



Appeal Decision

Site visit made on 28 April 2023

by D Cleary MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 July 2023

Appeal Ref: APP/N2345/W/22/3303693

1 Marlborough Drive, Preston, Lancashire PR2 9UE

- 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 Muhammad Hussain against the decision of Preston City Council.
 - The application Ref 06/2022/0527, dated 04 May 2022, was approved on 05 July 2022 and planning permission was granted subject to conditions.
 - The development permitted is amendment to planning permission 06/2022/0031 comprising of installation of 2no. Velux windows above the stairwell, repositioning of the front door and external remodelling to the North and West elevations including the resizing of glazing.
 - The conditions in dispute are Nos 7 and 9 which state that:
Condition 7: *'Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any subsequent order or statutory provision revoking and re-enacting the provisions of that Order), no windows shall be installed within the east elevation of the dwelling hereby permitted facing the neighbouring property no.5 Beech Drive'.*
Condition 9: *'Prior to the dwelling hereby approved being first brought into use, the bedroom window (furthest east) and bathroom window situated within the first floor of the south facing side dormer, of the dwelling hereby approved (facing number 1a Marlborough Drive) shall be obscurely glazed to a minimum of level 5 (where 1 is the lowest and 5 the greatest level of obscurity) and shall be non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor level of the room in which the windows are installed. The duly installed windows shall be retained as such thereafter'.*
 - The reasons given for the conditions are:
Condition 7: *'To prevent overlooking to safeguard the amenities of the residents of the neighbouring residential properties in accordance with Policy AD1(a) of the Adopted Preston Local Plan 2012-26 (Site Allocations and Development Management Policies), Saved Policy H8 of the Preston Local Plan 2004'.*
Condition 9: *'To safeguard the amenities of the residents of the adjoining residential property in accordance with Policies AD1(a) and EN9 of the Adopted Preston Local Plan 2012- 26 (Site Allocations and Development Management Policies) and the guidelines of the Central Lancashire Supplementary Planning Document 5: Design Guide and the Residential Extensions and Alterations Supplementary Planning Document'.*
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have re-ordered the address within the banner from that contained within the application forms, to rectify an ordering mistake.

3. At the time of my site visit I observed that a building at the appeal site was substantially under construction. What has been constructed on the site differs to the development which is the subject of this appeal. I have dealt with the appeal based on the submitted plans.

Background and Main Issue

4. The appeal site has an extensive planning history for the construction of a domestic outbuilding and subsequently a dwelling. From the information before me, planning permission was initially granted for the construction of a single dwelling¹ in 2020. This permission was subsequently varied to allow for further extensions and the installation of a dormer window². A further permission was granted³ for alterations to the approved design of the building, including alterations to openings (the '2022 variation').
5. It is the 2022 variation which is the subject of this appeal, and was subject to conditions attached to the grant of planning permission. Condition 7 removes permitted development rights for the installation of new windows within the east elevation. Condition 9 requires a bedroom window and a bathroom window within the southern elevation to be obscure glazed. The reasons for the conditions are to preserve the living conditions of the neighbouring dwelling.
6. Therefore, the main issue is the effect of removing the conditions on the living conditions of the occupiers of No.5 Beech Drive, with particular regard to privacy.

Reasons

7. The appeal site occupies land within the rear garden of No.1 Marlborough Drive. The approved dwelling would be located within close proximity to the site boundary with No.1A Marlborough Drive to the north, which is a detached bungalow with hipped roof design. The dwelling would also be located adjacent to the side boundary of No.5 Beech Drive to the east. No.5 is set within a generous plot, with detached outbuildings located within a long rear garden which includes some mature vegetation. The site boundaries with these properties are defined by close board fencing.
8. With regard to condition 7, the dwelling has been approved without windows within the eastern elevation. The elevation which faces towards No.5 would be the rear elevation of the dwelling. Permitted development rights⁴ allow for the installation of windows within a rear elevation. Therefore, an unrestricted permission would allow windows to be inserted within this elevation.
9. A first-floor window would serve a bedroom, the very close proximity of the dwelling to the boundary with No.5 Beech Drive is such that the installation of a bedroom window would result in direct and uninterrupted views into the private garden space of that property at an unreasonably close distance.
10. At ground floor level, a window within the eastern elevation would serve the open plan kitchen/living area. As any ground floor window would relate to an open plan habitable room, I do not consider that it be treated as a less

¹ 06/2020/1420

² 06/2022/0031

³ 06/2022/0527

⁴ Contained within Schedule 2, Part 1, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

sensitive kitchen. Future windows would face towards the existing boundary fence. On my site visit, I observed that views were available over the existing fence from existing external ground levels. Furthermore, I note that internal floor levels would be marginally higher than the external ground level which would increase the likely visibility. While the fence would help to obscure some views into the garden, I consider that the height of the existing boundary immediately adjacent to the eastern elevation to be insufficient to wholly prevent overlooking should a ground floor window be installed. Again, this would be at such a close proximity to the garden space of No.5 that a window is likely to be noticeable and intrusive. As such, I cannot be satisfied that the impact on the living conditions of occupiers of No.5 would be acceptable without the condition.

