



Appeal Decision

Site visit made on 19 June 2023

by Elaine Gray MA, MSc, IHBC

an Inspector appointed by the Secretary of State

Decision date: 14 August 2023

Appeal Ref: APP/E2001/C/22/3304457

1 Butterfield Close, East Cowick, GOOLE, DN14 9EZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Ms Kerry Costello against an enforcement notice issued by East Riding of Yorkshire Council.
- The enforcement notice is dated 5 July 2022.
- The breach of planning control as alleged in the notice is failure to comply with conditions imposed on a planning permission ref 20/01915/PLF, granted on 7 September 2020.
- The development to which the permission relates is: Erection of a single storey extension to rear, installation of windows in gable to front and rear, installation of rooflights and raise roof pitch to allow loft conversion.
- The conditions in question are nos 4 and 5 which state that:
 - 4. The Velux windows to be created in the east and west elevation roof slopes shall be glazed in obscure glass and, with the exception of the escape window, shall be non-opening, before the development hereby approved is first brought into use, and shall not thereafter be altered without the prior express consent in writing of the Local Planning Authority. (Replacement of the glass with glass of an identical type would not necessitate the Council being notified.)

This condition is imposed in accordance with policy ENV1 of the East Riding Local Plan because the Local Planning Authority consider that if plain glass was to be used in this location, the amenities of the adjacent dwelling(s) would be adversely affected due to overlooking. NB. Obscure glazing to satisfy this condition should be a minimum of Pilkington Privacy Level 3 or equivalent.
 - 5. The development hereby permitted shall be carried out in accordance with the following approved plans: 201032/2 Proposed elevations, floor plan and sections received 13.07.2020. 201032/3 Proposed site plan received 13.07.2020.

This condition is imposed in accordance with policy ENV1 of the East Riding Local Plan and for the avoidance of doubt and to ensure that the development hereby permitted is carried out in accordance with the approved details in the interests of the character and amenity of the area and the provisions of the development plan.
- The requirements of the notice are: 1. Alter the Velux windows in the East and West elevation roof slopes so that they are: a. non-opening in perpetuity with the exception of the escape window (as identified on the photograph attached to the Notice as 'Appendix A – West elevation roof slope') which shall be opening; and, b. fitted with obscure-glazing in perpetuity, which obscure-glazing should be a minimum of Pilkington Privacy Level 3 or equivalent.
- The period for compliance with the requirements is 90 days.
- The appeal is proceeding on the ground set out in section 174(2)(b) of the Town and Country Planning Act 1990 as amended.

Decision

1. It is directed that the requirements paragraph of the notice be deleted in full, and the following text substituted for it: 'Alter the Velux windows in the east

and west elevation roof slopes so that they are fitted with obscure glass, to a minimum of Pilkington Privacy Level 3 or equivalent, in perpetuity.'

2. The appeal is dismissed and the enforcement notice, as corrected, is upheld.

Reasons

3. The challenge is that the breach of control alleged in the enforcement notice has not occurred as a matter of fact. In legal grounds of appeal, the standard is on the balance of probabilities. The planning merits of the case, whereby condition 4 was imposed to protect the amenities of the neighbouring residents, are outside the scope of the appeal. As there is no requirement in the notice to remedy the alleged breach of condition 5, I have not considered this element further.
4. The gist of the appellant's case is that she has taken all the necessary and reasonable steps needed to comply with the conditions attached to planning permission ref: 20/01915/PLF.

Obscure glazing

5. Condition 4 requires that the Veluxes 'shall be glazed in obscure glass'. The appellant states that all the Velux windows in question have been obscured to 'Pilkington Privacy Level 3 or equivalent' by the use of window privacy film.
6. I saw the film in place on my visit, and there can be little doubt that it serves the purpose of obscuring views from the windows. However, the Council are concerned about their ability to take enforcement action in future, in the event that the film was to be removed.
7. Ground (b) turns on facts alone. Therefore, even if one accepts that the film performs a similar function to obscure glazing, it is nonetheless the case that no obscure glass has been installed in the Velux windows. There is no provision within the wording of condition 4 for the substitution of obscure glass with obscure film applied to clear glass.
8. It is open to the appellant to seek to remedy her concerns through a different approach, for example, by making a new application to vary condition 4. However, it is apparent that at the date when the notice was issued, this particular matter alleged in the notice had in fact occurred.
9. To that extent, ground (b) must fail.

Opening of the Veluxes

10. The Council visited the appeal site on 31 August 2021, and found that the Velux windows were capable of being opened at that time. They have submitted a photograph of an open Velux, which was not the escape window, within the west elevation. The Council made a further visit on 23 March 2022, at which time they received assurances from the appellant that the windows had been screwed shut. However, they state that they became aware in May 2022 that a rooflight was being opened, in breach of the condition.
11. Key to the consideration of this matter is the exact wording used in condition 4, which is 'shall be non-opening'. In their statement of case, the Council indicate that now they require the windows to be 'incapable of being opened.' They do not elaborate on how this requirement is to be achieved. However, it is

reasonable to assume that this could only be achieved by installing new rooflights that comprised glazing fixed into frames, with no opening mechanism.

12. However, I have been provided with Drawing 201032/2, titled 'Dwelling as proposed', which is one of the approved plans listed in condition 5. This drawing specifies that Velux GGL C04 windows are to be used. The proposed Veluxes are shown with diagonal crossed lines, a drawing convention that indicates that they open by means of a centre pivot.
13. On this basis, the Council have therefore approved the use of Velux windows that are capable of opening. That being the case, there are no grounds now for the Council to insist that a different type of rooflight should be installed.
14. On my site visit, I saw that all the Velux windows, with the exception of the escape window, have been fixed shut by means of a screw in the corner of each frame. It seems to me that this method is sufficient to render them 'non-opening' for the purposes of condition 4. On this matter, I therefore find that no breach of condition has occurred.
15. To that extent, the appeal on ground (b) succeeds.

Conclusion

16. The appeal succeeds as it relates to the non-opening aspect of the rooflight windows, and I have directed that the enforcement notice be corrected accordingly.
17. Otherwise, the appeal is dismissed, and the enforcement notice, as corrected, is upheld.

Elaine Gray

INSPECTOR