



Appeal Decision

Site Visit made on 7 September 2021

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th September 2021

Appeal Ref: APP/X1118/W/21/3274931 48 Elizabeth Drive, Sticklepath EX31 3AJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Derren Bates against the decision of North Devon District Council.
 - The application Ref 72847, dated 31 January 2021, was approved on 7 April 2021 and planning permission was granted subject to conditions.
 - The development permitted is demolition of existing extensions, erection of extensions & raising of roof ridge for additional accommodation to dwelling.
 - The conditions in dispute are Nos 6 and 7 which state that:
 - 6. The second floor windows on dormers of the southern elevation and the ground floor bedroom window on the northern elevation of the dwelling shall be obscure glazed.*
 - 7. The first floor windows on the western and eastern (side) elevations and the bathroom window on the first floor of southern elevation of the dwelling shall be obscure glazed and non-opening.*
 - The reason given for the conditions is:
To safeguard the privacy of neighbouring occupiers in accordance with Policy DM01 of the North Devon and Torridge Local Plan.
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Decision

1. The appeal is allowed and the planning permission Ref 72847 for demolition of existing extensions, erection of extensions & raising of roof ridge for additional accommodation to dwelling at 48 Elizabeth Drive, Sticklepath EX31 3AJ granted on 7 April 2021 by North Devon District Council, is varied by deleting conditions 6 and 7.

Applications for costs

2. An application for costs was made by Mr Derren Bates against North Devon District Council. This application is the subject of a separate Decision.

Background and Main Issue

3. Planning permission has been granted for alterations and extensions to the dwelling, including an increase in its ridge height, and the insertion of three dormer windows in the rear roofslope. Two of the planning conditions that were imposed required a number of windows in the altered dwelling to be either obscure glazed, or obscure glazed and fixed shut. The appeal is against these conditions. Consequently, the main issue is whether the non-opening and/or obscure glazing is necessary to protect the living conditions of the occupants of surrounding residential properties, with regard to privacy.

Reasons

4. 48 Elizabeth Drive is one of a row of four houses that are set back behind a loop in the road that encloses an area of public open space to the front. It has a long rear garden that backs onto the similarly extensive rear gardens of the bungalows that front Anne Crescent. As a result, the front and rear elevations of the house do not face any other dwellings in close proximity. Its side elevations are, however, close to those of the adjacent houses. Generally, the area has a quiet, residential character, with a mixture of houses and bungalows on relatively large plots, where occupants enjoy a high level of privacy in their dwellings and gardens.
5. Conditions 6 and 7 require seven windows to be obscure glazed, and three of these to be fixed shut. The Council's statement also refers to a ground floor bathroom window on the front elevation that is labelled on the plans as obscure glass. However, this window is not covered by either of the contested conditions. The Council's statement also indicates that it has reviewed its position since the decision was made, and accepts that only the second-floor dormer windows, and the first-floor window in the west elevation need to be obscure glazed to maintain the privacy of the occupants of surrounding dwellings.
6. Condition 6 requires a ground floor bedroom window in the front elevation to be obscure glazed. This window would look onto the front garden and the public open space beyond. The windows in the nearest houses on the other side of the open space are approximately 50 metres away, and observed at much closer quarters by pedestrians using the pavements. The Council's statement concedes that there is no justification for the requirement for this window to be glazed in obscure glass, and I saw nothing to persuade me otherwise.
7. Condition 7 requires the first-floor window in the east side elevation to be obscure glazed and fixed shut. This is no longer contested by the Council. I saw that there is already a clear-glazed and openable window in this position serving a bedroom. It looks towards the side elevation of the adjacent house, which only contains a small obscure glazed window. With the window open a view over the adjacent rear garden is also possible. However, the window already exists, and it would not be enlarged. Although it would serve a lounge, it would not increase the extent of overlooking that could be achieved. In these circumstances, the requirement for fixed pane obscure glazing is not necessary to protect the privacy of the adjoining occupants.
8. Condition 7 also requires a first-floor bathroom window in the rear elevation to be obscure glazed and fixed shut. This window would, however, be located between three larger windows in the rear elevation that would serve a lounge, office and snug. None of these windows are covered by the contested conditions, so they are likely to be clear glazed and openable. The bathroom window would not, therefore, result in any additional overlooking.
9. The Council no longer contests the requirement for this window to be fixed shut, but suggests that, as it serves a bathroom, it should be obscure glazed. The window is labelled as obscure glazed on the approved drawings, and it is unlikely that the appellants would install a clear glazed window in a bathroom. However, even if it were clear glazed, there would be no additional overlooking. A condition requiring obscure glazing of this window would not, therefore, be

necessary or reasonable. I note that the Council's suggested conditions do not include such a requirement.

