



Appeal Decision

Site visit made on 23 February 2023

by Ryan Cowley MPlan (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 April 2023

Appeal Ref: APP/K3605/W/22/3301127

Squirrel Place, Leatherhead Road, Oxshott, Leatherhead, Surrey KT22 0EX

- 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 Dylan Collins, on behalf of Eden Luxe Ltd, against the decision of Elmbridge Borough Council.
 - The application Ref 2021/4056, dated 17 March 2022, was refused by notice dated 12 May 2022.
 - The application sought planning permission for a terrace of 4 two-storey houses with rooms in the roof space and dormer windows following demolition of existing house without complying with a condition attached to planning permission Ref 2018/0854, dated 19 July 2018.
 - The condition in dispute is No 9 which states that: The first and second floor windows/rooflights on the northwest/side and southeast/side elevations of the development hereby permitted shall be glazed with obscure glass; and non-openable unless above 1.7m over the finished floor level of the room they serve to. Such glass shall be sufficiently obscure to prevent loss of privacy. The affixing of an obscure film will not be sufficient.
 - The reason given for the condition is: To preserve the reasonable privacy of neighbouring residents in accordance with Policy DM2 of the Elmbridge Development Management Plan 2015.
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. Planning permission was granted in 2018 (Ref 2018/0854) for a terrace of 4 two-storey houses with rooms in the roof space and dormer windows following demolition of the existing house. Condition No 9 of that permission sought to ensure first and second floor windows/rooflights in the side elevations of the development were obscurely glazed and non-openable unless above 1.7m over the finished floor level of the room they serve. I saw on my site visit that the development is substantially complete, with at least some of the dwellings occupied. However, several of the windows referred to in condition No 9 have been installed with clear glazing and opening mechanisms.
3. The appeal seeks the removal of condition No 9. The appellant contends the condition is not necessary and thus would not meet the tests for planning conditions set out in the National Planning Policy Framework (the Framework). The Council maintain the condition is necessary to protect the privacy of the occupiers of neighbouring properties.

4. The main issue is therefore the effect of the removal of the condition on the living conditions of the occupiers of "Woodacre" and "Selden Cottage", having particular regard to privacy.

Reasons

5. No 4 Squirrel Place (No 4) is on the south-eastern side of the development and features two first floor windows facing the neighbouring dwelling at Selden Cottage. The two windows serve a landing and bathroom and are each made up of two narrow rectangular panes with two small square panes above. The bathroom window is obscure glazed however the landing window is clear. Both windows feature opening mechanisms to lower panes.
6. Selden Cottage has several windows in the side elevation facing the appeal site. Two of these serve a living room at ground floor, and one a bedroom at first floor. I saw on my site visit that the separation distance between the side elevations of No 4 and Selden Cottage is short, and there is mutual overlooking between ground and first floor windows. In particular, direct and unobscured views can readily be achieved from the first-floor landing window of No 4 to the first-floor bedroom window of Selden Cottage. Additionally, the ground floor living room of Selden Cottage is considerably overlooked by No 4's landing window. The ability to open the lower panes of both the landing and bathroom windows in No 4 would also considerably undermine any benefit provided by obscure glazing. Given the rooms within Selden Cottage are living spaces in which the occupiers are likely to spend considerable time, the omission of condition No 9 would have a harmful effect on their privacy.
7. I recognise the first-floor bedroom window in the side of Selden Cottage is not the only window serving this room. However, this does not assuage the loss of privacy to this room through overlooking from the appeal site. Closed curtains or other screening would always be required at this window while the room is in use to maintain an adequate level of privacy. This is not a reasonable imposition and, in any event, is beyond the control of this appeal.
8. No 1 Squirrel Place (No 1) is on the north-western side of the development and features two first floor windows, and three second floor roof lights, facing the neighbouring dwelling at Woodacre. The two first floor windows serve a landing and bathroom and are of the same design as those in No 4. The lower panes of both windows are obscured sufficient to prevent views out towards Woodacre, however these also feature opening mechanisms. At second floor, the three roof lights serve a central landing and two bedrooms either side. All three roof lights are unobscured and openable, though they are situated at a height above the floor level that limits views out towards Woodacre.
9. Woodacre has a utility room window and door at ground floor in the side elevation facing the appeal site. The utility room is a relatively small space with limited function. There are no other windows or doors located in the side elevation of this neighbouring property facing the appeal site. Overlooking would therefore occur were the lower panes of the first-floor side elevation windows in No 1 to be opened or unobscured, though the level of harm to the privacy of occupiers would be lower than at Selden Cottage.
10. Woodacre also features a first-floor rear balcony serving a bedroom. This balcony features a privacy screen along much of the side closest to No 1. Views between the unscreened part of the balcony and the first-floor windows of No 1

can be achieved, albeit are oblique. The second-floor roof lights of No 1 can also be seen from this balcony, even when stood behind the privacy screen. While views towards the balcony from these roof lights are limited and indirect, their presence adds to the perception of overlooking for occupiers of Woodacre.

11. I recognise the landing and bathroom windows in question serve rooms that are not living spaces in which occupiers are likely to spend considerable time. Nevertheless, in the absence of a condition to require obscure glazing and restricted opening, opportunities for actual overlooking to occur are readily available and the perception of being overlooked for occupiers of neighbouring properties will be considerable.
12. I conclude that the removal of condition No 9 would harm the living conditions of the occupiers of Selden Cottage and Woodacre, having regard to privacy. Consequently, the appeal scheme would be contrary to Policy DM2 of the Elmbridge Local Plan Development Management Plan April 2015, which seeks, among other provisions, to ensure development proposals are designed to provide adequate privacy to protect the amenity of adjoining occupiers. It would also conflict with the Framework in respect of its aim of creating places that have a high standard of amenity for existing and future users.

Conclusion

13. For the reasons given above I conclude that the appeal is dismissed.

Ryan Cowley

INSPECTOR