



Appeal Decision

Site visit made on 20 February 2024

by B J Sims BSc (Hons) CEng MICE MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th February 2024

Appeal Ref: APP/J1860/D/3329996

Stanway, 176 Pickersleigh Road, Malvern, Worcestershire, WR14 2QX.

- 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 A Vella against the decision of Malvern Hills District Council.
- The application Ref M/23/00605/HP, dated 27 April 2023, was refused by notice dated 30 June 2023.
- The application sought planning permission for development described as "*Renovation of existing three bedroom dwelling, to include conversion of the existing loft to provide an extra bedroom. First floor extension to rear with single storey extension to rear of dwelling to create new kitchen and utility*" without complying with two conditions attached to planning permission Ref M/22/00380/HP, dated 31 May 2022.
- The conditions in dispute are Nos 2 and 6, which state that:

Condition 2

Unless where required or allowed by other conditions attached to this permission/consent, the development hereby approved shall be carried out in accordance with the information (including details on the proposed materials) provided on the application form and the following plans.

Approved Plan Numbers:

*1036.01.0001, 1036.02.0001, 1036.02.1101, 1036.02.1103
1036.02.1104, 1036.02.1501, 1036.02.1502, 1036.02.5102*

Condition 6

Before the first occupation of the building(s) hereby permitted the windows on the rear elevation at the first and second floor levels as shown on the proposed plans (drawing numbers 1036.02.1103, 1036.02.5102 & 1036.02.1502) shall be fitted with Pilkington Level 4 obscured glazing or equivalent and shall be permanently retained in that condition thereafter.

- The reasons given for the conditions are:

Condition 1

To define the permission.

Condition 6

To protect the amenities of adjoining properties from unacceptable overlooking in accordance with policy SWDP21 of the South Worcestershire Development Plan.

Decision

1. The appeal is allowed and planning permission is granted for renovation of existing three bedroom dwelling, to include conversion of the existing loft to provide an extra bedroom, first floor extension to rear with single storey extension to rear of dwelling to create new kitchen and utility, at Stanway, 176 Pickersleigh Road, Malvern, Worcestershire, WR14 2QX, in accordance with the application Ref M/23/00605/HP, dated 27 April 2023, without compliance with conditions numbers 2 and 6 previously imposed on planning permission Ref M/22/00380/HP, dated 31 May 2022, and subject to the conditions set out in the Schedule of Revised Conditions appended to this Decision.

Procedural Matters

1. The Appellant is discontent with the conduct of the application by the Council but this appeal provides for an entirely fresh and independent appraisal of the case.
2. During my site visit I observed the view from the first floor windows of the rear extension and also viewed the rear of the appeal building from the back garden of No 1 Hayslan Road, next door.

Current Circumstances, Scope of Appeal and Main Issue

3. The appeal house is unoccupied but the permitted renovation and extension works are well under way with the first floor rear window, the subject of the disputed Condition 6 of the original approval, currently fitted with clear glazing.
4. The scope of this appeal is limited to the main issue of whether the obscure glazing, required by the disputed Conditions 2 and 6 before first occupation of the approved rear extension, is necessary to prevent overlooking from the first floor, such as to cause unacceptable loss of privacy at the neighbouring dwelling, No1 Hayslan Road.
5. For the avoidance of doubt, this appeal cannot affect the original permission in any other way and its approval creates a new permission to be read alongside the original permission.

Reasons

6. The Appellant specifies that this appeal seeks approval for clear glazing to the first floor window of the approved extension by a variation to Condition 6 and a consequent modification to Condition 2, nominating the relevant drawings, amended accordingly.
7. The Council is less concerned with overlooking of No 1 Hayslan Road in present circumstances than would be the case if, in the future, intervening outbuildings within the curtilage of that neighbouring property were to be removed.
8. The Council relies upon adopted guidance that any first floor window facing a boundary with another property should be no less than 10m distant from that boundary, in order to protect the privacy of neighbours. That guidance is material to the present appeal but it is the real planning effect of allowing clear glazing in the window concerned that is the determining factor.
9. The new first floor window is some 8.5m from the shared boundary with 1 Hayslan Road, less than the recommended 10m and, according to the Council,

closer than any previous window. In strict terms this, in itself, counts against the approval now sought. However, on inspection, it is clear that an observer at the window in question could see into only a small part of the back garden of No 1 Hayslan Road with the existing intervening outbuildings in place. I do not consider that this would cause an unacceptable loss of privacy in present circumstances.

