



Appeal Decision

Site visit made on 12 October 2023

by **P Storey BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 16 January 2024

Appeal Ref: APP/W4515/W/23/3327026

33A Gerrard Road, Whitley Bay, Tyne and Wear NE26 4NJ

- 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 Mrs Janet Hemingway against the decision of North Tyneside Council.
 - The application Ref 23/00607/FUL, dated 9 May 2023, was approved on 4 July 2023 and planning permission was granted subject to conditions.
 - The development permitted is described on the decision notice as:
Variation of condition 1 of planning approval 22/01420/FULH. Position of kitchen window to be moved along existing wall
Condition Number(s): Condition 1 Conditions(s) Removal: position of kitchen window is being moved along the existing wall PO-20-100 Rev B.
 - The condition in dispute is No 3, which states that:
Notwithstanding any other details shown on the plans hereby approved, within 3 months of the date of this consent the ground floor east facing kitchen window facing towards 33 Gerrard Road shall, up to a minimum height of 1.7 metres above finished floor level, be fixed shut (without any opening mechanism) and glazed in obscure glass to a Level 3 or above. The windows(s) shall thereafter be retained as such.
 - The reason given for the condition is:
In the interests of the amenity of neighbouring properties having regard to policy DM6.2 of the North Tyneside Local Plan (2017).
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Decision

1. The appeal is allowed and the planning permission Ref 23/00607/FUL described on the decision notice as "Variation of condition 1 of planning approval 22/01420/FULH. Position of kitchen window to be moved along existing wall Condition Number(s): Condition 1 Conditions(s) Removal: position of kitchen window is being moved along the existing wall PO-20-100 Rev B." at 33A Gerrard Road, Whitley Bay, Tyne and Wear NE26 4NJ, granted on 4 July 2023 by North Tyneside Council, is varied by deleting condition No 3.

Preliminary Matters

2. An update to the National Planning Policy Framework (the Framework) was published on 19 December 2023 but there are no material changes relevant to the substance of the appeal.
3. The appellant's name was spelled differently on the planning application and appeal forms. The appellant has confirmed that the name given on the appeal form is correct and this has been used in the banner heading above.

Main Issue

4. The main issue is whether the disputed condition is necessary and reasonable in terms of safeguarding the living conditions of the occupiers of the neighbouring property at No 33 Gerrard Road, with specific regard to the privacy of the side-facing kitchen window of No 33.

Reasons

5. Nos 33 and 33A Gerrard Road comprise an adjoining pair of semi-detached bungalows. Both dwellings feature rear projections which retain a gap to the shared side boundary and contain windows facing each other.
6. The planning permission to which the appeal relates was granted as an amendment to an extant planning permission, to include a repositioned window on the side elevation of the rear projection of No 33A facing No 33. Prior to the works taking place, it is understood that the windows directly faced one another. The planning permission to which the appeal relates granted consent to block up the former window and install a new window further to the rear, offset from the kitchen window of No 33, subject to the disputed condition that it would be fixed shut and obscure glazed up to a height of 1.7 metres above the finished floor level. At the time of my visit the window was in situ as per the approved plans, albeit featuring clear glazing.
7. A close-boarded fence topped with an open trellis runs along the shared side boundary. Whilst part of the trellis features planting that would have screened views between the two pre-existing windows, a gap in the planting allows direct views between the two existing windows. When viewed from inside No 33A the window of No 33 is visible from a standing position. Due to the partial boundary screening, these views are greatly reduced from a sitting position.
8. The window sits towards the rear corner of a room comprising an open-plan kitchen and living area. Due to the offset position of the corresponding windows, the kitchen window of No 33 is only visible from the rearmost part of the room.
9. Kitchen activities would be expected to primarily take place from a standing position, thereby affording more elevated views. However, the window is positioned within the living area where the space is more likely to be used for sitting and relaxing. As such, whilst the neighbouring window of No 33 is visible from some parts of the room, given its likely usage, the potential for prolonged overlooking is limited. Moreover, even acknowledging that the garden area sits slightly lower than the internal floor level, given the likely uses, the potential for overlooking from the window would be broadly comparable to that from the garden area.
10. I acknowledge that the neighbouring occupier should not be expected to mitigate harm from development on adjacent land. However, such relationships between ground floor windows on neighbouring properties are commonplace. Without boundary treatment, the pre-existing arrangement would have afforded direct views between the two windows. Furthermore, the level of overlooking would be broadly comparable to that already available from the garden. As such, having unobscured outlook from the repositioned window would not worsen the situation.

11. Based on my findings above, I find no substantive evidence that the disputed condition is necessary to prevent harm to the living conditions of the occupiers of the neighbouring property of No 33 Gerrard Road. As such, I do not find the continued imposition of the condition to be necessary or reasonable when assessed against the tests outlined in paragraph 56 of the Framework and the Planning Practice Guidance (the PPG).

Conclusion

12. For the reasons given above, condition No 3 is not necessary or reasonable to safeguard the living conditions of the occupiers of the neighbouring property, and its continued imposition would conflict with paragraph 56 of the Framework and the PPG. I therefore conclude that the appeal should be allowed, and the planning permission is varied to delete condition No 3.

P Storey

INSPECTOR