



Appeal Decision

Site visit made on 23 January 2024

by A Wright BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 February 2024

Appeal Ref: APP/H2265/W/23/3319018

44 Hopgarden Road, Tonbridge, Kent TN10 4QT

- 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 Ms E Greenfield against the decision of Tonbridge and Malling Borough Council.
 - The development originally permitted under Ref TM/21/01950/FL described as "Proposed three storey side with part two storey extension and single storey rear extension. Replacement windows and replacement of existing tile hanging and vertical timber cladding with weatherboard" was granted approval by notice dated 7 October 2021 subject to conditions.
 - The subsequent application Ref TM/22/02327/NMA for a non material amendment to planning permission TM/21/01950/FL to impose a new condition worded thus: The development hereby permitted shall be carried out in accordance with the following approved plans and details: 6957/1/B received 12.07.2021, 6957/EX received 12.07.2021, 6957/LBP received 12.07.2021, Statement received 12.07.2021 was granted approval by notice dated 17 November 2022 subject to this condition.
 - The current application Ref TM/22/02623/FL, dated 28 November 2022, sought amendments to planning permission TM/22/02327/NMA for condition 1 to be re-worded so that approved drawing no. 6957/1/B is replaced by drawing no. 6957/22/1. This was granted approval by notice dated 27 January 2023 subject to conditions.
 - The condition in dispute is No 4 which states that: "The first-floor rear (east) elevation door as shown on drawing no. 6957/22/AB shall be removed and replaced with first floor rear window as shown on drawing no. 6957/22/1 within six months of the date of this permission."
 - The reason given for the condition is: "To prevent the roof of the extension being used as a terrace or balcony in the interests of neighbouring amenity."
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Decision

1. The appeal is allowed and the planning permission Ref TM/22/02623/FL for the Section 73 application to vary condition 1 of planning application TM/22/02327/NMA (Non Material Amendment to planning permission TM/21/01950/FL to impose a new condition worded thus: The development hereby permitted shall be carried out in accordance with the following approved plans and details: 6957/1/B received 12.07.2021, 6957/EX received 12.07.2021, 6957/LBP received 12.07.2021, Statement received 12.07.2021) at 44 Hopgarden Road, Tonbridge, Kent TN10 4QT granted on 27 January 2023 by Tonbridge and Malling Borough Council is varied by deleting condition 4 and by deleting condition 1 and substituting it for the following condition:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans and details: 6957/EX received 12.07.2021,

6957/LBP received 12.07.2021, 6957/22/AB received 18.01.23 and Statement received 12.07.2021.

Preliminary Matters

2. My decision above uses the description from the decision notice as this accurately reflects what has been applied for, even though the descriptions used in the banner heading reflect the contents of the relevant application forms.
3. Various plans have been provided associated with this and the earlier applications. The proposal¹ sought to re-word condition 1 to replace drawing 6957/1/B with drawing 6957/22/1, which involved some changes to the ground floor rear extension. However, drawing 6957/22/AB was submitted during the current application and compared to drawing 6957/22/1, it shows a similar ground floor rear extension, a smaller rear dormer and a first-floor rear glazed double door instead of a window. I have limited evidence of consultation on drawing 6957/22/AB, but as it shows works as built and interested parties clearly responded on this basis, I am satisfied that my consideration of it would not cause prejudice to them. To clarify, I have determined the appeal having regard to the drawings listed in conditions 1 and 4 of planning permission ref TM/22/02623/FUL.
4. The National Planning Policy Framework (the Framework) was revised in December 2023. As the changes do not materially affect the main issues in this case, the parties have not been invited to make further comments.

Background and Main Issue

5. Planning permission was granted (application ref TM/22/02623/FL) for an amendment to planning permission ref TM/22/02327/NMA involving changes to the approved drawings, subject to five conditions. The appellant is seeking the removal of condition 4 set out in the banner heading above. The condition was imposed 'to prevent the roof of the extension being used as a terrace or balcony in the interests of neighbouring amenity'. The main issue is the effect that removing condition 4 would have on the living conditions of the neighbouring occupiers with particular regard to privacy.

Reasons

6. The site comprises a two-storey semi-detached dwelling with a rear dormer in a predominantly residential area. The house has a single storey rear extension which lies close to the mutual boundary with 42 Hopgarden Road. The extension has a large projecting roof window on its flat roof and low side parapet walls. The door which is the subject of this appeal has been installed on the first-floor rear façade, behind and above the ground floor extension.
7. There is concern that the glazed double door could be used to facilitate the use of the flat roof as a balcony by the occupiers of the appeal property, especially given the height of the side parapet walls, causing overlooking of neighbouring gardens and bedrooms, and disturbance to the occupiers of nearby properties.
8. However, the large internal step up from the room floor to the door base and the internal safety rail across the whole door width prevents easy access to the

¹ Application ref TM/22/02623/FL, 'the current proposal/application', granted 27 January 2023.

roof by the occupiers of the appeal property. In addition, due to the size of the projecting roof window on the ground floor extension, there is limited space for the potential use of the roof as a balcony. Further, although a previous application (ref TM/22/01052/FL) included the provision of a rear balustrade, this was refused, and the current proposal does not include a rear safety wall or barrier.

9. The constrained nature of the roof access, the limited size of the useable roof space and the absence of a rear barrier make the use of the flat roof extension as a balcony impractical and unsafe. In addition, condition 3 of the planning permission, which prevents the use of the flat roof as a roof terrace/balcony sitting out area, would still apply. Therefore, the requirement to replace the door with a window is not necessary or reasonable to prevent the extension being used as a terrace or balcony. It thus follows that the current proposal in the absence of condition 4 would not cause harmful overlooking of or undue disturbance to the occupiers of neighbouring properties from occupants of the appeal dwelling.
10. The Council states that condition 4 was imposed to require the implementation of the proposed change from a large opening/double door (shown in drawing 6957/22/AB) to a smaller opening/window in the approved proposed plans (shown in drawing 6957/22/1) and that the timescale for the implementation of this was justified. However, as the appellant submitted drawing 6957/22/AB during the current application and this forms part of the approved plans under condition 1, it is reasonable to consider the disputed condition on this basis.
11. Consequently, I conclude that condition 4 is not reasonable or necessary in the interests of the living conditions of the neighbouring occupiers with particular regard to privacy.

Other Matters

12. Third parties raise concerns that the development has not been built in accordance with previously approved plans. However, this is beyond the scope of an appeal against condition 4 and would be a matter for the Council to consider separately.
13. Neighbours are concerned about the location of gutters which could lead to water flowing into their property, but the proposed removal of condition 4 would have no effect on this, which remains a civil rather than a planning matter.

Conditions

14. As a consequence of removing condition 4, the reference to plan 6957/22/1 in condition 1 should be deleted as it shows a different scheme to that outlined in drawing 6957/22/AB. The appellant has agreed to this change.

Conclusion

15. For the reasons given above, I conclude that the appeal should be allowed and I shall vary the planning permission by deleting condition 4 and by deleting and substituting condition 1.

A Wright INSPECTOR