



Appeal Decision

Site visit made on 5 November 2024

by Ian Radcliffe BSc(Hons) MRTPI MCIEH DMS

an Inspector appointed by the Secretary of State

Decision date: 15th January 2025

Appeal Ref: APP/Y3425/W/24/3339596

St Johns, Granville Terrace, Stone, Staffordshire, ST15 8DF

- 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) ('the Act') for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by BHG Developments against the decision of Stafford Borough Council.
- The application Ref is 23/38368/FUL.
- The application sought planning permission for conversion of the church and erection of a rear two storey extension (following demolition of existing single storey extension) to provide 5 no residential units, and the erection of a 2½ storey building fronting The Avenue to provide 4 no apartments on the former church car park without complying with a condition attached to planning permission Ref 21/35049/FUL, dated 31 August 2023, which varied planning permission Ref 19/31557/FUL, which in turn varied planning permission Ref APP/Y3425/W/16/3164139, dated 10 August 2017.
- The condition in dispute is No 6 which states that: Notwithstanding any description / details within the application documents, and before unit 5 is first brought into use, the following windows within unit 5 shall be installed in accordance with the following and thereafter retained as such:
 - First floor, southeast-facing, window serving bedroom 5 (frame 10) shall be obscure glazed and non-opening to a height of 1.7m above floor level.
 - First floor, southwest-facing, window serving the en-suite bathroom to bedroom 5 (frame 14) shall be obscure glazed to a height of 1.7m above floor level and hung from the right-hand side (external).
 - First floor, southwest-facing, window serving the landing (frame 14) shall be obscure glazed to a height of 1.7m above floor level and hung from the right-hand side (external).
 - First floor, southwest-facing, window serving the landing (frame 13) shall be obscure glazed to a height of 1.7m above floor level, the left-hand casement shall be non-opening, and the right-hand casement shall be hung from the right-hand side (external).
- The reason given for the condition is: To ensure an adequate level of privacy for occupiers of adjacent residential properties (Policy N1e and Stafford Borough Council Space About Dwellings Guidance).

Decision

1. The appeal is allowed and planning permission is granted for conversion of the church and erection of a rear two storey extension (following demolition of existing single storey extension) to provide 5 no residential units, and the erection of a 2½ storey building fronting The Avenue to provide 4 no apartments on the former church car park at St Johns, Granville Terrace, Stone, Staffordshire, ST15 8DF in accordance with the application Ref 23/38368/FUL, without compliance with condition number 6 previously imposed on planning permission Ref 21/35049/FUL, dated 31 August 2023 and subject to the conditions in the schedule at the end of this decision.

Applications for costs

2. An application for costs was made by BHG Developments against Stafford Borough Council. This application will be the subject of a separate Decision.

Preliminary Matters

3. Section 73 of the Act (s73) allows an application to be made for the development of land without complying with conditions subject to which a previous planning permission was granted. If a s73 application or appeal is allowed a new planning permission is created that stands alongside the existing planning permission.
4. The main parties and the neighbours at Granville House were invited to comment on a suggested condition that would restrict the use of bedroom 5 within unit 5 to use as a bedroom. The purpose of the condition would be to protect privacy within the rear garden of Granville House. The comments received have been taken into account in the determination of this appeal.
5. The revised National Planning Policy Framework ('the Framework') was published on 12 December 2024 after statements in relation to this appeal had been submitted and final comments made. However, as no changes were made in relation to the use of planning conditions or residential amenity, the cases of the parties have not been prejudiced by not being able to comment on the revised Framework. I have therefore determined the appeal on the basis of the statements and comments that have been received.

Background and main issues

6. Planning permission and listed building consent was granted on appeal for the residential conversion and extension of the Church, as well as for an apartment building to its rear in 2017. This planning permission was amended by allowed application ref 19/31557/FUL which created a new planning permission with this reference number. Following the commencement of development, and the installation of new windows to the church and the insertion of rooflights in different positions to those that had been approved, the appellant made a section 73A application to regularise matters. In allowing that application the local planning authority created a further planning permission (ref 21/35049) which included condition 6. This condition was included to address the local planning authority's concerns regarding overlooking from the two storey church extension (Unit 5). This extension was in the process of being constructed at the time of my site visit.
7. This appeal is against the local planning authority's refusal to vary planning permission ref 21/35049 by removing condition 6.
8. The main issues in this appeal therefore are:
 - whether condition 6 is necessary having regard to the privacy of the occupiers of Granville House; and,
 - whether, having regard to the Act and Planning Policy Guidance, the local planning authority was able to attach condition 6 to the permission.

