



Appeal Decision

Site visit made on 24 November 2022

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th January 2023

Appeal Ref: APP/G5180/W/22/3297938

25 Grove Vale, Chislehurst BR7 5DS

- 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 Yavuz against the decision of London Borough of Bromley.
- The application Ref DC/21/02235/FULL6, dated 4 May 2021, was approved on 10 November 2021 and planning permission was granted subject to conditions.
- The development permitted is a single storey front, first floor side and part one/two storey rear extensions, loft conversion incorporating dormer to rear and rooflights to all elevations and elevational alterations (part retrospective).
- The conditions in dispute are Nos 2 and 3 which state that: 2 The proposed window(s) in the flank elevations and roof slopes are to be obscure glazed to a minimum of Pilkington privacy Level 3 and are to be non-opening below 1.7 metres above the floor of the room in which the window is installed and shall be permanently retained in accordance as such for perpetuity; and 3 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order amending, revoking and re-enacting this Order) no building, structure, extension, enlargement or alteration permitted by Class A, AA, B, C, or E of Part 1 of Schedule 2 of the 2015 Order (as amended), shall be erected or made within the curtilage(s) of the dwelling(s) hereby permitted without the prior approval in writing of the Local Planning Authority.
- The reasons given for the conditions are: 2. In the interests of the amenities of nearby residential properties and to accord with Policies 37 and 6 of the Bromley Local Plan; and 3 In the interests of protecting the character of the area and residential amenity of neighbouring properties in accordance with Policy 37 of the Bromley Local Plan.

This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the decision issued on 16 December 2022.

Decision

1. The appeal is allowed and the planning permission Ref DC/21/02235/FULL6 for a single storey front, first floor side and part one/two storey rear extensions, loft conversion incorporating dormer to rear and rooflights to all elevations and elevational alterations (part retrospective) at 25 Grove Vale, Chislehurst, BR7 5DS granted on 10 November 2021 by London Borough of Bromley, is varied by deleting conditions 2 and 3 and substituting them for the following condition:
 - The lower section of the rooflight to the rear elevation shall be fixed (non-opening) and this arrangement shall be retained as such at all times.

Main Issues

2. The main issues are whether or not the conditions are necessary having regard to the living conditions of the occupants of neighbouring properties in terms of privacy, and the character and appearance of the area.

Reasons

3. The appeal property is a two-storey detached dwelling. It is located in a residential area and is surrounded by properties of a similar design.
4. Condition 2 requires that windows in the side elevations and roof slopes are to be obscure glazed and non-opening below 1.7 metres above the floor of the room in which the window is installed.
5. For those windows applicable to the development granted planning permission, I observed on my site visit that they were either to bathrooms, and thus obscured, or installed at a high position on the roof slope whereby outlook was limited. Either way, they did not face directly onto habitable room windows to properties either side and thus there is no requirement that windows in the side elevations are obscured to ensure that there would not be unreasonable harm to living conditions with regard to privacy.
6. One of the rooflights that has been installed to the rear elevation is a cabrio style rooflight. My understanding of such a window is that the lower section can open to form a balcony like feature whereby one may stand forward of the roof slope. The approved plans however are annotated to state that this window is a top-hung opening Velux, with fixed non-opening glazed beneath.
7. I observed on my visit that when the upper section of this rooflight is open, relatively wide-ranging views across the rear gardens of adjacent properties are permissible. The closed lower section prevents any significant or harmful overlooking, with occupants primarily confined to within the roof space, and it would be unreasonable to require that the upper section of this window is non-opening or obscured. The effect being no worse with regard to privacy than the impact from a second-floor window or dormer window.
8. Were the lower section to be open, however, this would allow occupants of the appeal property to stand further forward of the roof slope and allow for significantly wider ranging views into rear gardens from an elevated position. It would also increase the likely longevity one might stand at the balcony and undoubtedly increase the perception of overlooking. This would cause harm to the privacy of occupants of surrounding residential properties.
9. In regard to condition 3, paragraph 54 of the National Planning Policy Framework (2021) (the Framework) states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. The Planning Practice Guidance (PPG) – Use of Planning Conditions also advises that conditions restricting the future exercise of permitted development rights may not pass the test of reasonableness or necessity.
10. The Council state that the reason for the condition was to prevent uncontrolled development at the appeal site, where there has been a number of extensions as set out. Having regard to the character of the area, the Council consider that

having an assessment through the planning application process would be preferable.

11. I acknowledge that the appeal property has been extended from its original form. This would be likely to impact on the ability to carry out certain further extensions without the need for planning permission in any event. I observed on my site visit that many of the surrounding properties have been extended, and there is nothing in the character of the area of such special significance to warrant the removal of permitted development rights. I do not agree that it would be preferable to exert control through the planning application process, and there is not clear justification for doing so in this case.
12. The implications of removing the condition in terms of the character and appearance of the area and the effect on living conditions has not been substantiated and it follows that the condition is not necessary.
13. Therefore, the conditions are not necessary having regard to the living conditions of the occupants of neighbouring properties in terms of privacy, and the character and appearance of the area. In the interests of the living conditions of occupiers of surrounding residential properties, it is however necessary to substitute these conditions and impose a condition requiring that the lower section of the rooflight to the rear elevation is fixed (non-opening). In deleting the conditions and imposing a new condition the development complies with the requirements of Policies 37 and 6 of the Bromley Local Plan (2019) which require that, amongst other things, residential extensions should respect or complement the host dwelling and be compatible with development in the surrounding area; and respect the amenity of occupiers of neighbouring buildings.

Conclusion

14. For the reasons set out above, and having had regard to all other matters raised, I conclude that the appeal should be allowed.

A M Nilsson

INSPECTOR