for a two storey dwelling with integral three car garage without complying with conditions attached to planning permission Ref 55498/003, dated 16 July 2021.
 - The conditions in dispute are Nos 1 and 2 which state that:
 - 1) Within 3 months of the date of this permission, the sill heights of the rooflights on the side elevations of the dwelling hereby permitted, shall be raised to a height not below 1.7 metres from finished floor level, and shall be retained as such in perpetuity.
 - 2) Within 3 months of the date of this permission, the 'Cabrio' element of the two rooflights on the rear elevation shall be removed and the lower half of the rooflights shall be permanently fixed shut and shall be retained as such in perpetuity.
 - The reasons given for the conditions are: For the protection of neighbouring privacy and amenity.
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Decision

1. The appeal is allowed planning permission is granted for a two storey dwelling with integral three car garage at Well House, 63 Wellhouse Road, Beech, Alton GU34 4AQ in accordance with application Ref. 55498/005, dated 31 August 2021, without complying with condition Nos 1 and 2 of permission Ref. 55498/003 granted by East Hampshire District Council on 16 July 2021, but otherwise subject to the following conditions:
 - 1) Within 3 months of the date of this permission, the sill heights of the rooflights on the north eastern side elevation of the dwelling hereby permitted, shall be raised to a height not below 1.7 metres from finished floor level, and shall be retained as such in perpetuity.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans and particulars:
 - Location plan;
 - Block plan; and,
 - Roof plan - as amended received on 23/06/21.

Procedural Matters

2. At my visit the Cabrio element had not been removed from the rear two rooflights. While fixed internal panels are installed to approximately 1.7m the sills of the rooflights had not been raised. Therefore, I am considering the application as retrospective under section 73A of the Town and Country Planning Act 1990.
3. I am the Inspector considering another appeal at the property (Ref. APP/M1710/W/21/3281216) for the removal of a planning condition attached to permission Ref. 37851/013 restricting certain permitted development rights. I am aware of the details of the case and will have regard to it as appropriate.

Main Issue

4. The main issue is whether conditions 1 and 2 are necessary to ensure there would not be harmful living conditions for the occupiers of neighbouring properties with particular reference to privacy.

Reasons

Condition 1

5. Removing condition 1 entirely would permit side rooflights to remain at their constructed height without internal privacy requirements. At a sill height of approximately 1.6m, despite the existing tree, it would afford a greater opportunity of direct views through three of the north eastern elevation rooflights, onto much of the side elevation and into a significant additional proportion of the side garden of No 61 Wellhouse Road (No 61) to the east. The existing windows on the first floor of the eastern side elevation serve a bedroom and bathroom. However, these are either obscure glazed or offer views at oblique and lower angles, so they do not result in such visibility.
6. While rooflights are designed to provide a view mostly upwards, removing condition 1 for the north eastern elevation would permit a marked increase in the visibility of the side garden and its users at a close proximity from direct facing rooflights, from a greater proportion of floorspace inside the host dwelling. Retaining a proportion of side garden with sufficient privacy provides an important element of private outdoor space close to the dwelling of No 61.
7. Given the limited distance to the windows at No 61, it would be possible to look from the rooflights into many of the side facing non-obscure glazed windows of No 61 to some degree. The distance, visibility and proportion of internal and external space visible at No 61, and the increase in the proportion of space it would be visible from in No 63, would result in harmful living conditions for the occupiers of No 61 without the requirements set out in condition No 1.
8. Removing condition 1 would afford occupiers of No 63 a greater opportunity of direct views through two rooflights towards the rear of dwellings and a modestly increased proportion of rear gardens at Nos 65 and 67 Wellhouse Road (Nos 65 and 67). However, given the significant distances to those dwellings, removing condition 1 would not result in harmful living conditions to the occupiers of Nos 65 and 67 in respect of privacy of internal space.
9. In groups of dwellings some views towards and overlooking of dwellings and gardens is not unusual. The increase in the proportion of No 65's garden that

would be visible is modest and at a distance of approximately 13m to the boundary at its closest point. The part of the additional visible garden at closest proximity is away from the dwelling, so it is likely to be less intensively used and less sensitive than space close to the dwelling. The rest of the visible parts of the garden is a significant distance away. Given the distances and angles, removing condition 1 for these rooflights would ensure a sufficient degree of privacy would remain to the occupiers of No 65. There is also mature hedging present and while it could be the subject of some lowering through maintenance, there is no suggestion it would be removed.

