

Appeal Decision

Site visit made on 15 July 2024

by P Eggleton BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 August 2024

Appeal Ref: APP/Z4718/D/24/3341845

108 Radulf Gardens, Liversedge WF15 6AT

- 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 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 Mr & Mrs Chaturvedi against the decision of Kirklees Council.
 - The application reference is 2024/70/90050/E.
 - The application sought planning permission for a rear orangery and associated alterations without complying with a condition attached to planning permission reference 2023/62/92423/E, dated 25 October 2023.
 - The condition in dispute is number 4 which states that: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 as amended (or any Order revoking or re-enacting that Order with or without modification) the ground floor window on the northeast side elevation shall be obscure glazing to a minimum privacy level 4 or equivalent and shall thereafter be retained.
 - The reason given for the condition is: So as not to detract from the amenities of adjoining property by reason of loss of privacy and to accord with policy LP24 of the Kirklees Local Plan.
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Decision

1. The appeal is allowed and planning permission is granted for a rear orangery and associated alterations at 108 Radulf Gardens, Liversedge in accordance with the application reference 2024/70/90050/E without compliance with condition 4 previously imposed on planning permission reference 2023/62/92423/E, dated 25 October 2023.

Main Issue

2. The main issue is the effect on the living conditions of the residents of 106 Radulf Gardens with regard to privacy.

Reasons

3. The orangery has been built and is complete but the side facing windows are not obscure glazed as required by condition 4 of the planning permission. Although the house is built at an angle to the neighbouring property, from inside the orangery it is possible to view back towards the back corner and rear of the neighbouring dwelling. There is a high fence which forms the boundary between these properties which is in the region of four metres from the new
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windows. The tops of the ground floor rear openings; and the first floor windows, of the neighbouring property can be viewed over the fence but the angle does not allow for views from the orangery into the accommodation within the house.

4. When stood up in the orangery and looking directly towards the neighbouring garden area outside the house, it is possible to see over the high fence and onwards towards the upper part of the fence on the opposite boundary. At an eye height of 170cm and when stood close to the nearest part of the window, the fence provides a good screen to most of the garden area immediately outside the neighbouring house. It would perhaps be possible to view the heads of adult residents when stood outside the house but little below about head height would be visible, even in longer views across the back of the house. Views of the garden area further from the house are also very limited and would be little different to views from the original living room window. There is no material reduction of privacy in the adjacent garden when sat within the orangery.
5. Planting has taken place along the boundary which reduces inter-visibility further. I have not taken this into account as it may not offer significant screening in the winter. Overall, whilst there is a marginal increase in the ability to view over the side boundary fence and see the movement of residents in the neighbouring garden, these views are quite limited. The main outlook from the orangery is to the rear. Although I have had regard to the comments and concerns of the neighbours, the marginal reduction in privacy is not sufficient to unacceptably harm their living conditions when in their garden or their house.
6. The condition requiring the obscure glazing of the side windows would only be reasonable and necessary if the outlook from the orangery would unacceptably harm the living conditions of the neighbouring residents. As the clear glazing of the window results in only a very minor loss of privacy, that would not unacceptably harm the living conditions of the residents of 106 Radulf Gardens, the condition does not meet the tests set out in the National Planning Policy Framework 2023. As the neighbouring residents would continue to have a high standard of amenity with the clear glazing retained, there would be no conflict with the amenity requirements of policy LP24(b&c) of the Kirklees Local Plan 2019. I also find no conflict with Key Design Principle 3 of the House Extensions & Alterations Supplementary Planning Document 2021.
7. As the obscure glazing of the side facing windows of the orangery is not necessary, I allow the appeal. As the orangery is complete, there is no requirement for conditions to be attached to this varied permission.

Peter Eggleton

INSPECTOR