



Appeal Decision

Site visit made on 27 September 2023

by H Wilkinson BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20TH November 2023

Appeal Ref: APP/B1930/W/23/3316626

12 Wheatfield Road, Harpenden, Hertfordshire AL5 2NY

- 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 Steven Jallport against the decision of St Albans City Council.
 - The application Ref 5/22/1976, dated 4 August 2022, was refused by notice dated 22 November 2022.
 - The application sought planning permission for a replacement dwelling without complying with a condition attached to planning permission Ref 5/19/0422, dated 9 August 2019.
 - The condition in dispute is No 4 which states that: *'The upper floor side facing windows and roof lights to be created facing towards numbers 10 and 14 Wheatfield Road shall be glazed in obscured glass and shall be non-opening below a height of 1.7 metres taken from internal finished floor level. The windows shall not thereafter be altered in any way without the prior written approval of the Local Planning Authority'.*
 - The reason given for the condition is *'to maintain the privacy of adjoining residents. To comply with Policy 72 of the St. Albans District Local Plan Review 1994'.*
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Decision

1. The appeal is allowed and planning permission is granted for a replacement dwelling at 12 Wheatfield Road, Harpenden, Hertfordshire, AL5 2NY in accordance with the Ref 5/22/1976, made on the 4 August 2022 without complying with conditions Nos 1, 3, 4, 5 and 6 set out in planning permission Ref 5/19/0422 granted on 9 August 2019 by St Albans City Council, but otherwise subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - 05/18-P1, 05/18-P4, 05/18- P6 and 05/18-P7, 05/18-P8 and 05/18-P9 and B5 (First floor plan as proposed).
 - 2) Except for the roof lights in the first-floor gym/leisure room facing No 10 Wheatfield Road, the upper floor side windows and roof lights facing towards No 10 and No 14 Wheatfield Road shall be glazed in obscured glass and shall be non-opening below a height of 1.7 metres taken from internal finished floor level. The windows and roof lights shall thereafter be retained as such.

Preliminary Matter

2. I observed at my site visit that the replacement dwelling has been constructed. This would appear to be as shown on the plans accompanying the 2019 application. However, the roof lights installed in the first-floor gym/leisure room (above the integral garage) facing No 10 Wheatfield Road (No 10) open

below a height of 1.7 metres. Opaque frosting has been retrofitted to the glazing. The development is therefore in breach of condition 4.

3. The appeal relates specifically to the roof lights in the first-floor gym/leisure room. Therefore, in determining the appeal, I have focused my consideration on these openings and my assessment has been informed by my observations at the time of my visit.

Main Issue

4. The main issue is whether the condition is reasonable or necessary to maintain adequate living conditions for the occupants of No 10 with particular regard to privacy.

Reasons

5. The appeal site comprises a spacious plot which is occupied by a detached property. The integral garage lies adjacent to the shared boundary with No 10 and includes an open plan living area at first floor level which is currently used as a gym/leisure room. This space is served by a front and rear dormer window together with roof lights in the side elevation.
6. No 10 also includes accommodation above the garage. There are two, slimline roof lights in the side elevation of No 10 which are clearly glazed and capable of opening. The representation submitted by the interested party indicates that these openings serve a bathroom and are the only source of natural light and ventilation for this room.
7. I viewed the neighbouring property from within the first-floor gym/leisure room with the roof lights both fully open and closed. At the time of my visit, the roof lights in No 10 were closed. From within the first-floor gym/leisure room there are unobstructed views towards the roof lights in the side elevation of No 10. However, even when stood close to the internal wall with the roof light fully open, views into No 10 were extremely limited due to the size of the neighbouring openings, their positioning within the roof slope relative to the appeal roof lights and the intervening distance. Indeed, only the most upper part of the room was visible, and I was not able to view any internal facilities. When closed, the opaque frosting prohibited views into No 10. Nevertheless, it is reasonable to assume that without the opaque frosting the level of visibility would not be any greater than when fully open. Based on these observations, I do not consider there is any harmful overlooking of the neighbouring property.
8. Accordingly, I find that the disputed condition in so far as it requires the first-floor roof lights in the gym/leisure room facing No 10 to be obscurely glazed and non-opening below a height of 1.7 metres is neither reasonable nor necessary to maintain adequate living conditions for the occupants of No 10 with particular regard to privacy. The development without the condition would not unacceptably affect the living conditions of the adjoining property and would provide a tolerable level of visual privacy. It would therefore accord with saved Policies 70 and 72 of the St. Albans District Local Plan Review 1994. It would also be consistent with the National Planning Policy Framework where it seeks to secure a high standard of amenity for existing users.

Conditions

9. The Planning Practice Guide indicates that, to assist with clarity, decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original permission, unless they have already been discharged. In this case, it is the conditions attached to the 2019 permission which are relevant.
10. As I observed at my site visit, the replacement dwelling has been constructed and is occupied. Therefore, it is not necessary to impose the standard time condition. However, in the interests of certainty, I have imposed a condition requiring adherence to the approved plans. The Council's delegated report sets out that details in relation to materials and landscaping works have been approved. Therefore conditions 3 and 5 are no longer necessary.
11. There is mature landscaping within the appeal site including planting within the site frontage, which the appellant indicates was planted in accordance with the landscaping scheme approved by the Council. Based on the evidence, I have no reason to doubt this. I am also advised by the appellant that additional planting will take place shortly as part of a County wide scheme. Notwithstanding this, I am satisfied that the soft landscaping which I saw on site is sufficient. As such, it is not necessary to re-impose a condition requiring the implementation of the agreed landscaping.
12. Condition 4 restricts all the upper floor windows and rooflights in the side elevations facing No 10 and No 14 Wheatfield Road. However, for the reasons set out above, I have not considered the other openings. Consequently, I cannot conclude that condition 4 is no longer necessary or relevant to these other openings. Therefore, in the interests of suitable living conditions, a condition restricting these openings is necessary.

Conclusion

13. For the reasons given above I conclude that the appeal should succeed, and I shall exercise the powers transferred to me accordingly. I will grant a new planning permission without the disputed condition but will substitute this as set out above. I will restate the undisputed approved plan condition that is still subsisting and capable of taking effect.

H Wilkinson

INSPECTOR