



Appeal Decision

Site visit made on 10 December 2024

by **L Francis BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17 January 2025

Appeal Ref: APP/D1590/W/24/3351820

7 Orchard Grove, Eastwood, Southend-on-Sea, Essex SS9 5TP

- 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 (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 Mrs Jacqueline Alves against the decision of Southend-on-Sea City Council.
 - The application Ref is 24/00927/AMDT dated 6 June 2024 was refused by notice dated 2 August 2024.
 - The application sought planning permission for the erection of a single storey rear extension without complying with a condition attached to planning permission Ref 23/01623/FULH, dated 8 December 2023.
 - The condition in dispute is No 4 which states that: The proposed windows in the southern flank elevation of the development hereby approved shall only be glazed in obscure glass (the glass to be obscure to at least Level 4 on the Pilkington Levels of Privacy) and fixed shut, except for any top hung fan light which shall be a minimum of 1.7 metres above internal finished floor level prior to the first use or occupation of the development hereby permitted and retained as such thereafter. In the case of multiple or double-glazed units at least one layer of glass in the relevant units shall be glazed in obscure glass to at least Level 4 on the Pilkington scale.
 - The reason given for the condition is: To ensure the development has an acceptable design and protects the amenities of neighbouring occupiers in accordance with Policy DM1 of the Development Management Document (2015).
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a single storey rear extension at 7 Orchard Grove, Eastwood, Southend-on-Sea, Essex SS9 5TP in accordance with the application Ref 24/00927/AMDT, without compliance with condition number 4 previously imposed on planning permission Ref 23/01623/FULH dated 8 December 2023 and subject to the following conditions:
 - 1) The development hereby permitted shall be retained in accordance with the following approved plans: 100 P1, 200 P4.
 - 2) The materials used in the construction of the external surfaces of the development hereby permitted shall be retained for as long as the development remains in place.
 - 3) The window in the southern flank elevation of the development hereby permitted shall be fixed shut and the film to the specification, or equivalent, set out in the letter from Mr Window dated 6 August 2024, shall be retained for as long as the development remains in place.

Preliminary Matter

2. The National Planning Policy Framework (the Framework) was updated in December 2024, during the consideration of this appeal. Insofar as is directly relevant to the appeal, there are no substantive changes. Neither main party were asked for their views and no parties have been prejudiced as a result.

Background and Main Issue

3. Planning permission was granted in December 2023 for a single storey rear extension to replace a conservatory. The appeal application sought to remove condition 4 of the permission which required the window in the southern side elevation to be glazed with Level 4 obscure glass and fixed shut. The application to remove the condition was refused as the Council considered that the window, without obscure glazing, would unacceptably harm the privacy of the occupiers of No. 9 Orchard Grove adjacent. The extension is in place and clear glazed windows were installed at the time of construction. Since then, a film has been applied to the southern side kitchen window to give the effect of obscure glazing. The approved drawings show the windows as being openable, but I noted on my site visit that they are fixed shut.
4. In light of the above, the main issue is whether the condition is reasonable or necessary to protect the living conditions of the occupiers of No. 9 Orchard Grove, with particular regard to privacy.

Reasons

5. Orchard Grove is a residential street lined with single storey or chalet style dwellings; the road is set on a hill, the land rising towards the junction with Whitehouse Road. The appeal site, 7 Orchard Grove, is a semi-detached single storey dwelling. No. 9 Orchard Grove is part of another semi-detached pair adjacent, separated from No. 7 by a shared driveway. I visited both properties and was able to see the effect of the living conditions of No. 9 from their rear kitchen and garden.
6. The rear extension replaced a clear-glazed conservatory. It projects further from the house than the original conservatory and consequently the southern side kitchen window projects further than the glazing that was part of the conservatory. However, compared to the extent of glazing in the conservatory, the window has less depth and its sill is set at a higher level. The extension also projects beyond the rear elevation of No. 9 and consequently the side kitchen window faces the garden of No. 9.
7. The former conservatory was clear glazed and would have had a direct view to the garden of No. 9 and a more oblique view to the rear kitchen window. From the rear garden of No. 9, the side window in the extension appears to overlook the garden. It is less apparent in views from the rear kitchen window of No. 9. Nevertheless, due to the presence of the side window, I accept there is a perception of being somewhat overlooked when in the garden of No. 9. However, given that the former conservatory allowed these views, with a significantly larger expanse of glazing than that shown on the drawings for the extension, any effect upon the garden above and beyond that of the previous conservatory would be minimal.

8. For there to be any additional overlooking into the neighbouring windows over and above that allowed by the former conservatory, it would be necessary to look through the window pane closest to the rear elevation of the extension. The kitchen window is set at a reasonably high level in relation to the floor (1.37m above floor level according to the structural measurements provided by the appellant) and is also set behind worksurfaces. With the current kitchen layout, getting a view back into the rear windows of No. 9 would be improbable and unlikely to occur.
9. Taken together therefore, the protective film along with the non-opening windows located behind a kitchen worksurface and set at a higher level than before, means that the extent of overlooking would not be so significant in planning policy terms to justify the retention of the disputed condition. However, it is necessary and appropriate to require the retention of the film of a standard equivalent to that set out in the letter from Mr Window dated 6 August 2024 and to retain the requirement for the windows to be fixed shut. I have removed the references to opening fan lights being at least 1.7m above finished floor level. It is not necessary given there are no fan lights shown on the drawings or installed on the south elevation of the extension.
10. I therefore conclude the disputed condition as worded is not necessary to protect the living conditions of the occupiers of No. 9 Orchard Grove and it would not be reasonable to retain it. However, as set out above a revised condition is necessary and reasonable. On this basis I conclude that there would be no conflict with the aims of Policy DM1 of the Southend-on-Sea Development Management Document 2015 which, amongst other things, states that development should protect the amenity of immediate neighbours.

Conditions

11. As well as varying condition 4 (which now becomes condition 3), the standard time limit condition is unnecessary as works have been carried out. The numbering of the conditions has been adjusted accordingly. I have also amended the wording of the materials condition (2) to ensure the matching materials are retained for as long as the extension remains in place to ensure the extension retains an appropriate appearance.

Conclusion

12. For the reasons given above I conclude that the appeal should succeed. I will grant a new planning permission with the varied condition and reinstate those undisputed conditions that are still subsisting and capable of taking effect.

L Francis

INSPECTOR