



Appeal Decision

Site visit made on 7 February 2023

By Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 7th March

Appeal Ref: APP/B1550/W/22/3299858
12 Minton Heights, Rochford, SS4 3EQ

- 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 Steven Belton against the decision of Rochford District Council.
 - The application Ref 22/00232/FUL, dated 3 March 2022, was approved on 18 May 2022 and planning permission was granted subject to conditions.
 - The development permitted is front and rear dormers.
 - The condition in dispute is No. 4 which states that: the two windows serving the rear wall of the proposed flat roof rear dormer as depicted on plan project no.202 20202 date stamped February 2022 shall be obscure-glazed and fixed shut and shall thereafter be retained and maintained in the approved form.
 - The reasons given for the condition is: "In view of the proximity to the boundary, in the interest of privacy between occupiers".
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Decision

1. The appeal is allowed and the planning permission Ref 22/00232/FUL for front and rear dormers at 12 Minton Heights, Rochford, SS4 3EQ granted on 18 May 2022 by Rochford District Council Council, is varied by deleting condition No.4.

Preliminary matters

2. I was invited by the occupier of the dwelling at No.33 Albert Road to view the appeal site from within his property, and with his permission I entered the rear garden during my site visit. I was also able to climb into the roof space of the appeal dwelling, which was in the course of conversion, and look through the opening of the window concerned in what will become the bedroom.

Main Issue

3. Whether the condition is necessary and reasonable having regard to the proximity to the boundary and the interests of privacy between adjoining neighbours.

Reasons

4. The windows to the rear façade of the proposed flat roof dormer will be close to the north boundary of the site, the distance from the rear wall of the dwelling to the site boundary being of the order of 6.5m. There is a public footpath beyond this boundary, having a width of approximately 1.3m. This footpath

runs along the rear of the dwellings to the north, which front Albert Road. It is the privacy of No.33 Albert Road (the Neighbour) that is the prime concern of the council in imposing the condition in dispute.

5. There is no objection by the appellant to have obscure glazed glass in the window serving a bathroom, but it is considered that the window in the bedroom should have clear glass to provide an outlook.
6. Since the appeal dwelling is of 2 storeys, the accommodation in the roof provides a second floor. The council's concern is that the subject window to the bedroom, being at second floor level, is at a height of 6.3m. But I cannot see that there is a material difference between the outlook from the dormer window and the outlook from a usual first floor window. Measuring from the extract of the Ordnance Survey map provided on the application drawing, the distance from the rear elevation of the appeal property and the rear elevation of Neighbour is some 40m or so. This would normally be considered a reasonable distance between dwellings to avoid a loss of privacy.
7. In this case there is an additional consideration, which is the tree in the rear garden of the Neighbour. This is situated in the vicinity of the rear fence of that property and appears to be of the Cypress family, probably a Leyland (Leylandii). It is coniferous with the usual compact, thick and regular habit, and of considerable height. Looking from the window opening in the proposed bedroom towards the neighbouring property, the tree effectively gave screening to all the garden beyond it. Looking towards the appeal property from the garden of the Neighbour, the bedroom window in the proposed dormer was screened.
8. The officer's report expresses reservations about this tree: that it is not in the control of the appellant or the council, that it might be removed or die, and that loss of leaves in the winter would remove the privacy effect. Since it is an evergreen, the officer's concern about loss of foliage in the winter is not relevant. It appeared to be a very healthy specimen to me, and its future presence in the garden is in the hands of the Neighbour. It therefore seems to me that its protective presence can be given substantial weight.
9. To impose a condition, the decision maker must ensure that the condition meets the 6 tests referred to in paragraph 56 of the National Planning Policy Framework (the Framework). These include that conditions must be necessary, and reasonable in all other respects. Since there is a considerable distance between the rear elevations of the 2 properties, and the existing tree screens views between them, I am satisfied that the condition is not necessary and that there is no justification for it. I will therefore allow the appeal.

Terrence Kemmann-Lane

INSPECTOR