



Appeal Decision

Site visit made on 16 May 2023

by J White BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 May 2023

Appeal Ref: APP/Z1775/W/22/3308310

7 Oyster Mews, French Street, City of Portsmouth, PORTSMOUTH PO1 2JS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by Mr Steve Langton against Portsmouth City Council.
 - The application Ref 22/00749/HOU, is dated 16 May 2022.
 - The development proposed is construction of two dormer windows to rear slope; two roof lights to front roof slope.
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Decision

1. The appeal is allowed and planning permission is granted for construction of two dormer windows to rear slope; two roof lights to front roof slope at 7 Oyster Mews, French Street, City of Portsmouth, Portsmouth PO1 2JS in accordance with the terms of the application, Ref 22/00749/HOU, dated 16 May 2022, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby granted shall be carried out in accordance with the following approved drawings - numbers: 486.P300_A - Block and Location Plan; 486.P301_A - Proposed Plans and 486.P302_A - Proposed Elevations.
 - 3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match, in type, colour and texture those on the existing building and as specified within the submitted application form.
 - 4) Prior to the development hereby permitted being brought into use, the windows on the east (rear) elevation of the development hereby permitted shall be obscure glazed to Pilkington privacy level 3 or above, and non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed. Once installed the windows shall be retained as such thereafter.

Applications for costs

2. An application for an award of costs was made by Mr Steve Langton against Portsmouth City Council. This application is the subject of a separate Decision.

Background and Main Issue

3. This appeal relates to the Council's failure to give notice within the prescribed period of a decision on an application for planning permission. No Statement of

Case has been provided from the Council about how it would have determined this development proposal. However, the Council has provided a copy of the development plan policy that it considers as being relevant to the determination of the appeal and suggested conditions.

4. The appellant has provided a copy of an appeal¹ concerning a previous scheme at 7 Oyster Mews which was dismissed in April 2022. The Inspector concluded in that instance that, although the proposed development would preserve the character and appearance of the Old Portsmouth Conservation Area (OPCA), the proposal would cause harm to living conditions of neighbouring occupiers, with particular regard to loss of privacy.
5. The application seeks to address the reason for the dismissal of the previous appeal, with the fundamental difference between this scheme and the one previously considered being the provision of obscure glazing to the proposed rear windows which would be non-opening below 1.7 metres above finish floor level. The appellant has advised that in other respects the design has not changed from the previous scheme. This has not been disputed by the Council.
6. Whilst interested parties have commented on the appeal. The Council has not provided any comment on the evidence provided by the appellant or those of interested parties' comments.
7. A previous appeal decision is capable of being a material consideration where that decision is sufficiently closely related to issues that regard should be had to it. The appellant has approached the case in the context of the previous appeal decision. Thus, having regard to the above, the main issue is the effect of the proposed development on the living conditions of neighbouring occupiers, with particular regard to privacy.

Reasons

8. The site lies within the pleasant residential setting of Oyster Mews. It is predominately surrounded by other residential properties and lies in close proximity to the rear gardens and elevations of an attractive group of dwellings on Lombard Street.
9. I viewed the appeal site and its surroundings from the garden and the first floor living room window to the rear of the appeal property. I also walked around the immediate surrounding area, including St Thomas's Street, and I viewed the site from garden areas and windows of 5, 7, 9 and 11 Lombard Street (No's 5, 7, 9 and 11).
10. The proposed development would increase the ridge height along part of the roof and extend the existing eaves height along the rear of the building to provide two dormers, enabling the existing roof space to be converted into additional living accommodation at a second-floor level. The submitted plans show that new windows are proposed within the rear elevation of the dormers. Two roof lights are proposed in the front elevation of the building.
11. The roof lights would face onto a shared courtyard area and as such there is already a mutual degree of overlooking. Due to the juxtaposition of buildings the proposed roof lights would not exacerbate the existing levels of overlooking which currently occur.

