



Appeal Decision

Site visit made on 20 August 2024

by Eleni Randle BSc (hons) MSc FRICS FAAV MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th August 2024

Appeal Ref: APP/W2845/D/24/3344947

The Folly, Old Forge Lane, Preston Capes, Daventry, NN11 3TD

- 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 carried out without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr & Mrs C Moysen against the decision of West Northamptonshire Council.
- The application reference is 2024/0747/S73.
- The application sought planning permission for proposed first floor extension to existing garage to create habitable accommodation to be used ancillary to main dwelling (revised scheme) without complying with a condition attached to planning permission Ref WND/2023/0187 dated 10 January 2024.
- The condition in dispute is condition 5 which states that the proposed first floor window in the rear elevation in the extension hereby approved shall be obscure glazed below 1.8 metre level from the first-floor level and the rooflight windows in the roofscape facing the neighbouring property, Rosebank, shall also be obscure glazed. These windows shall not be glazed or re-glazed other than with obscure glass. (Replacement of the glass with glass of an identical type would not necessitate the Council being notified).
- The reason given for the condition is in the interest of neighbouring residential amenity.

Decision

1. The appeal is allowed, and planning permission is granted for proposed first floor extension to existing garage to create habitable accommodation to be used ancillary to main dwelling (revised scheme) at The Folly, Old Forge Lane, Preston Capes, Daventry, NN11 3TD in accordance with the application Ref 2024/0747/S73, without compliance with condition number 5 previously imposed on planning permission Ref WND/2023/0187 dated 10 January 2024 and subject to the following conditions:
 - 1) Except where expressly stated by other conditions on this planning permission, the development shall be carried out strictly in accordance with the details shown on the following drawings number: M90-4 Rev J received by the LPA on 24th October 2023;
 - 2) The materials and finishes to be used in the construction of the approved annexe shall be carried out strictly in accordance with the details approved by the Local Planning Authority;
 - 3) Notwithstanding the provisions of the Town & Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order revoking and re-enacting that Order with or without modification) no development shall be carried out which falls within Classes E of Part 1 of

Schedule 2 to the Order without the prior express consent of the Local Planning Authority;

4) The rooflight windows in the roof slope facing the neighbouring property, Rosebank, shall be obscure glazed. These windows shall not be glazed or re-glazed other than with obscure glass. (Replacement of the glass with glass of an identical type would not necessitate the Council being notified);

5) The detached annexe hereby approved shall not be used other than for the purpose's ancillary/incidental accommodation to the residential use of the main dwelling known as The Folly and shall not be sold or rented out as a separate residential unit unless agreed in writing with the Local Planning Authority.

Main Issue

2. The main issue is the impact of the proposal upon neighbouring residential amenity with regard to overlooking and loss of privacy.

Reasons

3. The appeal site comprises an existing detached double garage positioned within the curtilage of The Folly – a two-storey dwelling dating back to the 18th Century which, with the neighbouring property (Arch Cottage) forms a pair of historic structures that echo a medieval castle. The immediate neighbouring property to the garage is Rosebank and its rear garden area is noted to lie immediately to the northeast of the site. At the time of my site visit the garage extension which was granted planning permission under reference WND/2023/0187 had been partially constructed and, whilst it was not complete, a substantial start had been made. The works to date enabled me to stand up on scaffolding at the time of my site visit, at the floor level of the first-floor rear window in question, in order to assess the views that would be available from the first floor of the building which is being extended.
4. From the evidence before me, and as seen at the time of my site visit, the adjacent property stands within a substantial plot and the garage extension on the appeal site, in terms of its rear elevation, is approximately halfway down the shared boundary. When stood within the opening of the window in the rear elevation I found that views were extremely limited as a result of extensive trees and vegetation on the shared boundary and immediately to the rear of the building.
5. Even if the vegetation were not present or the trees in question were lost, I find that any views that would be available into the adjacent property/garden, at Rosebank, would still be limited with natural use of the living area which would be created within the garage structure at first floor. Any views which would be available in such circumstances would only be possible of a small area of the northwestern corner of the adjacent garden when stood immediately against the window in question, however, within natural views within the living area itself, shown on the plans before me, the limited potential for overlooking or loss of privacy I find to be insufficient to warrant refusal in this case. The neighbouring property would still benefit from an extensive area of garden and private space to the rear, and side, which would not be visible from the window of the appeal building. I do not, therefore, find that the requirement for obscure glazing at the first-floor rear elevation is necessary to make the overall development acceptable in planning terms.