10. Clearly, if those ancillary buildings were to be removed at some future time, which would not require planning permission, the degree of overlooking would be increased. It is important, therefore, to consider the degree of likelihood of that such an event might occur.
11. The outbuildings in question seem to be of relatively robust construction and reasonably well maintained, with no apparent likelihood of their being removed in the immediate future.
12. There is some prospect that those outbuildings might be removed at some time during the remaining life of their permanent host dwelling. This would result in increased overlooking from the new first floor rear window of the appeal house with consequent unacceptable loss of privacy.
13. However, the owners of No 1 Hayslan Road would undertake such alterations to their property in the knowledge of the implication of such action for their privacy and would have the option to replace the buildings or otherwise provide alternative means of screening.
14. Overall, I consider that the present level of screening afforded by the outbuildings is most unlikely to be removed in the foreseeable future. Notably, the present owners or occupiers of No 1 have raised no objection to the present proposal.
15. Further, I recognise that the appeal site is located in an urban residential area where a certain amount of overlooking is to be expected and that it is undesirable for the new bedroom to be subject to obscure glazing to its only window.
16. On balance, I have reached the conclusion that such potential for unacceptable overlooking and loss of privacy as exists in this case is insufficient to warrant substantive planning objection.
17. Therefore, with respect to neighbouring amenity, the proposal for the approved development to proceed without complying with the disputed Conditions 2 and 6 is to be regarded as compliant with the relevant Design Policies SWDP21.B.iv of the adopted South Worcestershire Development Plan and Policy MD.1.A.2 of the made Malvern Town Neighbourhood Plan, both of which are consistent with national policy in the National Planning Policy Framework.
18. In light of every matter raised in the written representations, including by a local resident, the present proposal to vary the disputed conditions attracts no other objection relevant to this appeal and, accordingly, the proposal complies with the development plan taken as a whole. This appeal should therefore be allowed, subject to conditions revised as proposed.

B J Sims

INSPECTOR

APPENDIX

SCHEDULE OF REVISED CONDITIONS

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To conform with the requirements of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. Unless where required or allowed by other conditions attached to this permission/consent, the development hereby approved shall be carried out in accordance with the information (including details on the proposed materials) provided on the application form and the following plans:

Approved Plan Numbers

1036.01.0001,
1036.02.0001,
1036.02.1102B,
1036.02.1103
1036.02.1104,
1036.02.1501,
1036.02.1502B,
1036.02.5102

Reason: To define the permission.

3. Prior to the first use/occupation of the development hereby permitted, the details set out in the submitted Water Management Statement shall be fully implemented and remain thereafter

Reason: To ensure that an appropriate sustainable drainage system is provided to serve the development in accordance with policy SWDP29 of the South Worcestershire Development Plan 2016.

4. No development shall take place until a percolation test has been carried out in accordance with BRE Digest 365, or such other equivalent guidance as may be agreed in writing by the Local Planning Authority. The results of the percolation test shall be submitted to and agreed in writing by the Local Planning Authority. If the percolation test results show that ground conditions are unsuitable for some, or all, types of infiltration device then an alternative method of surface water disposal will need to be submitted for approval. The agreed recommendations shall be implemented in full prior to the first occupation of the development.

Reason: To ensure that the site can be adequately drained.

5. The proposed stone to be used in the construction of the external surfaces of the proposed rear extensions hereby permitted shall match in type, colour and texture to those used in the existing building.

Reason - To ensure that the new materials are in keeping with the surroundings and represent quality design in accordance with policy SWDP21 of the South Worcestershire Development Plan.

6. Before the first occupation of the building(s) hereby permitted the window on the rear elevation at the second floor level, as shown on the proposed plans (drawing numbers 1036.02.5102B and 1036.02.1502B) shall be fitted with Pilkington Level 4 obscured glazing or equivalent and shall be permanently retained in that condition thereafter.

Reason: To protect the amenities of adjoining properties from unacceptable overlooking in accordance with policy SWDP21 of the South Worcestershire Development Plan

7. The Development hereby approved shall not be occupied until an area has been laid out within the curtilage of the dwelling for the parking of 3 cars at a gradient not exceeding 1 in 8. This area shall thereafter be retained for the purpose of parking a vehicle only.

Reason: In the interests of highway safety and to ensure the free flow of traffic using the adjoining highway.