11. I have had regard as to whether the condition ought to be amended to allow for windows with obscure glazing and non-opening above 1.7m from internal floor level. However, there would be no control over the size of an opening and, given the very close proximity to the site boundary, I consider that the installation of windows, even if obscure glazed, may result in the perception of overlooking. As such, I consider that it is necessary for the Council to retain control over any future changes to this elevation.
12. With regard to condition 9, a flat roof dormer has been approved within the southern roof-slope. The dormer includes windows which would serve two bedrooms and a bathroom. The windows would have direct views towards the side roof-slope of No.1A Marlborough Drive rather than towards its garden space or any principal openings. I am satisfied that the condition is not necessary to preserve the living conditions of the occupiers of No.1A.
13. A detached outbuilding is located at the bottom of the garden of No.5 Beech Drive. There is some dispute over the use of this building and whether it should be treated as a habitable room. It is understood from the occupants of that property that it is used as a home office and evidence has been presented as such. A study is identified as a habitable room within the Residential Extensions and Alterations Supplementary Planning Document (SPD). The SPD identifies that there is a requirement to achieve 21m between facing habitable rooms. The approved development from the easternmost bedroom window would not meet this standard. Nonetheless, I find that the presence of mature vegetation to the front of this building, along with the offset between the openings to be sufficient to ensure that living conditions within the home office would not be adversely affected.
14. As I have observed above, the dwelling would be sited in very close proximity to the site boundary and rear garden of No.5. The introduction of a roof dormer, at such close proximity, would have a palpable first floor presence when viewed from the garden space of No.5. The presence of which would be exacerbated by the introduction of the proposed windows. Despite the offset/windows facing away from the garden, given the close proximity and elevated position of the bedroom window, even angled views into the garden would result in unacceptable levels of overlooking towards No.5's amenity space to the detriment of the privacy of its occupiers. I acknowledge that there is some vegetation close to the site boundary and within the wider garden of No.5, however this is not so established or extensive to prevent clear views into large parts of the private garden that would arise. I find therefore that the condition is necessary to preserve the living conditions of the occupants of No.5

to protect occupants from being unduly overlooked. I consider also that the obscure glazing of the bathroom window is necessary to preserve the living conditions of future occupants of the granted development.

15. For the above reasons, I consider that the removal of conditions 7 and 9 would result in an unacceptable effect on the living conditions of the occupiers of No.5 Beech Drive, with particular regard to privacy. Therefore, the removal of conditions would result in a development which would be contrary to Policy AD1(a) of the adopted Preston Local Plan (Site Allocations and Development Management Policies) 2012-2026 (the PLP), saved Policy H8 of the Preston Local Plan (2004), and guidance contained within the SPD which, amongst other things, seek to protect the living conditions of the occupants of adjoining properties through loss of privacy.
16. The reason for condition 9 cites Policy EN9 of the PLP. This policy relates to design matters, and I do not find any conflict in this instance.

Other Matters

17. I have had regard to other matters raised relating to spacing distances with the main dwelling at No.5 Beech Drive, the 45-degree line and the presence of intervening structures. However, I have found the main issue in this instance relate to overlooking on the garden space. Therefore, I only afford adherence with SPD, in regards to these matters, little weight, which does not outweigh the adverse effect to living conditions of occupants of No.5 that I have identified.
18. The planning history for the site is one where the construction of a dwelling has evolved from permission granted for a domestic outbuilding. Therefore, I do not find the matters relating to Permitted Development rights for the installation of rear windows to be directly relevant. I do not consider that the consideration of a single storey detached outbuilding at No.5 Beech Drive to be directly comparable to the issues before me. I attach limited weight to these matters and, in any event, I have considered the appeal on its merits.
19. The conditions have been challenged on the grounds of not meeting the tests for necessity and reasonableness. However, I have found the conditions to be necessary and reasonable in order for the development to preserve the living conditions of the occupants of the neighbouring dwelling. I also find the conditions meet the other tests of relevance, enforceability, and precision.

Conclusions

20. For the above reasons, the removal of the conditions would result in a development which would conflict with the Development Plan. Therefore, the appeal is dismissed.

D Cleary

INSPECTOR