



Appeal Decision

Site visit made on 30 October 2023

by J Reid BA(Hons) BArch(Hons) RIBA

an Inspector appointed by the Secretary of State

Decision date: 13th November 2023

Appeal Ref: APP/C3810/W/23/3317622

Lintels, Bilsham Road, Yapton, West Sussex BN18 0JB

- 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 Gary Poston against the decision of Arun District Council.
- The application Ref Y/127/22/PL, dated 11 October 2022, was approved on 6 January 2023 and planning permission was granted subject to conditions.
- The development permitted is "Change of use of existing garage to 1 No 3 bed dwelling, separate to the main dwelling, including side extension. This site is in CIL Zone 2 and is CIL Liable as new dwelling."
- The condition in dispute is No 3 which states that: All windows above ground floor level on the north-western (rear) elevation of the building shall be glazed with obscured glass and non-opening below 1.7m from finished floor level. The windows shall remain non-opening and obscure glazed in perpetuity.
- The reason given for the condition is: To protect the amenities and privacy of the adjoining property in accordance with Policy D DM1 of the Arun Local Plan.

Decision

1. The appeal is allowed and the planning permission Ref Y/127/22/PL for "Change of use of existing garage to 1 No 3 bed dwelling, separate to the main dwelling, including side extension. This site is in CIL Zone 2 and is CIL Liable as new dwelling." at Lintels, Bilsham Road, Yapton, West Sussex BN18 0JB granted on 6 January 2023 by Arun District Council, is varied by deleting condition 3 and substituting for it the following condition:
 - 1) Notwithstanding the details given on the approved plans, the dwelling hereby permitted shall not be occupied until all parts of the first floor rear (north west) facing windows that are less than 1.7 metres above the finished floor level of the rooms in which they are installed have been fitted with obscured glazing, and no part of those windows that is less than 1.7 metres above the finished floor level of the room in which it is installed shall be capable of being opened. Details of the type of obscured glazing shall be submitted to and approved in writing by the local planning authority before the windows are installed and once installed the obscured glazing shall be retained as approved thereafter.

Reasons

2. Paragraph 55 of the National Planning Policy Framework (Framework) explains that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions. The Framework and Planning Practice Guidance (PPG) add that planning conditions should be kept to a minimum and only imposed where they are, amongst other things, necessary. So, the main issue is whether condition 3 is necessary to

protect the living conditions of the occupiers at 69 and 71 Foundry Road regarding privacy.

3. The appeal site includes the south west part of the grounds of the dwelling at Lintels and the existing detached garage, which includes an attic store in its side gabled roof space with a clear glazed rooflight in its rear facing roof slope. The site adjoins the proposed grounds of Lintels to roughly north east, the ends of the lengthy back gardens of the dwellings at 69 and 71 Foundry Road to roughly north west, and the drive to the well set back garage of the bungalow at Little Oaks to roughly south west.
4. The back of the development permitted (appeal dwelling) would include a side extension of similar form and height to the garage, which would fill much of the space between the garage and the proposed boundary with Lintels, and a slightly projecting rear gabled upper floor roof extension as tall as the existing ridge. The rear facing upper floor windows would include 2 dormer windows in the main roof slope and a window in the gable end of the roof extension.
5. The ground by the back of the site is a little above the level by the back of the appeal dwelling, and a fence up to 2 m tall could be acceptable by the common boundary with the back gardens at 69 and 71 Foundry Road. As some degree of mutual overlooking would reasonably be expected within the built up area, due to its distances and relationships with the backs of the dwellings at 69 and 71 Foundry Road, the overlooking that could occur from the appeal dwelling's rear facing upper floor windows would not cause a harmful loss of privacy in the rooms in the backs of those homes. However, the far ends of back gardens are often the parts where occupiers expect to enjoy the most privacy, and due to the rear facing rooflight's cill height, the back gardens at 69 and 71 Foundry Road can barely be overlooked from the garage.
6. The windows in the rear facing dormers would be a similar distance from the site's back boundary as the present rooflight, but the rear facing bedroom 2 window in the roof extension's gable end would be closer. The future occupiers could use any of the bedrooms for other purposes, such as a study or hobbies room, so those rooms could be occupied for significant parts of each day. Due to the shallow depth of the appeal dwelling's back garden, and the distances and relationships between the appeal dwelling's upper floor rear facing windows and the back gardens at 69 and 71 Foundry Road, the overlooking that could occur would cause a significant loss of privacy for those adjoining occupiers in most of their back gardens.
7. As the planting and/or sheds near the ends of those back gardens could not be relied upon to endure in the long term, their partial screening effect attracts little weight. So, the appeal dwelling would be contrary to Policy D DM1 of the Arun Local Plan 2011-2031 (LP) which aims to avoid a significant loss of privacy, the thrust of the guidance in the Arun District Design Guide Supplementary Planning Document (SPD), and the Framework which seeks a high standard of amenity for existing and future users.
8. However, if the lower parts of the rear facing upper floor windows were to be obscure glazed and fixed shut, the appeal dwelling would not cause an unacceptable loss of privacy for the occupiers of the back gardens at 69 and 71 Foundry Road. So, a condition along the lines of condition 3 would be necessary to make the otherwise unacceptable development acceptable.

9. The obscured glazing in the lower parts of the rear facing upper floor windows would have little effect on the natural light received within the master bedroom (bedroom 1), and bedrooms 2 and 3, and the upper parts of all 3 rear facing upper floor windows could be clear glazed and openable. Bedrooms 1 and 3 would include openable clear glazed windows in the front facing dormers, and if necessary other measures, such as mechanical ventilation, could supplement the natural ventilation in bedroom 2, so there would be ample ventilation in all 3 bedrooms for the occupiers' wellbeing. The outlook from the upper part of bedroom 2's window could include the sky, and the obscured glazing in the lower part would not prevent the room from being used mainly for sleeping. Future occupiers seeking an outlook from bedroom 2 could choose whether they occupy the dwelling.
10. The upper floor windows in the backs of Lintels, Whitebricks, Rosemead and Fairview, are to varying extents similarly close to the back gardens of other dwellings in Foundry Road. However, as they would appear to predate current Development Plan policy, they provide little support for removing the condition.
11. As condition 3 would require all of the glazing in the rear facing windows to be obscured, it would not be reasonable. So, condition 3 should be removed and it should be replaced with a less onerous condition. The Council's suggested alternative condition has been re-worded in the light of the guidance in PPG.
12. Therefore, I consider that the replacement condition is necessary to protect the living conditions of the occupiers of 69 and 71 Foundry Road regarding privacy. It is necessary to enable the development permitted to satisfy LP Policy D DM1, guidance in the SPD, and the Framework. As the replacement condition satisfies the other 'tests' in Framework paragraph 56 and PPG, I shall remove condition 3 and impose the replacement condition.

Conclusion

13. With the replacement condition, the development permitted would satisfy the Development Plan when taken as a whole, and the other considerations in this case, including the Framework, do not indicate a determination otherwise.
14. For the reasons given, the appeal should succeed. I will vary the planning permission by deleting the disputed condition and substituting another.

J Reid

INSPECTOR