



Appeal Decision

Site visit made on 3 January 2024

by C Carpenter BA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 January 2024.

Appeal Ref: APP/M3645/W/23/3321100

Barnfield, Lunghurst Road, Woldingham, Surrey CR3 7EJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Stephen Parry against the decision of Tandridge District Council.
 - The application Ref TA/2022/1119, dated 18 October 2022, was refused by notice dated 13 December 2022.
 - The application sought planning permission for "Demolition of existing dwelling. Erection of dwelling and detached double garage" without complying with a condition attached to planning permission Ref TA/2015/1000, dated 4 September 2015.
 - The condition in dispute is No 6 which states that "Before the development hereby approved is first occupied the first floor window in the east elevation serving the master bedroom (as shown on the drawing numbered 13/1156-03 Rev D), shall be obscure-glazed and non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed and shall be permanently maintained as such."
 - The reason given for the condition is "To protect the amenities and privacy of occupiers of adjoining properties in accordance with Policy CSP18 of the Tandridge District Core Strategy 2008 and Policy DP7 of the Tandridge Local Plan: Part 2 – Detailed Policies 2014."
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The National Planning Policy Framework (the Framework) was updated in December 2023, during the course of this appeal. However, other than paragraph numbering, the wording on amenity for users of development has not changed. Therefore, I am satisfied no party would be disadvantaged by not having the opportunity to comment on the new Framework.
3. There is an emerging Tandridge Local Plan 2033. I am not aware of the exact stage it has reached, the extent of unresolved objections or whether its policies will be considered as consistent with the Framework. Consequently, in accordance with paragraph 48 of the Framework, I give it limited weight.

Main Issue

4. The main issue is whether condition No 6 is necessary to protect the living conditions of neighbouring occupiers, with particular reference to privacy.

Reasons

5. Lunghurst Road runs along a high ridge overlooking the valley below. The land falls away steeply towards the valley, so some other residential streets nearby are at a considerably lower level. The appeal site is a backland plot, which slopes down from its border with Lunghurst Road towards its boundary with the residential properties below it on Slines Oak Road. The master bedroom window that is the subject of the disputed condition is on the elevation of the house that overlooks the valley. This elevation is very close to the rear boundary with the Slines Oak Road properties, which have relatively large, sloping rear gardens.
6. The marked difference in levels between the house at Barnfield and the adjoining properties on Slines Oak Road is such that, even without restricted opening and obscured glazing, there would be little scope for direct views from the master bedroom window into the windows of the neighbouring houses. However, the topography means there would be considerable visibility from the master bedroom window across much of the rear gardens of several of these dwellings if the restrictions secured by condition No 6 were removed. The occupiers of the dwellings on Slines Oak Road would be overlooked, or would perceive that they were overlooked, to a degree that would constrain their ability to use their gardens for sitting out and private relaxation. This would harm their living conditions.
7. There is some planting along the property boundaries, but this provides only partial screening for some of the gardens, including only partial screening for the garden of Byron House directly below Barnfield. Even in summer months when more foliage would be present, and even if all the planting were mature, this would not fully mitigate the overlooking and resulting harm to the living conditions of neighbouring occupiers in several houses.
8. I have considered the appellant's photograph No 5, which is described as having been taken through the opening of the window that is the subject of this appeal. Given that window cannot currently open below a height of 1.7 metres, the photograph does not show everything that would be seen were the restricted opening and obscured glazing to be removed. Consequently, the photograph does not provide sufficient evidence to demonstrate an absence of harm to the living conditions of the occupiers of Byron House. In any event, were condition No 6 to be removed, the window would overlook several other rear gardens. Moreover, I am not persuaded that someone looking out of the window would just look across the valley without also looking down at the gardens below, given their proximity.
9. I accept there is a rear-to-rear separation distance of at least 40 metres between Barnfield and Byron House, which is much more generous than the minimum distance of 22 metres specified for most circumstances in Policy DP7 of the Tandridge Local Plan Part 2: Detailed Policies 2014 (TLP2). It is also more generous than most of the other nearby examples brought to my attention by the appellant.
10. Nevertheless, Policy DP7 states that this distance may need to be increased where sites are sloping and, in this instance, there is a high degree of sloping. Most of the other examples cited are in parts of Woldingham where there is a less marked topographical difference between the dwellings in question. Even in the other example provided of dwellings on Lunghurst and Slines Oak Roads, the houses are closer to the junction of the streets so are more aligned in level than Barnfield and its neighbours. Consequently, the circumstances in these other examples are not sufficiently like those in this appeal to be directly comparable.
11. I acknowledge a degree of mutual overlooking in residential settlements is common. However, each set of circumstances must be considered on its own

merits. In this instance, the circumstances are such that the degree of overlooking would be unacceptable for the reasons given.

12. The appellant has brought the planning history of the site to my attention. I have reviewed the information before me about each of these planning decisions. I note that permission for a two-storey house at Barnfield was granted in 2011¹ and the design underwent modest amendments through three later permissions². I accept that each iteration of the design included a master bedroom window in broadly the same location as the one now subject of this appeal. I acknowledge there was little material change to relevant national policies during this period. As regards the development plan, TLP2, which includes Policy DP7 referred to above, was adopted in 2014 prior to the 2015 consent.
13. From the evidence before me, it appears that a condition like the one now in dispute was first imposed on the 2013 permission, apparently by the planning committee that made the decision. I do not have a record of the committee meeting before me so cannot be certain what was discussed or the context leading to imposition of this condition. Be that as it may, the planning committee as decision-maker had the power to impose a condition it considered necessary even if it was not recommended in the officer report. The reason for the condition is clearly stated in the 2013 decision notice.
14. Therefore, I am not persuaded on the evidence before me that there had been no material change in circumstances between the 2011/2012 decisions and the 2013 decision, such that the imposition of the condition in 2013 was not justified. Moreover, decision-makers reconsidered the issue in 2015, having regard to Policy DP7 of TLP2, and again decided the condition was necessary. In any event, I am required to consider this appeal on its individual merits, having regard to the evidence before me. This evidence includes my own assessment on site.
15. For the above reasons, I conclude that condition No 6 is necessary to protect the living conditions of neighbouring occupiers, with particular reference to privacy. This is in accordance with Policy DP7 of TLP2; and with Policy CS18 of the Tandridge Core Strategy 2008 and Policy L1 of the Woldingham Neighbourhood Plan 2016, which require development to have regard to the topography of the site and not significantly to harm the amenities of the occupiers of neighbouring properties. It is also in accordance with the Framework, which requires a high standard of amenity for existing users of development.

Conclusion

16. I therefore dismiss the appeal.

C Carpenter

INSPECTOR

¹ Permission reference TA/2011/1039 dated 27 September 2011

² Permission references: TA/2012/1001 (19 October 2012); TA/2013/1432 (15 November 2013); TA/2015/1000 (4 September 2015).