



Appeal Decision

Site visit made on 13 March 2025

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th of April 2025

Appeal Ref: APP/G5180/W/24/3353937

Cerises, Mottingham Lane, London SE9 4RX

- 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 Mr Jonathan Read against the decision of the Council of the London Borough of Bromley.
- The application reference 24/02689 was approved on 4 September 2024 and planning permission was granted subject to conditions.
- The development permitted is described as “First floor rear extension over existing conservatory and installation of eight roof solar panels: Scheme 3.”
- The conditions in dispute are Nos 2 and 4 which state that:
2 – The development hereby permitted shall not be carried out otherwise than in complete accordance with the plans approved under this planning permission unless previously agreed in writing by the Local Planning Authority.
4 – Before the development hereby permitted is first occupied the proposed window(s) in the first floor South elevation shall be obscure glazed to a minimum of Pilkington privacy Level 3 and shall be non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed and the window(s) shall subsequently be permanently retained in accordance as such.
- The reasons given for the conditions are:
2 – In order to comply with Policy 37 of the Bromley Local Plan and in the interests of visual and residential amenity.
4 – In the interests of the amenities of nearby residential properties and to accord with Policies 6 and 37 of the Bromley Local Plan.

Decision

1. The appeal is dismissed.

Background and Main Issues

2. Cerises is a two-storey detached dwelling which was constructed during 1999 and 2000. It has a considerable planning history, with several planning applications – some granted, some refused – having been made over its lifetime. It has been extended to the side and front¹. This appeal relates to planning permission granted in September 2024 for the erection of a first-floor extension and the installation of solar panels. The appellant wishes to remove Condition 4, which requires a first-floor window to be glazed with obscure glass, and Condition 2, which requires the development to be carried out in accordance with the approved plans.
3. The main issue is whether the disputed conditions are necessary, reasonable and acceptable in all other respects.

¹ LPA refs for these extensions given in the appellant's submissions as 08/00820 and 09/01353.

Reasons

Condition 4 – obscure glazing

4. The planning permission allows for a first-floor extension providing an additional bedroom (shown as “bedroom 2” on the approved plans) to be built above an existing conservatory at the south-west corner of the property. The disputed Condition 4 requires that the south-facing window within this bedroom should be glazed with obscure glass. The Council’s officer report indicated that this condition was imposed because of concern there about the potential for an adverse effect on privacy for the occupiers of Keruing, the dwelling immediately to the south of Cerises, as a result of increased overlooking.
5. The south-facing elevation of Cerises is very close to the site’s side boundary and the neighbouring gardens beyond, including that of Keruing. The only window within the existing first-floor bedroom on that side of the property (“bedroom 4” on the approved plans) is a Velux rooflight with an internal sill only around 1.1m above floor level. I saw on my site visit that it offers clear views directly over the rear garden of Keruing. The proposed south-facing window within bedroom 2 would also allow direct overlooking of the garden of Keruing. Although the window would be 2.5m or so further from the boundary fence than the existing rooflight, and views to the south-east would partly be obscured by the roofline, the window would still allow overlooking of the Keruing garden from a very short distance. Without obscure glazing, this would mean a further harmful loss of privacy.
6. I recognise that in suburban areas predominantly characterised by two-storey dwellings a degree of overlooking of neighbouring gardens is usually to be expected. More often than not in my experience this would be because of oblique views from a rear-facing room. It is rather more unusual, and generally considered undesirable, for a habitable room to have its principal or only window on a side elevation where close-range views directly over a neighbouring garden would be possible. That situation already exists here because of the rooflight in bedroom 4, but although privacy may therefore already be less than ideal, that is not a convincing justification for allowing further harm. The existing situation would be made significantly worse by the proposed development if the south-facing window of bedroom 2 were to be fitted with clear glazing.
7. I also viewed the south elevation of Cerises from the garden of Keruing during my visit. While overlooking is already possible from bedroom 4 as I have described, it appeared to me that the *perceived* impact of this may be lessened because of the angle of the rooflight (even if this is not actually so because of its height and placement). This consideration would not apply to the proposed vertical window in bedroom 2, even allowing for the greater separation distance. Without obscure glazing, the perceived lack of privacy within the garden of Keruing compared to the present situation, would be likely to be increased significantly.
8. The appellant considers that any potential overlooking would be ameliorated by the higher boundary fencing of the appeal site in relation to its ground level, and by surrounding vegetation. This is not at all borne out by my observations during my site visit, as I have described above – there is considerable intervisibility above the fence. The appellant also refers to a magnolia tree in the garden of Keruing having been cut down in July 2024, “after the submission of the planning application and prior to the Council’s site inspection”. That is not something which I consider

demonstrates the neighbours' possible lack of concern about their privacy, given the various possible reasons for which a tree might be removed. It does, however, illustrate that planting cannot necessarily be relied on as mitigation.

