

Appeal Decision

Site visit made on 14 August 2023

by Mr C J Tivey BSc (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th September 2023

Appeal Ref: APP/B1740/D/23/3323846

Riverside, Bath Road, Lymington, Hampshire SO41 3SE

- 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 Jonathan Clark against the decision of the New Forest District Council.
- The application Ref 22/11415, dated 14 December 2022, was refused by notice dated 14 April 2023.
- The application sought planning permission for a first floor side/rear extension without complying with conditions attached to planning permission Ref. 22/10345, dated 3 May 2022.
- The conditions in dispute are Nos. 2 and 3 which state:

2. The development permitted shall be carried out in accordance with the following approved plans:

- Dwg no. 101A Block and location plan, as submitted to NFDC on 22 March 2022
- Dwg no. 051 Proposed elevations, as submitted to NFDC on 22 March 2022
- Dwg no. 042 Proposed ground floor plan, as submitted to NFDC on 22 March 2022
- Dwg no. 044 Proposed first floor plan, as submitted to NFDC on 22 March 2022
- Dwg no. 045 Proposed roof plan, as submitted to NFDC on 22 March 2022; and

3. The first floor W.C. windows, as shown on the approved plans, on the south and west elevations of the of the extension shall in the first instance be:

- (i) obscurely glazed, and
- (ii) non-opening at all times unless the parts that can be opened are more than 1.7m above the floor,

and the windows shall be retained as such in perpetuity.

- The reasons given for the conditions are:
 - 2. To ensure satisfactory provision of the development; and
 - 3. To safeguard the privacy of the adjoining neighbouring properties in accordance with Policy ENV3 of the Local Plan 2016-2036 Part One: Planning Strategy for the New Forest District outside of the National Park.
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Decision

1. The appeal is allowed and planning permission is granted for a first floor side/rear extension at Riverside, Bath Road, Lymington, Hampshire SO41 3SE in accordance with the application Ref. 22/11415, made on the 14 December 2022 without complying with condition No. 3 as set out in planning Ref. 22/10345 granted on 3 May 2022 by the New Forest District Council, but otherwise subject to the following conditions:
 1. The development permitted shall be carried out in accordance with the following approved plans: Drg No: 31821-FE-03 (Location plan), Drg No: 31821-PL-02 (Floor plan) and Drg No: 31821-PL-01 (Elevations).
 2. The Juliet balcony railing shall be maintained in accordance with the submitted details and the flat roof section of the roof which it is adjacent shall not be used as a balcony, roof garden or similar amenity area without the grant of further specific permission from the Local Planning Authority.

Preliminary Matters

2. As set out above, planning permission was granted in 2022 for a first floor side/rear extension pursuant to Reference 22/10345. That planning permission was granted subject to 3no conditions: no 1 being the standard time limit for implementation and conditions 2 and 3 as described above.
3. The main differences between the original planning permission and the proposals that are before me pursuant to planning Ref. 22/11415 are: that a Juliet style balcony has been created within the roof void of the rearmost ground floor bedroom with associated remodelling to its design, giving rise to the creation of a smaller, high level window opening to the rear of the first floor shower room/WC; the addition of a new window opening to serve the shower room on the south eastern flank elevation of the first floor extension; and a reduction overall in the internal depth of the shower room, thereby creating a wheelchair turning circle adjacent to 2no clear glazed windows on the same elevation.
4. I noted on my site visit that the development was substantially complete and it had been constructed in accordance with the revised drawings and that the resultant shower room windows were obscurely glazed with a form of film.

Main Issue

5. The main issue is whether the non-compliance with conditions 2 and 3 of planning permission 22/10345 would protect the living conditions of the occupants of neighbouring residential properties in respect of privacy.

Reasons

6. As noted by the Officer in their report to the Council's Planning Committee, the most obvious difference from the previously permitted scheme, was the removal of a section from the roof of the existing single storey rear extension in order to facilitate the formation of the Juliet balcony. Having inspected the appeal property internally, I noted that views are afforded from the bifold glass doors that have been installed, although only oblique views from these to the

- rear gardens of the residential properties immediately either side would be afforded, with privacy maintained for their immediate rear sitting out areas.
7. I note the Council's concerns that the flat roof section that has been created could potentially be used as a roof terrace, however this can be controlled by the imposition of an appropriately worded planning condition. Furthermore, a window had been previously approved in this location to serve the dining room and therefore I consider that any increase in overlooking from this part of the appeal property would not be material.
 8. With regard to the matter of obscure glazing to the windows serving the shower room, the modifications to the internal layout of the property mean that the doorway and associated stud work serving this room do not segment the pair of casements that already existed on the south-west elevation facing Waterford Cottage. As condition no3 only required the WC windows to be obscurely glazed, the forward most casement was not required to be such.
 9. Bearing this in mind, the fact that the pair of windows serve an internal circulation area, as opposed to a habitable room per se, and due to intervening vegetation I consider that no material increase in overlooking or consequent loss of privacy would be caused to the occupants of Waterford Cottage. The same vegetation also screens views from the aforementioned obscured side WC window. Further, these windows are on the opposite elevation to the dwelling known as Ferry View and therefore they would have no impact on the residential amenities of the occupants of that property in any case.
 10. I therefore find that the proposed changes to the windows and increase in un-obscured glazing would not result in an unacceptable level of overlooking or additional sense of perceived overlooking. Therefore, the privacy of the occupiers of neighbouring dwellings would be protected, provided that the flat roof section is not used as some form of external amenity space. I conclude that the proposal complies with Policy ENV3 of the New Forest District Local Plan 2016 – 2036 Part 1: Planning Strategy (2020) in that the development would achieve high quality design that, amongst other things, avoids unacceptable effects by reason of overlooking or other adverse impacts on residential amenity.

Other Matters

11. As the proposal is in a Conservation Area and lies within the setting of a Listed Building, Waterford Cottage, I have had special regard to sections 66 (1) and 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
12. Waterford Cottage is Grade II listed and comprises a brick, painted two storey Georgian property with a high attention to detail to the main range fronting the road, including brick string courses, timber sliding sash windows and a hipped slate roof; to the rear it is of a more modern appearance with replacement windows having been installed. Taking into account the wide variety in architecture within the rear garden scene of Bath Road whereby properties have been altered and extended over time, in many cases in a contemporary manner, I find that the proposal does not detract from the setting of the Listed Building and would preserve the character and appearance of the Kings Saltern Conservation Area as a whole.

Conditions

13. I have had regard to the replacement conditions recommended by the Council if I was minded to allow the appeal. For the reasons given I consider that it is not necessary to protect the living conditions of the occupiers of adjacent residential properties from overlooking due to the oblique views from the windows and intervening vegetation.
14. I do however consider it necessary to prevent the flat roof area from being utilised as a balcony, roof terrace or similar external amenity area as such a use could be far more intrusive to the residential amenities of the area.
15. It is also necessary to re-impose a revised version of condition no2 with the new drawing numbers the subject of this minor material amendment.

Conclusion

16. For the reasons set out above and having regard to all other matters raised, I conclude that the appeal should succeed and I grant a new planning permission with conditions as set out above.

C J Tivey

INSPECTOR