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# Appeal Decision

Site visit made on 27 February 2024

**by Hannah Ellison BSc (Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 2nd April 2024**

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**Appeal Ref: APP/W4223/W/23/3314004**

**2 Thornley Rise, Manchester Road, Greenfield, Oldham OL3 7FZ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr David O'Driscoll against the decision of Oldham Council.
- The application Ref is MMA/350017/22.
- The application sought planning permission for the variation of conditions 2 (approved plans) and 3 (materials) to PA/342925/19 for a development of 5 no. dwellings, without complying with conditions attached to planning permission Ref MMA/345170/20, dated 17 September 2020.

The conditions in dispute are Nos 2 and 11 which state that:

*(2) The development hereby approved shall be fully implemented in accordance with the following approved plans and specifications:*

*Drawing no.100D, Drawing no.100.1*

*House Type 1 - Plots 1 and 2: Drawing no. 01-P-01, Drawing no. 01-P-02, Drawing no. 01-P-03*

*House Type 2 Rev. B - Plot 3: Drawing no. 201 A, Drawing no. 202 A, Drawing no. 203 B, Drawing no. 204 B, Drawing no. 205 B*

*House Type 3 - Plot 5: Drawing no. 301, Drawing no. 302 A, Drawing no. 303 A, Drawing no. 304 A, Drawing no. 305 A*

*House Type 2A - Plot 4: Drawing no. 401, Drawing no. 402, Drawing no. 403, Drawing no. 404, Drawing no. 405*

*(11) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), all windows indicated on the approved plans to be obscurely glazed to Pilkington level 5 shall be installed in accordance with that specification prior to first occupation of the dwelling to which the window(s) relates, and such glazing shall be retained at all times thereafter.*

- The reasons given for the conditions are:

*(2) For the avoidance of doubt and to ensure that the development is carried out in accordance with the approved plans and specifications.*

*(11) In order to protect the amenity of neighbouring properties and the appearance of the area in general having regard to policies 9 and 20 of the Oldham Local Plan.*

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## Decision

1. The appeal is dismissed.

## Preliminary Matter

2. In the interests of certainty, I have taken the site address above from the planning application form.

## **Background and Main Issue**

3. The application which this appeal seeks a variation of is MMA/345170/20 (the variation permission), which itself was a variation to conditions 2 and 3 of application PA/342925/19 (the original permission), conditions which concerned the plans list and materials. This original permission concerned the demolition of the former dwelling at 149a Manchester Road and the proposed development of 5 dwellings.
4. The variation permission allowed for elevational changes including the fitting of obscure glazing to bedroom no 2 of the appeal dwelling, which is the subject of this appeal.
5. Condition 2 of the variation permission sets out the approved plans. Of particular relevance to this appeal are those concerning house type 2A, which related to Plot 4 of the original permission and is the appeal dwelling.
6. Condition 11 of the variation permission set out the requirement for all the windows which were indicated on the approved plans to be fitted with obscure glazing to be installed prior to first occupation of the dwelling to which they relate and retained thereafter as such.
7. Through this appeal the appellant seeks to vary both conditions. A variation of condition 2 is sought so as to show transparent glazing in the rear facing, first floor window on the approved plans for plot 4 (the appeal dwelling). In the event that condition 2 is varied, condition 11 would no longer have relevance to the window with which this appeal is concerned thus it would not be necessary to vary it in any way.
8. Therefore, the main issue is the effect that varying condition 2 would have on the living conditions of occupiers at 149 Manchester Road, with particular regard to privacy.

## **Reasons**

9. The appeal dwelling has a very close relationship to the rear garden of No 149 by virtue of the restricted depth of the host property's garden. Clear glazing in the concerned first floor window would provide for views into some windows of No 149 as well as most parts of its garden, including the area closest to its rear elevation. This is an area which would typically be well used for sitting out in good weather, being a patio area close to habitable rooms. I note that the reason for requiring obscure glazing in the variation permission was to protect the living conditions of neighbouring occupiers.
10. I do however acknowledge that mature, coniferous trees are located along the shared boundary which currently provide a good degree of screening. This may increase should the trees continue to grow. Nevertheless, as the trees are within the garden of No 149 their retention cannot be controlled and reliance cannot therefore be placed on them as a source of screening, irrespective of their purported dense coverage qualities.
11. There are no specific details before me regarding landscaping which could be introduced to the appeal site thus I cannot make a full assessment. Further, I am also concerned that the introduction of landscaping may, itself, result in harm to the living conditions of occupiers of No 2, particularly given the

restricted depth of the appeal garden. The lack of evidence in this respect fails to demonstrate otherwise.

