



Appeal Decision

Site visit made on 9 January 2023

by Eleni Randle BSc (hons) MSc FRICS FAAV MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 February 2023.

Appeal Ref: APP/X0360/W/22/3303676

The Istana, Lambs Lane, Wokingham, Spencers Wood, RG7 1JB

- 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 Alistair Roy against the decision of the Wokingham Borough Council.
 - The application sought planning permission for householder application for the proposed raising of the roof with 3 no. dormers, 4 no. rooflights and a rear Juliet balcony to create first floor accommodation, plus changes to fenestration without complying with condition 5 attached to planning permission Ref 201752 dated 18 August 2020.
 - The condition in dispute is No 5 which states that: The bedroom 5, bedroom 6, bathroom and ensuite window in the side elevations at first floor and the bathroom and ensuite windows in the side elevation at ground floor of the development hereby permitted shall be fitted with obscured glass and shall be permanently so- retained. The window shall be non-opening unless the parts of the window which can be opened are more than 1.7 metres above the finished floor level of the room in which the window is installed and shall be permanently so retained.
 - The reason given for the condition is: to safeguard the residential amenities of neighbouring properties. Relevant policy: Core Strategy policy CP3.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal proposal is noted to have been submitted on a retrospective basis.
3. It is noted that the condition which is the subject of this appeal relates to both windows in bedroom 5 and bedroom 6 (the ensuite window would remain unchanged). The Council's decision has partly granted the variation applied for in so far as it has allowed an amendment to the condition in question to remove the requirement for obscure glazing, being non-opening etc., in bedroom window 5.
4. Based upon the evidence before me I have no reason to come to a differing decision on this element relating to bedroom window 5. This leaves only that relating to the glazing and opening within bedroom window 6 which, for the avoidance of doubt, is the main subject of this appeal.

Main Issue

5. The main issue is the impact of the proposal upon neighbouring residential amenity with regard to privacy.

Reasons

6. The appeal site is a detached residential dwelling located within a row of residential dwellings off Lambs Lane. Planning application ref: 201752 granted permission for raising of the roof with three dormers, four rooflights and a clear Juliet balcony to create first floor accommodation, plus changes to fenestration. As outlined above, in procedural matters, a condition relating to the windows in bedroom 5, bedroom 6 (B6) and the ensuite was applied to that permission.
7. From the evidence before me I note that the allowed rooflights have not been installed within the roof as per the approved drawings. I find that this is key as the rooflights would have specifically allowed for light and outlook, in some form, into the rooms at the appeal site, as well as providing a potential opening. This is key when combined with considering the requirement for obscure glazing in the window of B6. In my view, had the proposal originally been submitted as is now put forward, it is unlikely that permission would have been granted.
8. It is stated that the rooflights are unable to be constructed due to roof detail, however, no evidence such as formal comments from a structural engineer, building surveyor or similar (including the builder themselves) has been submitted as evidence as to what the issue was in that regard. I would consider it normal practice, from qualified architects drawings, for building regulations drawings to be prepared which should have indicated at a much earlier stage whether something was constructable as approved in accordance with Building Regulations.
9. Without the rooflights the side window is the only source of outlook or light which would likely require clear glazing when considered solely in the interests of the residential amenity of occupiers of the appeal site itself. The installation of clear glazing in B6 would, however, allow clear views into the garden/amenity area of neighbouring property, Bel-Daire with natural use of that room. The glazing on the ground floor of the appeal site is noted, however, such windows (as is the case here) are generally obstructed to a large extent by boundary fencing and in addition, such views are generally comparable to natural use of a site and someone standing in the garden area in any case.
10. Side windows on first floors, by comparison, provide a much higher level of outlook and overlooking into neighbouring properties. The appellant's original submission includes photographs which show views into the neighbouring garden which I find are obtrusive as a result of the orientation of the properties and their general relationship. I also note the Council's submitted image as well the appellant's concern over angle, however, regardless of angle I find that it demonstrates a clear view into the patio and garden of Bel-Daire. It does not fall to consider specific users of the room in question i.e. the appellant's daughter who may currently be of limited height in comparison to the windows in question which would restrict use at present.
11. In this case I find that clear glazing in B6 would unacceptably impact upon neighbouring residential amenity with regard to privacy as well as a general sense of overlooking. The appellant's original statement also notes that the appeal site is somewhat higher than the neighbouring property and does allow some clear views into their garden as well as that the view to the right out of B6 does show a view into the neighbouring garden. I note that some views