Reasons

Living conditions

9. The two storey extension to the church is located to the rear of the church and projects past its side elevation. At first floor level, windows within the front elevation

- of the extension will face, a short distance away, Granville House's driveway, its parking area and, from the side, the main entrance to this dwelling.
10. The majority of these first floor views though are from windows serving a corridor. As a result, unlike the barrage of windows serving habitable rooms within the church that directly enclose the western side of the drive and parking area directly opposite the entrance to the house, future occupants will have brief, incidental views of these areas as they pass between rooms. Moreover, the tall twin garage serving Granville House will partially screen views from these windows. The front window, which in principle would have the clearest view of Granville House, would not serve a corridor. However, as the submitted plan shows that it would serve an en-suite bathroom it is normal practice that it would be obscurely glazed in order to protect the modesty of its occupants. This matter could be secured by an appropriately worded condition.
 11. The rear elevation of Granville House is crudely parallel to the front elevation of the extension. However, owing to the extent that these two elevations are offset in relation to each other, views from the first floor front windows of the extension would be acute and would not result in a material loss of privacy within the rear facing kitchen / dining room of Granville House or the bedroom directly above. For the reasons that I have given, it is therefore unnecessary for the corridor windows to be obscurely glazed.
 12. The rear garden to Granville House is the only private, outdoor amenity space serving the dwelling that is not overlooked from the highway. It is therefore of high amenity value. At first floor level within the side elevation of the extension will be the primary window serving bedroom 5. This large window will be positioned approximately halfway down the length of the garden and will directly face it. However, unlike the array of windows on the eastern elevation of the church that directly enclose the driveway and parking area and face the main entrance door to Granville House, the bedroom window is set back from the side boundary by approximately 12m. This separation distance lessens the extent of overlooking.
 13. In assessing overlooking, the use of the room that a window serves is also relevant. Bedrooms are not used as intensively as spaces such as living rooms and dining kitchens where occupiers spend large amounts of time together. This is because their primary purpose is for sleeping and dressing. As a result, the duration of any overlooking from this window is likely to be short lived.
 14. Furthermore, the areas of highest amenity value within the garden, namely, the sunken seated area at its end and the stone table and chairs towards the house will be protected from overlooking by virtue of their relationship with this window. The sunken seated area is sufficiently offset from the window and screened by an existing pine within Granville House's back garden to prevent harmful overlooking. In addition, if the garage adjacent to the side boundary fence is built as shown on the approved plans for the development, then screening of the sunken seated area will be enhanced still further. With respect to the stone table and chairs located on the opposite side of the garden, the intervening separation distance between this area and the window would be significant and, in my judgement, sufficient to prevent a harmful loss of privacy.
 15. The middle section of the rear garden would be the closest to the window. The tall side boundary treatment though together with the consideration that bedrooms are often used relatively little during the day means that such overlooking would

typically be short lived, especially as bedroom occupants rarely want to be observed in bedclothes or whilst dressing. Moreover, as users of the garden are likely to gravitate to the seated areas from which they could enjoy their surroundings, the closer relationship between the window and this part of the garden would not result in overlooking that would be harmful.

16. If the internal layout within the extension was to change so that the first floor, southeast facing window no longer served a bedroom, and instead served part of a dwelling that would be in greater use during the day, such as a living or dining area, this would tip the effect on privacy from acceptable to unacceptable. The neighbours at Granville House state that such an internal change occurred that adversely affected their privacy in the development of the apartment building on the appeal site. This assertion has not been challenged by the appellant. To prevent such an occurrence, and so ensure that the development is acceptable in terms of overlooking, a condition should be attached preventing this window from serving any other room than a bedroom.
17. The conversion and extension of this large church to create 5 dwellings over two storeys has understandably raised concerns regarding overlooking, particularly as it extends development closer to Granville House than is currently the case. I also recognise that the Council has endeavoured to act consistently in relation to privacy as it also previously required obscure glazing to windows within the flank of the church facing the side of Granville House. However, for the reasons given above, I find that the effect of the extension to the church on privacy at Granville House has been overestimated.
18. Reference has been made to the supplementary planning document 'Design' (SPD). It contains no minimum separation standards with respect to privacy that are applicable to the appeal. Instead, in such circumstances it encourages each situation to be assessed on its merits. In relation to private garden space, it seeks the use of tall boundary treatments and the side boundary treatment between the development and the rear garden of Granville House would meet its expectations.
19. Taking all these matters into account, I therefore conclude that condition 6 is not necessary to prevent undue harm to the privacy of the occupiers of Granville House, and so achieve an adequate standard of amenity, in compliance with policy N1e of 'The Plan for Stafford Borough'. Policy N1e requires that, as a minimum, the design and layout of development, amongst other matters, takes account of the amenity of adjacent residential areas. In my assessment, the development shown on the approved plans has done so.

Legitimacy of the condition

20. Planning Practice Guidance (PPG) advises that when an application is made under section 73 of the Act, the local planning authority must only consider the disputed condition and that it is not an opportunity to completely re-consider the application.
¹ The local planning authority complied with this guidance. Application ref 21/35049/FUL sought the variation of the plans condition (Condition No 2) attached to planning permission ref 19/31557/FUL and the plans showed the size and location of windows, not just in the church, but also in the extension.
21. In granting permission under section 73, PPG states that the local planning authority may also impose new conditions – provided the conditions do not

¹ Planning Practice Guidance ID 21a-031-20180615 'What options are available to an applicant who does not wish to comply with a condition?'

materially alter the development that was subject to the original permission, and are conditions which could have been imposed on the earlier permission.² As condition 6 complies with both criteria, the Council legitimately attached this condition to planning permission ref 21/35049/FUL.