6. I am, however, mindful that the proposal before me seeks to remove condition 5 of planning application reference number WND/2023/0187 and, as outlined in the header of the decision letter, the wording of this decision also requires obscure glazing in the roofscape facing the neighbouring property to the eastern elevation. I find that it is reasonable to retain obscure glazing, as specified in the current condition, within the rooflight windows within the roofscape facing the neighbouring property, Rosebank, to prevent potential for overlooking or, at the very least, a perceived sense of overlooking which could impact upon the residential amenity of the occupiers of Rosebank as a result of orientation of those windows directly towards the property in question.
7. To conclude, I find that the removal of the requirement for obscure glazing to the rear elevation double glazed window, at first floor level, would not lead to an unacceptable level of overlooking or loss of privacy to the rear garden area for the occupants of the neighbouring property, however, I find it reasonable to retain the requirement for obscure glazing within the rooflight windows in the roofscape facing towards the neighbouring property, Rosebank. I find, therefore that it is possible to effectively split the decision to allow the removal of the requirement for glazing to the first-floor window, in the rear elevation, within the condition in question but still retain the requirement for obscure glazing in the rooflights in the eastern elevation facing towards Rosebank for the reasons set out.
8. The proposal would be consistent with Settlements in Countryside Local Plan (Part 2) 2020 (LP) Policy ENV10 which seeks to protect the amenity of new and existing dwellings and not compromise the function of existing surrounding uses and LP Policy RA3 which seeks to protect the amenity of existing residents. The proposal would also be consistent with the overarching objectives, and guidance, contained within the Residential Extensions and Design Guide and the National Planning Policy Framework 2023 which both seek to ensure that planning policies and decisions create places with a high standard of amenity for existing and future users

Other Matters

9. I note an objection to the proposal as well as comments from the Parish Council. The Parish Council comment states that the proposal has potential to overlook three neighbouring properties from its first storey vantage point, however, the Council have assessed the proposal and have not found any refusal reason based upon other neighbouring properties with the exception of Rosebank as specified in the stated refusal reason. I have dealt with matters relating to Rosebank, in terms of overlooking and privacy, directly within the main body of this decision letter as a main issue.
10. I also note third party comments made, and I have dealt with the issues raised within the main body of this decision letter, however, I would outline that the existing window on the side elevation east does not fall within the scope of this appeal. This appeal seeks to remove condition 5 of planning permission reference WND/2023/0187 which, as outlined above, is clear in its requirements relating to the first-floor window in the rear elevation of the extension as well as the rooflight windows in the roofscape facing the neighbouring property. The condition does not assert control over the existing window on the side elevation east and it is not within the scope of this appeal to consider, or control, matters relating to that particular window.

Conditions

11. The appeal follows a refusal of permission by the Council of an application to carry out development without complying with a condition attached to the original permission. As the appeal has been allowed a new permission is created which stands alongside the original permission. All well as the condition needed to be varied, as set out, all other conditions from the original permission need to be reimposed. In that regard I have not re-applied the commencement condition as, as noted above, the development had clearly commenced at the time of my site visit. A condition requiring the development to be in accordance with the approved plans is required to control and define the development which is granted consent.
12. Condition three of the original permission, required submission of materials and finishes used in the construction to be submission prior to construction above slab level which has now taken place. I have, therefore, amended the wording to reflect this and secure materials in accordance with that which are to be approved via a discharge of condition to ensure the materials are appropriate to the appearance of the area and in accordance with the approved details. I have also amended the wording to refer to an annexe, not a dwelling, for the avoidance of doubt.
13. A condition relating to removal of permitted development rights (Class E) is required to protect the amenity of the area within a Conservation Area. A condition relating to use as an annexe is to prevent creation of a separate planning unit which would be a material change from that which was granted permission and in the interests of residential amenity and highway safety and finally a condition relating to obscure glazing in the rooflights is in the interests of neighbouring residential amenity as is the main subject of this appeal.

Conclusion

14. For the reasons outlined above, and taking account all other matters raised, I conclude that the appeal should be allowed subject to conditions.

Eleni Randle

INSPECTOR