12. I have only been provided with very limited information on the other examples in which windows were permitted in close proximity to neighbouring properties. I cannot therefore ascertain the full context behind them or determine their relevance. I do however note that one was a certificate of lawfulness for a single storey extension and the other appeared to concern a window overlooking the front garden of a property. Front gardens are not comparable spaces to rear gardens in terms of useability and privacy, irrespective of the degree of landscaping which may have been in place in this instance. As such, I afford these examples limited weight.
13. Accordingly, varying condition 2 would result in harm to the living conditions of occupiers at 149 Manchester Road and thus would conflict with Policy 9 of the Oldham Local Development Framework, Development Plan Document – Joint Core Strategy and Development Management Policies (November 2011) (the CS). This policy aims to ensure that development does not cause significant harm to the amenity of existing and future neighbouring occupants through impacts on privacy, amongst other things. Therefore condition 2, and consequently condition 11, in their current format are reasonable and necessary.
14. The proposed development would also conflict with paragraph 135 of the National Planning Policy Framework (the Framework) which aims for developments that have a high standard of amenity and do not undermine quality of life. The suggested compliance with sections of the Framework and the CS does not add any weight in favour of the proposal.

### **Personal Circumstances**

15. I have carefully considered the personal circumstances of this case, namely that the appellant is disabled and that the concerned window serves a child's bedroom. With this in mind, I have had due regard to the three aims of the Public Sector Equality Duty (the PSED) set out in s149 of the Equality Act 2010.
16. These are: the need to eliminate discrimination, harassment and victimisation; advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it; and foster good relations between persons who share a relevant protected characteristic and persons who do not share it. Protected characteristics include a person's age and disability.
17. The appeal property is of a generous size and it seems to me that the occupier of the bedroom is not restricted to or reliant on this bedroom. It is also reasonable to assume that they do not spend all of their awake time within that room, but rather spends time during the day and in the evenings in other rooms such as the kitchen and living room, both of which have clearly glazed windows and outlooks.
18. Whilst I am mindful of the appellant's personal circumstances, there is nothing before me to suggest that the occupier of the affected bedroom requires assistance from the appellant to move between rooms and floors within the appeal property.

19. Moreover, at the time of my site visit I observed that the concerned bedroom was a bright and pleasant room, despite the weather being somewhat overcast. From certain positions in the room, I could also obtain a view of the hills beyond through the clearly glazed top sections of the window. This was without the use of a stepladder or similar equipment. The green of the trees in the neighbouring garden were also discernible beyond the obscure glazing. Even though an outlook was not provided from the lower part of the window, the room was not dull or oppressive.
20. Therefore, in this instance, and taking into consideration the various academic studies provided by the appellant, it seems to me that the existing obscure glazing does not have an adverse impact on the living conditions, mental health, development, general well-being or best interests of the person occupying the concerned bedroom.
21. Thus, I am satisfied that a refusal of planning permission is a necessary and proportionate response to the legitimate aim of ensuring that the living conditions of neighbouring occupiers can be reasonably safeguarded.

### **Other Matters**

22. I appreciate the concerns that the appellant was not aware of the obscure glazing requirement on the concerned window whilst viewing the property, however this is not a matter which I can take into consideration. Condition 11 which this appeal is concerned with required the obscure glazing to be installed prior to first occupation of the appeal property and the planning history of the site would have been available to the appellant.
23. Concerns regarding the Council's handling and assessment of the planning application, including whether or not it fulfilled its duties under the PSED, are not matters for me within the context of this appeal.

### **Conclusion**

24. The proposal conflicts with the development plan as a whole and there are no other considerations which indicate that a decision should be made other than in accordance with it. Therefore, the appeal should be dismissed.

*H Ellison*

INSPECTOR