



Appeal Decision

Site visit made on 12 February 2025

by **G Roberts BA (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 21 February 2025

Appeal Ref: APP/D0840/D/24/3351972

3 Century Court, Newquay, Cornwall, TR7 3JP

- 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 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Miss Katy Griffin against the decision of Cornwall Council.
- The application Ref is PA24/03551.
- The application sought planning permission for retention of a rear window on the first floor of the north west elevation without complying with conditions 3 and 4 attached to planning permission Ref PA21/07562, dated 26 October 2021.
- The conditions in dispute are Nos 3 and 4 which state, with the reasons given, that:

Condition 3 – *The windows hereby approved shall be obscurely glazed to a level of Pilkington 5 or equivalent, and any replacement windows shall retain this level of obscurity.*

Reason – *To protect the residential amenity of neighbouring properties, in accordance with Policy 12 of the Cornwall Local Plan.*

Condition 4 – *The windows hereby approved shall be fitted with secure window restrictors which shall not allow the windows to open more than 89mm at any time. Any replacement windows shall in the future retain this level of restriction.*

Reason – *To protect the residential amenity of neighbouring properties, in accordance with Policy 12 of the Cornwall Local Plan*

Decision

1. The appeal is dismissed.

Main Issue

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

Reasons

3. The appeal site comprises a single storey end of terrace property that has been extended to the side and in the roof to provide additional accommodation. It forms part of a small estate of similar largely single storey properties in the form of two oval shaped clusters. The appeal site forms part of a cluster of 14 properties. Due to their layout and short rear gardens, the distance separating the rear elevations of the properties is limited.
4. The appeal proposal relates to an existing dormer window within the rear roof plane of the host property. Planning permission was granted in January 2020 for extensions and a loft conversion to the host property (Ref PA19/08536). On the

rear elevation, the approved plans showed a new dormer with high level windows and obscure glazing. The permission was implemented but the high level windows were replaced with full width windows. An application was subsequently submitted to retain the, as built, windows and as part of that proposal the design included both obscure glazing and window restrictors, to protect the amenities of neighbouring occupiers. Planning permission was granted to retain the windows, with these restrictions, on 26 October 2021 (Ref PA21/07562). This permission was then implemented and as I observed on site, the windows are now obscure glazed and have lockable window restrictors.

5. It is condition 3 (obscure glazing) and condition 4 (window restrictors) to the October 2021 permission that the current appeal seeks to vary by their removal.
6. For ease of reference I have dealt with the conditions in turn.

Condition 3

7. As I observed on site, without the obscure glazing the occupiers of the bedroom to the host property, that the window serves, would have unfettered views over a large number of the neighbours' rear gardens. Those views would be direct, from a high level and from a location where there were, prior to the property being extended, no such views. The January 2020 and then the October 2021 permissions were granted so as to prevent and mitigate direct overlooking of the neighbouring properties. The removal of the obscure glazing would, therefore, result in an unreasonable loss of privacy and significant harm to the living conditions of neighbouring occupiers.
8. I accept that some views from the dormer window into the rear windows of neighbouring properties would be at an oblique angle, but those views would still exist and over a short distance, due to the small size of the rear gardens. Even so, the direct overlooking of neighbours' private amenity areas is sufficient in itself to render any proposal to remove the obscure glazing unacceptable.

Condition 4

9. It is not uncommon for new windows in extensions or new build, where they face neighbours, to be conditioned so that they are obscure glazed and in most cases fixed shut, so as to protect the existing level of amenity enjoyed by neighbouring occupiers. As I confirmed earlier, in this case, both conditions were imposed to mitigate the level of overlooking that would otherwise arise. Even so, the condition does allow the windows to open no more than 89mm at any time, rather than being fixed shut. As I also observed on site, the restrictors in this case are operated by a key locked cable and I assume these can be removed in an emergency.
10. With the restrictors in place and open no more than 89mm, the views are much more limited. They, therefore, serve their purpose in preventing the full opening of the windows which would provide the occupiers of that bedroom with clear and direct view into neighbours' gardens, and at an oblique angle to their rear windows.
11. The Appellant contends that the window restrictors are a fire risk, but there is no substantive evidence before me to support that statement. There is no evidence before me to indicate that the use of window restrictors with locks, as in this case, give rise to any issues in relation to means of escape or fire safety. As such, any remaining safety considerations do not outweigh my findings on this issue.

12. Reference has also been made to similar windows on other properties, but my attention has not been drawn to any specific example. As I observed on site, some of the properties in this cluster do have small Velux windows within the roof, but I did not see any similar dormer windows at roof level.
13. The Appellant also refers to the obscure glazing and restrictors being installed by a previous owner. That may be so, but as I have explained above, that work was undertaken so as to enable the window, which did not reflect the window design originally approved, to be granted permission and retained. Without the inclusion of the obscure glazing and restrictors, it is clear that the Council would not have granted planning permission in October 2021.
14. The approach that the Council adopted in relation to approving the retention of the window was consistent, in my view, with that in paragraph 56 of the NPPF. This states that Council's should consider whether otherwise unacceptable development could be made acceptable through the use of conditions.
15. Given the above, I find that conditions 3 and 4 are necessary and reasonable having regard to paragraph 57 of the NPPF and in the interests of protecting the living conditions of neighbouring occupiers in accord with policy 12 (Design - part 2.a.) of the Cornwall Local Plan Strategic Policies 2010 – 2030 (CLP), policy H1 (Replacement Dwellings and Extensions) of the Newquay Neighbourhood Plan 2010 – 2030 (NNP) and paragraph 135 f) of the NPPF. The latter seek, amongst other requirements, to secure a high standard of amenity for existing and future users, and protect individuals and property from an unreasonable loss of privacy.
16. The Council's reason for refusal also refers to policy 13 (Development standards) of the CLP and policies G2 (Development Principles) and D1 (Key Principles - Guidance and Design Statement). However, my attention has not been drawn to any part of these policies that is directly relevant to the issue of residential amenity raised in this appeal.

Conclusion

17. For the reasons given above I conclude that the disputed conditions are reasonable and necessary. The appeal is dismissed.

G Roberts

INSPECTOR