may be available from other windows, however, they do not fall within the scope of the proposal to be conditioned as part of the permission granted under ref: 201752 and views from rear windows are not comparable due to orientation of the properties as previously mentioned. It falls to consider the impact of the proposal as submitted and the mitigation required.

12. In this case there is a side window facing directly towards the neighbouring property with clear views across the patio and garden. The conditions exist to mitigate, to an acceptable level, the impact of the permission as was granted under ref: 201752. I note that the plans did not specifically state obscure glazing, however, the conditions on the permission for those plans clearly stated the requirement and reasoning for obscure glazing which is normal practice in applications of this nature.
13. Building Regulations are a separate legislation to Planning and Development Control. Building Regulations set standards for design and construction whereas planning permission relates to the impact upon the surrounding environment, in this case this would include impact upon the neighbours. It is not uncommon for the objectives of the two to be at odds with other in some cases which can restrict what is achievable on some sites.
14. I can only consider a proposal as submitted before me it is not the place of an appeal to evolve a proposal given that interested parties cannot, at this stage, comment further. In this case the proposal seeks to remove the requirement for obscure glazing and be non-opening below 1.7m for the window in B6. I note that it is stated that the window openings are too high to comply with Building Regulations, however, I have no evidence that alternatives have fully been explored to secure Building Regulation compliance such as products that would only open in case of emergency to allow fire exit but remain fixed shut as per the condition the remainder of the time.
15. The Council have not really appeared to have assessed the issue surrounding the opening of windows but as presented before me the appeal seeks the straight removal of the wording relating to B6 within condition 5 and I do not have the evidence before me to allow me to do that when considering the impact to residential amenity which I have outlined with particular regard to proposing clear glazing.
16. I acknowledge the appellant's comments regarding children's wellbeing, however, constructed as approved the rooflights in the original permission would have provided a suitable level of amenity for occupiers of the appeal site with the obscure glazing as assessed in the original application. In this case, as noted previously, had the proposal been submitted as is now proposed as a result of the condition variations and with no rooflights the proposal would not have been approved in the first place.
17. I note the appellant's reference to the Borough Design Guide, a Supplementary Planning Document 2012 and the Council have provided a copy of this. This document is guidance, and not policy, but it does note that the design of windows can influence the potential for overlooking which is the case at the appeal site. Additionally I note that, with regard to extensions and alterations, it is confirmed that potential impact to neighbouring properties is a key consideration. The proposal would be contrary to Adopted Core Strategy Development Plan Document 2020 Policy CP3 which requires proposals to be

without detriment to the amenities of adjoining land users and their quality of life.

Other Matters

18. A lack of objection, in the form of a letter of support, is noted but is a neutral consideration. Letters of objection are noted but I have dealt with the main matters raised within them within the main body of this decision letter and, given that the appeal is to be dismissed, this addresses concern regarding undermining Council's own policies and judgements. The relationship with the neighbour, and comment regarding concern as to who submitted a negative comment, are not considerations of weight within the determination of this appeal.
19. Correspondence with the Council, or any perceived confusion regarding window numbers, are not within the scope of this appeal. To me the outcome of the decision is clear, in that it removed restrictions placed upon bedroom window 5 and left them in place upon both B6 and the ensuite. The use of conditions to secure detail such as obscure glazing, restrictions upon openings is normal practice within the planning system. They limit the consent.
20. Control over elements of a development can only be secured by condition and not by the development description as, as is the case here, there is a split decision which has resulted in the condition being varied as noted within the procedural matters above.

Conclusion

21. For the reasons outlined above, and taking account all other matters raised, I conclude that the appeal should be dismissed.

Eleni Randle

INSPECTOR