



Appeal Decision

Site visit made on 30 January 2024

by N Bromley BA Hons DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th February 2024

Appeal Ref: APP/J3720/W/23/3327734

Ty Ni, Hall Lane, Harbury, Warwickshire CV33 9HG

- 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 Scott Chiles against the decision of Stratford-on-Avon District Council.
 - The application Ref 23/00264/VARY, dated 6 February 2023, was refused by notice dated 5 June 2023.
 - The application sought planning permission for two storey side and rear extensions without complying with a condition attached to planning permission Ref 20/01549/FUL, dated 16 June 2020.
 - The condition in dispute is No 5 which states that: The flat roof of the extension hereby permitted shall not be used as a balcony, elevated platform, or roof garden or similar amenity area without the submission and subsequent approval of a separate application for planning permission.
 - The reason given for the condition is: To safeguard the privacy of the occupants of the adjacent properties and of the development hereby approved in accordance with Policy CS.9 of the adopted Stratford-on-Avon Core Strategy (2011-2031).
-

Decision

1. The appeal is allowed and planning permission is granted for two storey side and rear extensions at Ty Ni, Hall Lane, Harbury, Warwickshire, CV33 9HG in accordance with the application Ref 23/00264/VARY dated 6 February 2023 without compliance with condition number 5 previously imposed on planning permission Ref 20/01549/FUL, dated 16 June 2020, and subject to the following conditions;
 - 1) Within three months of the date of this decision a fixed and permanent glass balustrade shall be installed to the outside of the double doors of the master bedroom to create a Juliet balcony on the rear elevation of the dwelling at first floor level, as shown on plan reference 3921-01A. The glass balustrade shall thereafter be retained fixed in position as such.
 - 2) The single full height window at first floor level on the rear elevation of the dwelling that serves the master bedroom shall be permanently fixed shut and non-opening, as shown on plan reference 3921-01A. The window shall thereafter be retained as such.
 - 3) The flat roof of the single storey rear extension shall at no time be used as a roof terrace, balcony or sitting out area.

- 4) No domestic paraphernalia other than artificial grass and the planters, shown on plan reference 3921-01A, shall be situated or installed onto the flat roof of the single storey rear extension at any time.

Preliminary Matters

2. The Government published a revised National Planning Policy Framework (the Framework) on 19 December 2023 and updated on 20 December 2023. Those parts of the Framework most relevant to this appeal have not been amended. As a result, I have not sought submissions on the revised Framework, and I am satisfied that no party's interests have been prejudiced by taking this approach.
3. At the time of my site visit, I observed that the flat roof of the single storey rear extension to the appeal dwelling was laid with artificial turf and planters have been positioned around the edge of the roof, but they have not been filled with soil or foliage. I have dealt with the appeal on this basis.

Background and Main Issue

4. Ty Ni is an extended semi-detached cottage set amongst existing neighbouring residential dwellings that front Hall Lane in the rural settlement of Harbury. The appeal site falls outside of the Harbury Conservation Area boundary, which abuts the front boundary.
5. Planning permission has been granted for two-storey side and rear extensions and includes a single storey flat roof extension at the rear. The disputed condition 5 of the planning permission restricts the use of the flat roof so that it is not used as a balcony, elevated platform, or roof garden or similar amenity area; this is required for privacy reasons. The appellant seeks to replace this condition with one that allows the flat roof to be retained as a roof garden but not used as a terrace, sitting out area or for any other purpose connected to the occupation of the main dwelling house.
6. The main issue therefore is the effect that varying the disputed condition would have on the living conditions of the occupiers of Laurel Cottage, with regard to privacy.

Reasons

7. The flat roof to the single storey rear extension has direct access from the master bedroom of the property via a set of double doors, with moveable metal balustrade on the outside. There is also a single full height window that serves the master bedroom above the flat roof. The roof has no external stairs or other method of permanent access to it from the dwelling or the outdoor areas of the property.
8. Given its position, the use of the flat roof as a roof garden would increase the potential for overlooking into the neighbouring windows of Laurel Cottage, including the rear conservatory. There would also be views over the neighbouring gardens of properties either side.
9. The proposal is for a glass balustrade to be permanently installed to the external wall outside of the patio doors to the master bedroom, which would prevent direct access to the flat roof from the master bedroom.

10. Maintenance of the artificial grass and foliage within the planters could be achieved from ground level with use of a watering lance and/or a ladder. This would be less convenient than direct access to the roof from the master bedroom and would suitably deter the occupiers from accessing the roof regularly, or other than for occasional maintenance purposes. Likewise, the property has a large, well maintained, private rear garden area which provides an attractive area for the occupiers of the property to sit and enjoy. For these reasons the occupiers are unlikely to use the flat roof as a roof terrace, balcony or sitting out area if access to it from the master bedroom is restricted.
11. Direct access to the flat roof would only be required on occasional instances, such as general maintenance and tending to the planters. Therefore, I am satisfied, on the evidence before me that the flat roof is unlikely to be used as a roof terrace, balcony or sitting out area and that the occasional maintenance of planting and artificial grass would not lead to unacceptable levels of overlooking of any neighbouring properties. However, suitably worded planning conditions would ensure that the flat roof is not accessible from first floor level, and these would meet the six tests, including being enforceable, as required by paragraph 56 of the Framework.
12. Accordingly, I conclude that the variation of condition 5 would not unacceptably harm the living conditions of the occupiers of Laurel Cottage, with regard to privacy. As such it would not conflict with Policy CS.9 of the adopted Stratford-on-Avon Core Strategy (2011-2031), which amongst other things, seeks to ensure development provides a good standard of amenity for occupiers of neighbouring buildings that does not result in a loss of privacy.
13. As I have found that the proposed variation of condition would not harm the privacy of any neighbours, there would be no interference with the qualified rights for respect for private and family life and the protection of property under Article 8 and Article 1 of the First Protocol, respectively, of the European Convention on Human Rights as set out in Schedule 1 of the Human Rights Act 1998.

Other Matters

14. The Council considers that the planters and artificial turf are acceptable with regards to the character and appearance of the surrounding area. Having considered the development and visited the site, I concur and find that the appeal proposal would not harm the character and appearance of the surrounding area or the setting of the nearby Harbury Conservation Area.
15. The watering and tendering of the planters would not require regular access to the flat roof and would not therefore result in undue disturbance to neighbouring occupiers, their pets, or wildlife. In addition, damage to neighbouring properties from watering the planters on a regular basis, as well as the health and safety concerns in relation to the planters during adverse weather, which I have been referred to, are private matters which fall outside the scope of this appeal.

Conclusion and Conditions

16. For the reasons given, and having regard to all matters raised, the appeal is allowed. I shall grant a new planning permission without the disputed condition

and shall insert a new condition confirming that the flat roof extension shall at no time be used as a roof terrace, balcony or sitting out area.

17. The standard time limit condition is not necessary because the development has already commenced. Furthermore, as the development appears to have been completed, conditions relating to external materials and sustainability measures incorporated into the design of the development are also not necessary. A condition which prevents further domestic paraphernalia on the roof, other than the artificial grass and planters, as shown on plan reference 3921-01A, is necessary and would restrict the use of the roof.
18. For the same reason and to protect the living conditions of neighbouring occupiers, a condition which secures a fixed and permanent glass balustrade on the outside of the double doors of the master bedroom, as shown on plan reference 3921-01A, is necessary. This should be installed within three months of the decision and retained thereafter. In addition, the single full height window that serves the master bedroom above the flat roof should be permanently fixed shut and non-opening.

N Bromley

INSPECTOR