9. The appellant also referred to a 2024 appeal decision relating to a development with the same description as the scheme which is now before me². That appeal was dismissed because the Inspector concluded that the development's impact on privacy would be harmful to the living conditions of occupiers of Roselands, the neighbouring property to the west of Cerises. However, there is nothing before me to indicate that the 2024 appeal scheme included a window – with clear glazing or otherwise – in a similar position to that which is the subject of this disputed condition.
10. Finally on this issue, the appellant contends that “clear glazing [for the south-facing window] would be expected in order to ensure satisfactory living conditions for current and future occupiers of the new accommodation”. However, there would be another window on the other side of bedroom 2 which I note (despite the appellant referring to it as “secondary”) would be larger than the south-facing one. There is no substantive evidence before me to indicate that requiring the use of obscure glazing for the south-facing window would result in the room having significant shortcomings in respect of outlook or natural light. Although the Inspector in the 2024 appeal considered that the use of obscure glazing would not be appropriate, using the words quoted at the beginning of this paragraph, to the best of my understanding the point at issue there related to the principal window in the bedroom, not a secondary one; the two situations are not the same.
11. I therefore conclude that Condition 4 is necessary and reasonable to ensure that the development does not cause significant harm to living conditions for occupiers of the neighbouring property Keruing, and to comply with Policies 6 and 37 of the 2019 Bromley Local Plan (“the BLP”). Among other things those policies seek to ensure that development, including residential extensions, is compatible with the surrounding area, and respects the amenity (including privacy) of occupiers of neighbouring buildings. I also consider the condition to be acceptable in all other respects.

Condition 2 – approved plans

12. The appellant argues that Condition 2 is “unnecessary, imprecise and unenforceable”. This is on the grounds that “if development is not carried out in accordance with the approved plans then it does not benefit from the planning permission”, that the difference between “in accordance” and “in complete accordance” is unclear and therefore imprecise, and that the policy referred to in the reason for imposing the condition does not “refer to the degree of adherence to approved plans”. It was also noted that “it appears the Council imposes the condition on every planning permission it grants”.
13. The imposition of a condition requiring the development to be carried out in accordance with the approved plans is good practice, and necessary in most cases not least because it creates certainty for all parties. In my experience it is so commonplace as to be unremarkable most of the time, and that the Council should use it as a matter of course is also therefore unremarkable.

² PINS Ref:

14. Among other things, Policy 37 of the BLP requires development to be imaginative and attractive to look at, of a good architectural quality, and respect the amenity of neighbouring residents. It is entirely reasonable that the Council might consider compliance with the approved plans to be necessary to help achieve these aims.
15. The only thing which to my mind could perhaps be considered at all “imprecise” is that the condition does not actually go so far as to specify the actual plans, instead relying on a more generalised wording. It might arguably have been preferable, and it would certainly have been more precise, if the Council had listed the approved plans by title or drawing number. However, on all the evidence before me there does not appear to be room for any credible doubt as to which are the approved plans, so the condition is adequately – though not perfectly – precise, and it does not need to be rewritten to list them individually. The condition also appears to me to be entirely enforceable.
16. The appellant’s objections to Condition 2 appear to have largely been put forward on semantic grounds, rather than because of anything relating to the approved plans themselves, or to any impact the condition might have on the implementation of the planning permission. However, the meaning and purpose of the condition is entirely clear to me and, I would suggest, to any other reasonable reader construing it in the context of the permission as a whole. To that end, no useful purpose would be served by my considering any possible difference between the interpretation of “in complete accordance with”, as written, and “in accordance with”; it could make no difference to my overall conclusion.
17. I conclude that Condition 2 is necessary, reasonable and acceptable in all other respects.

Conclusion

18. For the reasons given above the appeal is dismissed.

M Cryan

Inspector