



Appeal Decision

Site visit made on 25 July 2024

by G Roberts BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th August 2024

Appeal Ref: APP/V1260/W/23/3334136

11 Sopers Lane, Poole, BH17 7EW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a grant of planning permission subject to conditions.
 - The appeal is made by L Williams against the decision of BCP Council.
 - The application Ref APP/23/00986/F was approved on 17 October 2023 and planning permission was granted subject to conditions.
 - The development permitted is installation of two rooflights.
 - The condition in dispute is No 2 which states that: *Both in the first instance and upon all subsequent occasions, 2no. roof lights installed towards the southern end of the eastern elevation of the existing dwelling, serving the first floor 'bedroom', shall be glazed with obscure glass which conforms to or exceeds Pilkington Texture Glass Privacy Level 3, and shall either be fixed light or hung in such a way as to prevent the effect of obscure glazing being negated by reason of opening. These shall be installed no later than the expiration of 2 months beginning with the date of this permission and shall thereafter be permanently retained as such.*
 - The reason given for the condition is: *To protect the amenity and privacy of the adjoining properties and in accordance with Policy PP27 of the Poole Local Plan (November 2018).*
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Planning permission was granted in 2003 (ref 03/36523/000/F) to erect a rear extension to the host property with roof accommodation served by two Velux windows. The permission was subsequently implemented. A condition was attached to this permission restricting any further windows being constructed in the side elevation (roof and wall) without the approval of the Local Planning Authority. The Appellant argues that the condition was to prevent new dormer windows, but the wording refers to "*no further windows/dormer windows*". The Council's Statement of Case (CSOC) indicates that the 'Reason' for this condition was "*To avoid loss of privacy to adjoining properties.*"
3. In 2023 the Council received a complaint in relation to the construction of two new rooflights in the eastern elevation and an application was submitted by the Appellant to regularise the position. Planning permission was granted subject to condition 2 requiring the installed windows to be obscure glazed and fixed/hung so as to prevent overlooking of adjoining properties. The CSOC also refers to a Certificate of Lawfulness being submitted, after this permission was granted, on the basis that the windows had become lawful due to the passage

of time. This was refused by the Council, which led to the Appellant submitting the appeal seeking to remove condition 2.

4. The Appellant's Statement of Case (ASOC) contends that as the Planning Case Officer (PCO) did not enter the appeal property it was not possible for a proper assessment to be undertaken of the impact of the rooflights on the adjoining properties. I understand that this was due to the PCO being pregnant. The Council contend that the PCO was able to reach a judgement based on experience, an objection from the adjoining occupiers and from viewing the site externally. This is, however, not a matter that I need to comment on as it does not affect my own assessment of the appeal proposal.

Main Issue

5. The main issue is whether the condition is reasonable and necessary in the interests of protecting the living conditions of neighbouring occupiers.

Reasons

6. The two rooflights are located in the rear section of the main roof on the eastern elevation to the host property. As I observed on my site visit, the rooflights serve a bedroom in the rear of the roofspace which also benefits from a window in the rear gable end. There are two further rooms in the roofspace, one of which is served by rooflights which I understand are those that were granted planning permission in 2003. The CSOC indicates that these windows were permitted as they faced the side elevation of 9 Sopers Lane (No.9) and did not result in any harmful overlooking of that property. That finding reflects my own observations on site.
7. Turning to the appeal proposal, the two rooflights have a cill height of some 1 metre and are clear glazed and openable. As I observed, they provide direct views into the rear garden and rear elevation windows to No.9. I accept that existing boundary fencing and an outbuilding provide some screening but that does not in any way mitigate for the level of overlooking that occurs. As the occupiers of No.9 confirm in their representations, both rooflights are sited well beyond the end of the main rear wall to their house and allow views, even at an angle, into their rear windows, which I understand comprise a lounge and above it a bedroom.
8. The Appellant contends that the impact would be reduced were the occupiers of No.9 to implement a rear extension that was approved by the Council in October 2022. That may preclude views of the rear elevation to No.9 but not those over its rear garden. Even so, I can only consider the situation as it exists on site at present and any mitigation that may result from the approved extension cannot, in my view, be accorded significant weight or relied upon as that extension that may never be built. There is certainly no evidence before me to suggest that this extension will be implemented. Moreover, in relation the rooflight that is shown on this approved extension, the image in Figure 7 to the ASOC indicates that this would be small and sited high up in the roof plane (as extended). No further details are provided to indicate what part of the extended accommodation this window would serve, what would be the internal cill height, whether it would be obscure glazed and/or fixed shut or whether the internal floor level would allow views towards the host property. As such, it's not possible for me to reach any firm findings as to whether this approval would in any way be comparable to the appeal proposal.

9. For the above reasons, I concur with the Council that the proposed rooflights to the appeal property result in the overlooking of No.9. The use of obscure glazing and a restriction on opening would, therefore, reduce the harmful level of overlooking that presently occurs.
10. The Appellant contends that mutual overlooking is a common characteristic of urban areas such as this. I do not disagree with that statement, but as the Council indicate that normally arises where the rear windows of properties, as existing or extended, afford oblique or long range views over their neighbours rear gardens. In this case, the proposed windows afford direct views from a height into the rear garden and rear elevation of No.9, where there were previously no such views. Whilst I also accept that it is common to see roof accommodation served by rooflights, it is also common to see rooflights that may give rise to a level of overlooking restricted so that they are either obscure glazed and/or have a minimum sill height of 1.7 metres from the floor level to the room they serve.
11. Reference has also been made to existing rooflights on No.9 as well as 13 Sopers Lane. However, these rooflights are not, in my view, comparable as they face the side elevations of their neighbours and therefore have a different relationship to that which arises in the appeal scheme. Moreover, I have not been provided with any detailed planning background to these examples and even if they were approved by the Council there is no evidence before me to indicate that they give rise to the same level of overlooking that occurs with the proposed rooflights. Furthermore, I can only consider the proposal that is before me and determine it, as is required, on its individual merits. For these reasons, none of these examples affect my findings on this issue.
12. The Appellant also contends that the obscure glazed/opening restriction would reduce light and ventilation to the bedroom. There is no substantive evidence before me to support that statement and as I observed the bedroom is served by a rear gable window that was, I understand, permitted as part of the 2003 works. Even so, the condition requires the windows to be obscure glazed so they would still provide a source of light to that room. Furthermore, even if the occupiers of the host are simply standing by these windows, the overlooking that results is still harmful to the occupiers of No.9. As the latter's representations infer, which has not been challenged, the windows are open most of the time and the occupier often leans out and looks directly towards their rear windows.
13. Given the above, I find that condition 2 is necessary and reasonable having regard to paragraph 57 of the Framework and in the interests of protecting the living conditions of the occupiers of No.9, and thus accords with policy PP27 of the Poole Local Plan (November 2018). Part (c) of policy PP27 states that new development will be permitted where it does not result in any harmful impact on neighbours amenities having regard to, amongst other matters, privacy.

Conclusion

14. For the reasons given above, I conclude that the disputed condition is reasonable and necessary. The appeal is dismissed.

G Roberts

INSPECTOR