22. The appellant states that caselaw exists which means that the Council exceeded its powers by attaching condition 6. However, as no details of that caselaw has been provided, and given the clear guidance provided by PPG, I am not persuaded that this is the case. As a result, reference to this consideration is insufficient to alter my findings in relation to this issue.

Other Matters

23. The Church of St John is a Grade II listed building located within the Stone Conservation Area (CA). As a Victorian Methodist / United Reform church built of sandstone in the decorated Gothic style, the special interest and significance of the building is architectural and historical. The CA contains well designed and older and historic buildings within Stone. Defined by these buildings, the character and appearance of the CA and its significance is also architectural and historical.
24. As planning permission has already been granted for the development, and the appeal seeks only to remove a condition requiring obscure glazing in parts of the extension, the compliance of the scheme with the statutory objective of preservation of these designated heritage assets would remain unaltered if the appeal was allowed. It is therefore unnecessary for me to consider this matter further in this decision.

Conditions

25. For the purpose of clarity, PPG advises decision notices for the grant of permission under section 73 should set out all of the conditions imposed on the new permission, restating the conditions imposed on the earlier permission that continue to have effect. As there is an absence of submitted evidence that any of the conditions imposed on planning permission ref 21/35049 have been discharged or are no longer are relevant, I have therefore imposed all the previous conditions other than for condition 6.
26. In the interests of modesty and privacy, I have attached an amended version of condition 6 which requires that obscure glazing is only fitted to the en suite bathroom to bedroom 5 (condition 7). In the interests of privacy, a new condition has also been imposed which requires that the room shown as Bedroom 5 within unit 5 is used as a bedroom and for no other purpose (condition 6).
27. To show the location of the windows, to which condition 6 of planning permission ref 21/35049 relates, the appellant submitted with the appeal the plan 'Working Drawing – Church Conversion – First Floor' ref 14/1/3242/11. However, the Council states that the plan with this reference number cited in the plans condition attached to planning permission reference 21/35049/FUL shows the image of a roof light. As a result, in condition 6 in the schedule below I have referred to plan ref 14/2/3242/5b rev U which the Council has confirmed shows the location of bedroom 5 and its windows.

² Planning Practice Guidance ID 21a-040-20190723 'How are conditions treated under section 73?'

Conclusion

28. For the reasons given above, I therefore conclude that the appeal should be allowed.

Ian Radcliffe

Inspector

Schedule of conditions

- 1) This permission relates to the originally submitted details and specification and to the following drawings, except where indicated otherwise by a condition attached to this consent, in which case the condition shall take precedence:-
 - 1:1250 Location plan revision E
 - 1:500 Block plan revision E
 - 14/1/3242/1
 - 14/1/3242/2
 - 14/1/3242/3
 - 14/1/3242/4
 - 14/1/3242/5a Rev U
 - 14/1/3242/5b Rev U
 - 14/1/3242/6 Rev Q
 - 14/1/3242/7 Rev C
 - 14/1/3242/8 Rev L
 - 14/1/3242/9 Rev J
 - 14/1/3242/10 Rev C
 - 14/1/3242/11
 - 14/1/3242/36 Rev E
- 2) The development hereby permitted shall not be brought into use unless and until visibility splays at the new vehicular access have been provided in accordance with drawing 14/1/3242/8 revision L, as approved under 18/27950/DCON, unless otherwise approved in writing by the Local Planning Authority. The visibility splays shall thereafter be kept free of all obstructions to visibility over a height of 600mm above the adjacent carriageway level
- 3) Unless otherwise agreed in writing by the Local Planning Authority, the development shall not be brought into use unless and until the new access, parking, and turning area shown on drawing 14/1/3242/8 Rev L and approved under 18/27950/DCON have been provided and they shall thereafter be retained as such.
- 4) The development hereby permitted shall not be brought into use until the footpath between The Avenue and the north end of the proposed vehicular access onto Longton Road has been widened to 2m in accordance with

drawing 14/1/3242/8 revision L as approved under 18/27950/DCON or any other drawing subsequently approved under condition 3 above.

- 5) All construction, including demolition, site works and deliveries to the site shall only take place between the hours of 0800 and 1800 Monday to Friday and 0800 to 1400 on Saturday, and not at all on Sundays or public/bank holidays. There shall be no burning on site during development.
- 6) The area shown as bedroom 5 on plan ref 14/1/3242/5b Rev U shall be used as a bedroom and for no other purpose.
- 7) The rear two storey extension of the development hereby permitted shall not be occupied until the window serving the first floor, south west facing, en-suite bathroom to bedroom 5 (frame 14) of Unit 5 has been fitted with obscured glazing to a height of 1.7m above floor level and hung from the right-hand side (external). Details of the type of obscured glazing shall be submitted to and approved in writing by the local planning authority before the window is installed and once installed the obscured glazing shall be retained thereafter.