10. The amount of increased garden area visible to No 67 would be comparatively small. The angle of visibility to No 67 is similar to No 65, but closest parts of the garden are significantly further away. Given the distances, angles and parts of the garden visible, this would not result in harmful living conditions to the occupiers of No 67 in respect of privacy. Given the distances involved, the proposal to remove condition 1 would not result in harmful living conditions to other neighbouring properties further away.
11. For the reasons set out above, for the north eastern elevation rooflights condition 1 is necessary to ensure they would not result in harmful living conditions for the occupiers of No 61 with particular reference to privacy, to comply with Policies CP27 and CP29 of the East Hampshire Joint Core Strategy (2016) (the JCS). In combination and amongst other things these require development is of an exemplary standard of design that does not result in unacceptable effects upon the living conditions of neighbouring occupiers through loss of privacy. In regard of No 61, it is also necessary to comply with the aims of paragraph 130f) of the National Planning Policy Framework (2021) (the Framework), which seeks to provide a high standard of amenity for existing and future users.
12. However, condition 1 is not necessary to ensure the development does not result in harmful living conditions to the occupiers of Nos 65 and 67 with particular reference to privacy. Therefore, in respect of these properties, the proposal would not conflict with Policies CP27 and CP29 of the JCS, or paragraph 130f) of the Framework, the relevant provisions of which I have referred to above. In this regard, I also do not find a conflict with Policies BPC06 and BPC07 of the Beech Neighbourhood Development Plan (2020) (the NP) which has similar objectives to policies referenced above.

Condition 2

13. When open the two cabrio roof lights create short narrow balcony type features that open back of the rear wall. The cabrio element allows a person to stand upright up to approximately 1.2m further forward than would be attainable under compliance with condition 2. The views I obtained towards neighbouring properties to the east and west were a small amount more than I could gain from the balcony due to the increased height and absence of a screen on one side.
14. With the cabrio element open, to the north east, I was able to gain a view of a small amount more of the side elevation of No 61 at approximately 16m distance, and a small section more of the side garden below them. However, much of the elevation and side garden was not visible behind the roofline, chimney and balcony screen. The increase in visibility was small and the distance to the side elevation of No 61 is such that the degree of reduced

privacy from the cabrio element would not result in harmful living conditions to the occupiers of No 61. Much of the side garden would remain sufficiently private behind the roof line, so I am satisfied the proposal would not result in harmful living conditions to No 61 in respect of privacy.

15. To the west the distance to the rear elevations of Nos 65 and 67 would ensure the proposal does not result in harmful living conditions in respect of privacy to those windows. There would be small increases in the amount of garden spaces visible at each property. However, this would be at some distance and the closest proximity visibility would be more towards the ends of the gardens, so it is likely to be less intensively used and less sensitive than space close to the dwelling. For these reasons given the distance and proportion of increased visibility, the removal of condition 2 would not result in harmful living conditions to the occupiers of Nos 65 and 67. The distances to other neighbouring properties, means that the removal of condition 2 would not result in harmful living conditions to other neighbouring occupiers.
16. For the reasons set out above, condition 2 is not necessary to ensure the development would not result in harmful living conditions to neighbouring occupiers with particular reference to privacy. Its removal would not conflict with the aims of Policies CP27 and CP29 of the JCS, BPC06 and BPC07 of the NP, or paragraph 130f) of the Framework, the relevant provisions of which I have referred to above.

Other Matters

17. The Grade II Listed Beech Barns Donkey Wheel House lies within the front garden boundary of the appeal site and the Grade II Listed The Old Farm House on the opposite side of Wellhouse Road. There is no substantive evidence that suggests the proposals would affect the setting of the listed buildings. There is very little direct intervisibility between the relevant rooflights and listed buildings. The rooflights are already permitted by the previous planning permission and removal of conditions 1 and 2 would not affect the way in which the listed buildings are experienced. I conclude this proposal preserves the setting of the designated heritage assets.
18. An interested party considers the proposal conflicts Policies BPC06 and BPC07 of the NP in respect of the design of the rooflights. However, they are permitted to be present on the roof slopes, and the appeal proposal proposes a minor change. The Council does not object to the proposals in respect of their effect upon character and appearance. Having regard to the NP policies quoted and other development plan policies, based upon what I saw and given the minor nature of these changes, I see no reason to disagree with the Council's view.
19. An interested party has made comments about the height of an appeal site hedge affecting the enjoyment of their property and garden. This particular matter is not within my remit in determining this appeal.

Conditions

20. As the development has already commenced it is not necessary to impose a commencement condition. As this permission results in a new independent permission a plans condition is necessary in the interests of certainty. To ensure an adequate level of privacy for the occupiers of No 61 it is necessary

for me to re-impose the existing requirements for the rooflights on the north eastern elevation only.

Conclusion

21. For the reasons set out above, subject to the imposition of conditions 1 and 2 set out above, the proposed development is compliant with the development plan and the Framework read as a whole. There are no considerations that indicate the proposal should be determined other than in accordance with the development plan and the Framework. Therefore, for the reasons given the appeal is allowed.

Dan Szymanski

INSPECTOR