¹ APP/Z1775/D/21/3283459

12. When standing within the proposed extension, it would be possible to see over the boundary wall and toward the rear of No's 5, 7, 9 and 11, which include first and second floor bedroom windows. Whilst it is possible to view the rear areas of these dwellings from the existing first floor living room window, the proposed development would allow views from a second-floor level and a position where no such views exist at present. I agree with the previous Inspector that this would result in an unacceptable level of overlooking of those adjoining neighbours on Lombard Street.
13. However, the appellant has proposed that this concern could be addressed by a condition that requires these windows to be obscure glazed with no part of the windows, that are less than 1.7 metres above the floor level of the extension, capable of being opened. Having viewed the relationship of buildings on site and being mindful of the existing window arrangement, I am satisfied that such condition is acceptable. The use of obscure glazing and restricted means of opening would limit the extent of overlooking that could take place and would address the concerns in relation to privacy, so that the development would not result in a level of harm that would justify a refusal of planning permission.
14. I note the concerns raised by interested parties regarding overbearing impact and loss of light. However, having regard to the existing relationship of buildings, boundary treatments and scale of development proposed, I am satisfied that the proposal would not cause material harm in terms of outlook or overbearing effect on neighbouring occupiers living conditions or loss of light.
15. Consequently, notwithstanding the previous Inspectors findings, given the proposal for obscure glazed windows that would be non-opening below 1.7 metres above floor level, the appeal proposal would not have an unacceptable adverse or harmful effect on the living conditions of neighbouring residential properties with particular regard to privacy. Thus, on this main issue, there would be no conflict with Policy PCS23 of The Portsmouth Plan 2012 (TPP) which, amongst other things, requires that development provides a good standard of living environment for neighbouring and local occupiers.

Other Matters

16. I am mindful of the outcome of the previous appeal at the appeal site, and I note the comments of interested parties in connection with this proposal. The appeal site lies within the OPCA. Section 72(1) of the Planning (Listed Buildings and Conservation Area) Act 1990 requires that special attention be paid to the desirability of preserving or enhancing the character or appearance of that area. Policy PCS23 of TPP similarly requires that development protects and enhances the city's historic townscape.
17. Whilst glimpse views of the roof of the appeal building can be achieved from St Thomas's Street, the appeal site is not prominent within the street scene. In the short-lived views that are available when passing, the proposal would not appear unduly assertive given its position and context. I find that the proposal would not be materially harmful to the character and appearance of the street scene along St Thomas's Street, and I have no basis to consider the proposal would cause a material impact on the setting of the Cathedral.
18. Having regard to the existing window design at the appeal property, I am satisfied that the design of the proposed windows is acceptable. I agree with

the conclusion of the previous Inspector that the proposed development would not result in any adverse visual impact on the townscape and the character or appearance of the OPCA. Accordingly, I find that the proposed development would preserve the character and appearance of the OPCA, as a whole, in that it would leave it unharmed and would thus accord with Policy PCS23 of TPP.

19. The site lies in a built-up area where there is a degree of mutual impact between neighbouring land uses. In this context, there is no substantive evidence to suggest that harmful artificial light pollution would occur or translate to harm neighbours' living conditions or the character and appearance of the area. Comments were submitted in relation to neighbouring residents shielding from Coronavirus. There is, however, no substantive evidence before me that the proposal would exacerbate this issue.
20. I note the concern that allowing the proposed development would create an undesirable precedent. However, I have found the scheme would be acceptable and therefore see no reason why it would lead to unacceptable development elsewhere. I have no basis to consider that the appellant would not comply with conditions of planning permission.
21. Representations have been made to the effect that the rights of neighbouring occupiers, under the Human Rights Act 1998, Article 8, would be violated if the appeal were allowed. I do not consider this contention to be substantiated, because I have found that the proposed development would not cause unacceptable harm to the living conditions of neighbouring occupiers. The degree of interference that would be caused would be insufficient to give rise to a violation of rights under Article 8 of the Human Rights Act 1998.

Conditions

22. I have considered the conditions put forward by the Council. Where necessary I have amended the wording of the conditions for clarity, to reflect the advice in the National Planning Policy Framework 2021 and to meet the six tests. I have attached the standard time condition and I have specified the approved plans in the interests of certainty.
23. A condition relating to matching materials is necessary to ensure that the appearance of the new development would be satisfactory. It is necessary to add a condition to ensure the proposed windows in the east (rear) elevation are obscure-glazed and non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor level prior to the development being brought into use, and that the obscure glazing remains in place, in order to protect the privacy of neighbouring occupiers.

Conclusion

24. For the reasons given I conclude that the appeal should succeed.

J White

INSPECTOR