



Appeal Decision

Site visit made on 24 May 2023

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 12 June 2023

Appeal Ref: APP/V2635/C/22/3290712

Land at 5 Lamsey Lane, Heacham, King's Lynn, Norfolk, PE31 7LA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended ("the Act"). The appeal is made by Mr Steven Watson and Mrs Hayley Watson against an enforcement notice issued by King's Lynn and West Norfolk Borough Council.
- The enforcement notice, numbered 21/00378/BOC, was issued on 10 December 2021.
- The breach of planning control as alleged in the notice is failure to comply with conditions imposed on a planning permission ref 18/00556/F granted on 20 June 2018 and a subsequent non material amendment ref 18/00556/NMA_1 granted on 2 October 2018.

The development to which the permission relates is: Extensions and alterations, and carport to front of dwelling.

- The conditions in question are nos 2 and 3 which states that:
 2. The development hereby permitted shall be carried out in accordance with the following approved plans: DWG BLP-185-03A Proposed site plan and location plan; and DWG BLP-185-02G Proposed plans and elevations.
 3. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no new windows/dormer windows (other than those expressly authorised by this permission), shall be allowed at first floor on the north-east elevation of the extension hereby permitted without the granting of specific planning permission.
- The notice alleges that 'the conditions have not been complied with in that: A new window has been inserted at first floor on the north-east elevation of the extension without the grant of specific planning permission resulting in significant overlooking of the private garden space and conservatory of the dwelling to the north east (No.12 Stainsby Close) contrary to Site Allocations and Development Management Plan 2016 Policies DM1, DM2 and DM15'.
- The requirements of the notice are to: remove the unauthorised window at first floor on the north-east elevation ensuring the works are completed in accordance with the attached approved drawing reference BPL-185-02G.
- The period for compliance with the requirement is: four weeks after the notice takes effect.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Decision

1. The appeal is allowed and the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Act for extensions and alterations, and carport to front of dwelling. In accordance with section 177(1)(b) and section 177(4) of the Act, the condition number 2 attached to the planning permission dated 20 June 2018 ref 18/00556/F and subsequently varied on 2 October 2018 ref

18/00556/NMA_1, is discharged and the following new condition is substituted:-

2. The development hereby permitted shall be carried out in accordance with the following approved plans: DWG BLP-185-03A Proposed site plan and location plan; and DWG BPL-185-10.

Preliminary Matters

2. The appeal is lodged on ground (a). Ground (a) is 'that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted, or that the condition concerned ought to be discharged'.
3. When a notice is appealed on this ground together with the payment of the relevant fee, the appellant is deemed under s177(5) to have made an application for planning permission in respect of the matters stated in the notice as constituting the breach of planning control.
4. While the dormer window was constructed in breach of the condition, such a condition cannot remove the right to apply for planning permission, including for development already carried out. The appeal on ground (a) includes a deemed planning application for the rear dormer window and as such, the approach requires me to consider whether the rear dormer window is acceptable in planning terms and therefore whether to grant planning permission for it.

The appeal on ground (a)

5. Having regard to the reasons for issuing the notice, the main issue is the effect of the unauthorised development on the living conditions of occupants of a neighbouring dwelling having particular regard to overlooking and privacy.
6. The unauthorised development has introduced a window at first floor level where, other than rooflights within the roof structure, there are no other windows at first floor level within the rear elevation. Based upon my observations at the site visit, the outlook from this window is primarily towards 12 Stainsby Close (No.12), a detached bungalow positioned at the end of the cul-de-sac. This has introduced a level of overlooking of this property.
7. The areas that are affected include a conservatory and area of side garden. However, based upon my observations, the side garden forms a continuation of the front garden that wraps around the bungalow and for which there is no division and separation of the front and side garden areas. As a result, the side garden area is mostly visible in views from public vantage points from the highway, through and over the front boundary of No.12 which is comprised of a gate and fencing of low height. Given that the conservatory is positioned within the area of side garden, it is also partly visible from this public viewpoint.
8. Notwithstanding, the position of No.12 at the end of a cul-de-sac where passing traffic is therefore limited, the side garden and conservatory are capable of being viewed by those undertaking turning manoeuvres at the end of the close and by neighbouring occupants as they gain access to their properties. Those areas are also visible by individuals visiting No.12 to carry out tasks such as deliveries. In my view, as a consequence of their position, the side garden and conservatory are not private areas and as such I consider

that they are less sensitive to overlooking. I therefore find that the appeal scheme has not resulted in an unduly harmful level of overlooking that would result in a loss of privacy that would materially compromise the living conditions of the occupants of No.12.

9. Overall, I therefore find that there would not be unacceptable harm to the living conditions of neighbouring occupiers of No.12. Thus, the appeal scheme accords with Policies DM1 and DM15 of the Site Allocations and Development Management Plan (2016)(SADMP) insofar as these policies seek to achieve sustainable development that protects neighbouring uses and their occupants with particular regard to, among other things, overlooking.
10. The Council also cite a conflict with SADMP Policy DM2. However, this policy concerns the principle of development within settlement boundaries and as the Council have not provided any detail of the specific conflict with this policy, I find that the Council have not demonstrated the appeal scheme to be contrary to Policy DM2.

Other Matters

11. In determining this appeal I have had regard to the comments of an interested party. Whilst I note their concerns, I have reached a different view based upon the evidence and my observations at the site visit.

Conclusion

12. Overall, I conclude that the appeal scheme accords with the development plan. The material considerations in this instance do not justify a decision otherwise than in accordance with the development plan. Accordingly, for the reasons given above, I conclude that the appeal should succeed on ground (a) and the enforcement notice should be quashed.
13. I shall discharge condition no.2 which is subject to the notice, and grant planning permission on the application deemed to have been made for the development without complying with the condition no.2 enforced against but subject to the new condition as described above.
14. For the avoidance of doubt, condition no.3 of planning permissions reference 18/00556/F and 18/00556/NMA_1 will continue to have effect in respect of any new windows/dormer windows at first floor on the north-east elevation that would otherwise have been permitted by the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended).

E Brownless

INSPECTOR