



Appeal Decision

Site visit made on 5 February 2024

by R Major BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 February 2024

Appeal Ref: APP/W4223/W/23/3324535

113 Broadway, Chadderton, Oldham OL9 0EL

- 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 Alex Bardi against the decision of Oldham Metropolitan Borough Council.
 - The application Ref MMA/349676/22, dated 22 September 2022, was refused by notice dated 18 May 2023.
 - The application sought planning permission for first floor side and rear extension and a single storey rear extension without complying with a condition attached to planning permission Ref HOU/347611/21, dated 21 February 2022.
 - The condition in dispute is No 2 which states that: *The development hereby approved shall be fully implemented in accordance with the Approved Details Schedule list on this decision notice. Schedule list: Drawing Number - A102*
 - The reason given for the condition is: *For the avoidance of doubt and to ensure that the development is carried out in accordance with the approved plans and specifications.*
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. I note the name of the appellant has been spelt differently on the planning application form and the appeal form. The name of the appellant in the above banner heading is taken from the planning application form.
3. I observed on my site visit that the door shown on drawing number A104 has been installed within the side elevation of the first-floor extension, I shall thus consider it on that basis.
4. Furthermore, I also observed on my site visit that timber panels had been erected around the flat roof area situated above the single storey element to the rear of the appeal property. These panels are not however shown on the proposed plan but are referred to by the appellant within their submission. The Council made its decision against the proposed plan, and I have dealt with the appeal on the same basis.
5. Subsequent to the Council issuing its decision the revised National Planning Policy Framework (the Framework) was published on 19 December 2023 and updated on 20 December 2023. The amendments to the Framework do not affect the matters that are in dispute in the determination of this appeal. Where reference is made to the Framework in this decision, the paragraph numbers are those that appear in the latest version.

Background

6. Planning permission¹ was approved for a first-floor side and rear extension, and a single storey rear extension. This permission included a condition requiring the development to be undertaken in accordance with the approved plans. These extensions have been constructed on site.
7. However, the first-floor rear extension, as built, includes a door with a narrow obscurely glazed panel, in the north facing first-floor side elevation, facing towards No. 111 Broadway. This door leads out onto a flat roof area above a single storey element located to the rear of the property and was not shown on the approved plans. The appellant therefore seeks retrospective consent to retain this door and has submitted a variation of condition application to vary the approved plans.

Main Issue

8. The Council's decision notice includes two reasons for refusal. However, these reasons fundamentally relate to the same issue. As such, the main issue is the effect of the revised design upon the living conditions of the occupiers of No. 111 Broadway (No. 111), with regard to privacy, noise and disturbance.

Reasons

9. The appeal relates to a semi-detached dwelling fronting onto Broadway. The appeal property is adjoined by No. 115 Broadway to the south, and directly to the north is the semi-detached dwelling at No. 111. To the rear the appeal property has a garden area and beyond this are the rear garden areas of the semi-detached dwellings fronting onto Mora Avenue. The rear garden of the appeal property is enclosed by concrete post and timber panel fencing.
10. When the first-floor level door is closed, due to its solid form and narrow obscurely glazed panel, it does not allow views outside the bedroom that it serves. However, when the door is open, and if occupiers were to stand at the doorway, it would allow views toward the neighbouring property at No. 111, and elevated views into this neighbour's rear garden area.
11. Furthermore, the door facilitates access to a flat roof area above an existing single storey section of the appeal dwelling, and therefore allows this flat roof area to be used as a roof terrace. When stood on this roof terrace occupiers of the appeal property have a clear and elevated view into almost the whole of the rear outdoor amenity space of No. 111, thus resulting in a loss of privacy for the neighbouring occupants.
12. I acknowledge that there is an existing level of intervisibility between the appeal property and some parts of the rear outdoor amenity space of No. 111, through windows in the first-floor rear elevation of the appeal property. However, the door and roof terrace, as a result of their location close to the shared boundary, provide a significantly greater level of overlooking than that experienced from these existing windows.
13. Furthermore, the provision of the roof terrace results in an area on which the occupiers of the appeal property could spend a considerable amount of time

¹ HOU/347611/21

either standing or sitting out on, and this would result in a greater degree of sustained overlooking than would occur from a window.

14. The Council's first reason for refusal also states that the door and roof terrace overlook the neighbouring property at No. 111's bathroom window. I observed on site that this side opening bathroom window is obscurely glazed and is not visible from the installed doorway. This bathroom window is however visible from the roof terrace. Nevertheless, it is not set directly in line with the roof terrace and therefore given the oblique angle between the roof terrace and this bathroom window the relationship is acceptable, even when this window is open.
15. In respect of noise and disturbance, I note that owing to its elevated position, any noise from the roof terrace may project above the neighbouring boundary treatment. Nonetheless, the roof terrace is modest in size, and whilst it could accommodate a small group of people, due to its size and being accessed from a bedroom rather than living room, it is unlikely that such events with non-resident guests would be a regular occurrence. Furthermore, similar noise and disturbance issues can currently arise from the use of the rear garden area at ground level.
16. In view of the above, I conclude that the revised design, which includes a door at first-floor level providing access to a roof terrace, would have a significant impact on the living conditions of the occupiers of the neighbouring property at No. 111 by way of overlooking and loss of privacy. The proposal would therefore conflict with Policy 9 of the Oldham Local Development Framework Development Plan Document – Joint Core Strategy and Development Management Policies (2011), which seeks to ensure, amongst other things, that development does not cause significant harm to the privacy of neighbouring occupants. Furthermore, the proposal is also considered contrary to paragraph 135(f) of the Framework, which seeks to ensure a high standard of amenity is provided for existing users.

Other Matters

17. The appellant states that the door has been installed to provide fresh air into the bedroom, which becomes very hot due to the low roof height. I have limited evidence that the installation of a door in the side elevation is the only means to achieve fresh air within this bedroom and therefore I attribute this benefit limited weight.
18. I note the appellant has referred to the security benefits, and reduced levels of overlooking, resulting from the timber panels erected around the roof terrace. However, as detailed earlier these timber panels are not shown on the proposed plans and do not form part of my consideration of the appeal proposal.
19. As such, the benefits outlined by the appellant are not sufficient to outweigh the significant detrimental effect upon the neighbouring occupiers living conditions, and therefore do not alter my views or lead me to determine the appeal other than in accordance with the development plan.

Conclusion

20. The proposal conflicts with the development plan taken as a whole and there are no material considerations to justify a decision otherwise than in accordance

with the development plan. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

R Major

INSPECTOR