



Appeal Decision

Site visit made on 31 October 2023

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd November 2023

Appeal Ref: APP/V3120/W/22/3302779

131 Ock Street, Abingdon OX14 5DL

- 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 Mrs Sue Read against the decision of Vale of White Horse District Council.
 - The application Ref P21/V0557/FUL, dated 27 January 2021, was refused by notice dated 16 May 2022.
 - The application sought planning permission for change of use from shop to 2 flats, with minor internal and external alterations.(as amended by additional information on drainage received 1 February and amended plan received 22 February 2017) without complying with conditions attached to planning permission Ref P16/V3116/FUL, dated 13 March 2017.
 - The conditions in dispute are:
Condition 2, which states that: That the development hereby approved shall be carried out in accordance with the details shown on the following approved plans, 16069.2, 16069:03, 16069.1 and 16069:04A, and submitted documents, except as controlled or modified by conditions of this permission.
Condition 5, which states that: The bedroom window on the west elevation shall be installed with a sill height of not less than 1.7 metres above the finished floor level of the room in which it is fitted and shall be retained as such.
 - The reasons given for the conditions are:
Condition 2: To secure the proper planning of the area in accordance with Development Plan policies.
Condition 5: To protect the privacy of adjacent dwellings (Policy DC9 of the Local Plan 2011).
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Decision

1. The appeal is allowed and planning permission is granted for change of use from shop to 2 flats, with minor internal and external alterations.(as amended by additional information on drainage received 1 February and amended plan received 22 February 2017) without complying with conditions attached to planning permission Ref P16/V3116/FUL, dated 13 March 2017 at 131 Ock Street, Abingdon OX14 5DL in accordance with the application Ref P21/V0557/FUL, dated 27 January 2021 and subject to the following conditions:
 - 1) The development hereby approved shall be completed in accordance with the following approved drawings: 21003.1, 21003.2, 21003.3R (as shown on Ground Floor Plan As Constructed) and 21003.4R (as shown on Side Elevation As Constructed).

- 2) Unless within 3 months of the date of this decision, the part of the window annotated as: 'This side window to be obscure glazed' as shown on: 'Side Elevation As Constructed' on approved drawing: 21003.4R is fitted with obscured glass and permanently retained thereafter, the occupancy of the flat which this room serves shall cease until such time as this condition is complied with.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 3) The bathroom window annotated as 'non habitable room' on the west elevation, as shown on: 'Side Elevation As Constructed' on approved drawing: 21003.4R shall be retained as a obscured glazed window for the life of the development hereby approved.

Preliminary Matter

2. A third party has suggested that the drawings before me are incorrect. However, these were considered acceptable by the Council and the application was determined on this basis. Moreover, for the purposes of my Decision, these drawings show the approved and proposed alterations which are relevant to this appeal. I have proceeded with the appeal on this basis.

Background and Main Issue

3. Planning permission was granted in March 2017¹ ('the original permission') for the conversion of the ground floor shop unit into 2 flats. One flat was to be accessed directly from Ock Street ('Flat A') and one from the side passageway which provides access to the rear of the site as well as rear access to the neighbouring residential property known as 133 Ock Street. This property is also Grade II Listed.
4. The 'original permission' was granted on the basis that the ensuite and separate toilet windows for Flat A would be obscured glazed and the bedroom window would be high-level to ensure there was no unacceptable overlooking into the side facing kitchen/dining room window ('the kitchen window') of 133 Ock Street.
5. Condition 5 of the original permission specifies a requirement for the high-level bedroom window.
6. As part of the new application², the appellant is seeking to 'vary' Condition 2. This is to substitute the approved drawings with amended drawings. The amended drawings include a change from the approved high level bedroom window for a larger double pane window, changing the ensuite to a single pane window instead of double pane and removing the windows from the toilet and the living room altogether. These changes have largely been undertaken.
7. The Council asserts that the implementation of the new bedroom window as shown on the submitted plans would result in overlooking and loss of privacy for the occupiers of 133 Ock Street, specifically in relation to the kitchen window.

¹ Ref P16/V3116/FUL

² Ref P21/V0557/FUL

8. The other changes, including glazing to the door of the other flat at 133 Ock Street, are considered acceptable to the Council. I have also noted these and have no reason to disagree.
9. The proposal also seeks the discharge of Conditions 6 and 7 of the original permission. These require that provision is made for the covered storage of bicycles (Condition 6) and storage of refuse and recycling (Condition 7) on site prior to the occupation of the approved dwellings. Other than the provision of these storage facilities, no further details are required to be discharged. The Council has no objection to the location and nature of the facilities provided on site. I have also considered these and I am satisfied that the facilities provided meet the requirements of these conditions.
10. Accordingly, the main issue is whether Conditions 2 and 5 of the original permission are necessary and reasonable to safeguard the living conditions of the occupiers of 133 Ock Street.

Reasons

11. The bedroom window is split vertically and comprises a fixed pane and an opening section. At the time of my visit most of this window was obscured by a plastic film fixed internally to the glazing. As part of the proposal, only the fixed section of this window is to be obscured glazed.
12. When standing in the bedroom of Flat A, views towards the kitchen window at 133 Ock Street are available. Nevertheless, the range of views are restricted from a limited section of the bedroom and only from part of its window, which is also the part furthest from the kitchen window. For these reasons and because the bedroom window is off set relative to the kitchen window, the extent of any intervisibility and overlooking between these is limited.
13. Furthermore, Flat A incorporates a sizeable and separate living, dining and kitchen area. As a consequence of this arrangement, it is likely that the bedroom would be in use for limited times and usually in the evenings when the occupiers are most likely to make use of curtains or blinds.
14. Also, because the side passageway provides access to the rear of the site and is used by the occupiers of 131 Ock Street, there is some incidental overlooking already associated with the kitchen window.
15. Therefore, and whilst there would be some overlooking as a consequence of the proposed arrangement, given the site-specific circumstances, I do not consider that this would unacceptably or significantly harm the living conditions of the occupiers of 133 Ock Street with regard to loss of privacy. In reaching this conclusion, I am mindful that the appeal site is in a built-up urban area where some degree of overlooking is not uncommon.
16. Consequently, the 'varying' of Condition 2 of the original permission to allow the amended drawings would be acceptable. Accordingly, Condition 5 of the original permission is not necessary.
17. Consequently, I find no conflict with Policy DP23 of the Council's adopted Local Plan 2031 - Part 2, which says development proposals should demonstrate that they will not result in significant adverse impacts on the amenity of neighbouring uses when considering both individual and cumulative impacts in relation to amongst other things loss of privacy.

Other Matters

18. Because the appeal site is adjacent to the listed building, it forms part of its setting. Under the original permission, the design and materials of the approved scheme were considered acceptable with regard to the setting of the listed building. The proposal does not significantly alter the approved design and materials, so as to cause any harm to the setting of the listed building.
19. I have limited information about previous planning permissions relating to the appeal site. In any event, these are beyond the remit of this appeal which is to only consider the disputed conditions and not a complete re-consideration of the original proposal. Therefore, any matters relating to access, traffic, parking and the maintenance of any communal areas/facilities are not before me. Any breaches in respect of previous planning approvals and any subsequent approval are for the Council.
20. Concerns about odours emanating from the refuse and recycling storage facilities can be dealt with through other legislation, such as environment health legislation.
21. Although the original permission was negotiated on the basis of the high-level bedroom window, I have considered the proposal before me on its merits and found this to be acceptable.

Conditions

22. Condition 1 of my Decision replaces Condition 2 on the original permission and includes the amended drawings. This is necessary in the interests of certainty.
23. In respect of any other conditions on the original permission, the Planning Practice Guidance makes clear that when granting planning permission under section 73A of the Act they should be repeated on decision notices unless they have already been discharged. In this case Condition 1 of the original permission relates to the time-limit for implementing it. As the original development has been started, it is not necessary for me to impose this condition.
24. Condition 3 of the original permission says: 'The development shall be built using only the external materials specified on the forms and/or shown on the approved drawings the subject of this planning permission, unless otherwise agreed in writing by the Local Planning Authority.' Because the development has been substantially completed and the Council has not raised any concerns about the overall external appearance of this, Condition 3 is not necessary.
25. Condition 4 of the original permission requires that the shower and WC windows on the west elevation be glazed with obscured glass and retained as such. The shower and WC now comprises a bathroom which is served by a single obscured glazed window. Having visited the appeal site, I find the quality of the obscured glazing of this window acceptable. Nonetheless, my Condition 2 requires that the bathroom window is retained with obscured glazing for the life of the development.
26. Condition 3 of my Decision requires that the bedroom window is, in part, fitted with obscured glass and also retained thereafter. Conditions 2 and 3 are necessary to safeguard the living conditions of neighbours with regard to loss of privacy.

27. As already stated, Conditions 6 and 7 of the original permission do not require discharging and because the required facilities are now provided on site. These conditions are not necessary.
28. Because the appeal property comprises flats it does not benefit from the permitted development rights usually afforded to a dwellinghouse. As such, it is not necessary to impose a condition removing such rights.
29. Where necessary and in the interests of clarity and precision, I have altered the conditions to better reflect the relevant guidance.

Conclusion

30. For the above reasons, I conclude that the appeal should be allowed.

M Aqbal

INSPECTOR