10. The third window that is required to be obscure glazed and fixed shut is a first floor WC window in the west side elevation. The approved plans indicate that this window will be obscure glass. The Council no longer considers it necessary for this window to be fixed shut. I saw that this window would look towards the blank gable wall of the adjacent house, with potential oblique views to the rear garden. However, it would not increase the level of overlooking that is already possible from the balcony on the rear of the house, which is at the same level. Furthermore, the approved drawings show a larger second floor window in this side gable, directly above, which is not covered by the contested conditions. Consequently, even if clear glazed, the WC window would not result in increased overlooking. A condition requiring obscure glazing of this window would not, therefore, be necessary or reasonable.
11. Condition 6 requires the approved dormer windows in the rear roofslope to be obscure glazed. It is argued by the appellant that clear-glazed dormer windows can be installed as permitted development. However, in this case, the dormers are part of the overall proposals, which involve a raising of the ridge, so permission is required. It has not been demonstrated that clear glazed dormers could be provided in the positions proposed as permitted development, so I have not given any weight to this potential fallback position.
12. The dormer windows would be a storey higher than any of the existing windows in the house, or those of the adjacent houses, so would be more visible from surrounding properties above the intervening vegetation. However, the dwelling has a long rear garden, so the windows would be at least 20 metres from the rear garden boundaries of the bungalows in Anne Crescent. Furthermore, the gardens of these properties are even longer. Consequently, there would be a considerable distance between the windows in the dormers and those in the rear elevations of the nearest bungalows in Anne Crescent. The appellant's evidence that this would be at least 56.59 metres has not been challenged. This is a much greater distance than is often considered necessary to avoid harmful overlooking between back-to-back dwellings. Over such a distance, there would not be a material loss of privacy for occupants within the bungalows.
13. I viewed the proposals from the rear garden of No 13 Anne Crescent at my visit, which also allowed an appreciation of the impact on the garden of No 15. The dormer windows would be a more visible presence for occupants in these gardens, magnified to some extent by the lower ground level of the bungalows. Nevertheless, the windows would be a considerable distance from the garden boundaries, and the parts of the gardens nearest to the boundaries would be screened from the dormer windows by boundary vegetation. As a result, the dormers would not be an overly intrusive presence. Although they may give rise to some perception of overlooking, the distances involved, and the fact that parts of the gardens would be unaffected, means that obscure glazing would not be necessary to ensure that occupants of Anne Crescent would retain a high standard of privacy in their gardens.
14. The dormer windows would look over the rear gardens of the adjacent houses in Elizabeth Drive from a higher level. However, this would not enable closer views, or views of parts of the gardens that cannot already be seen from the

existing balcony and first floor windows. The provision of clear glazing in the dormer windows would not, therefore, be harmful to the current level of privacy enjoyed by the occupants of these houses.

15. Policy DM01 of the North Devon and Torridge Local Plan 2011-2031 (the Local Plan) is referred to in the reasons for the conditions. This Policy says that development will be supported where it would not significantly harm the amenities of any neighbouring occupiers. For the above reasons, I have found that it is not necessary for any of the windows to be obscure glazed or fixed shut to avoid significant harm to the living conditions of the occupants of surrounding properties. The development, without the disputed conditions, would, therefore, comply with Policy DM01 of the Local Plan.

Conclusion

16. For the reasons given above, I conclude that the appeal should be allowed. I will vary the planning permission by deleting the disputed conditions.

Nick Davies

INSPECTOR



Costs Decision

Site visit made on 7 September 2021

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th September 2021

Costs application in relation to Appeal Ref: APP/X1118/W/21/3274931 48 Elizabeth Drive, Sticklepath EX31 3AJ

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Derren Bates for a full award of costs against North Devon District Council.
 - The appeal was against the grant subject to conditions of planning permission for demolition of existing extensions, erection of extensions & raising of roof ridge for additional accommodation to dwelling.
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Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance (the PPG) says that parties in planning appeals and other planning proceedings normally meet their own expenses. However, it advises that costs may be awarded against a party who has behaved unreasonably, and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The application for an award of costs in this instance is based almost entirely on the behaviour of the Council during the planning application process and following the decision, rather than during the appeal process. The PPG makes it clear that costs can only be awarded in relation to unnecessary or wasted expense at the appeal, although behaviour and actions at the time of the planning application can be taken into account in my consideration of whether or not costs should be awarded.
4. Although it is apparent that the application process was somewhat frustrating for the applicant, the evidence indicates that a decision was made in a little over two months, which is not far outside the expected timescale for determining an application of this type. Further frustration was encountered in post-decision communications with the Council to understand why the conditions had been imposed, and how the applicant's concerns may be resolved. Nevertheless, the evidence shows that an e-mailed response explaining the decision, and setting out two alternative courses of action, was received two days after the date of the decision. I do not, therefore, find that the Council's behaviour during and after the application was unreasonable.
5. The Council chose to amend its position on the need for some of the windows to be obscure glazed following receipt of the appeal. On the one hand, this could be taken as an admission that the conditions were wrongly imposed.

However, the PPG advises that a local planning authority will be at risk of an award of costs for not reviewing their case promptly following the lodging of an appeal. Consequently, this is what it did, and that resulted in a narrowing of the difference between the parties. As a result, there was less for the appellant to address at the final comments stage. I do not therefore find the Council's approach to be unreasonable.

6. It is contended in the application that the Council approved a similar proposal, at around the same time, where there was a considerably smaller distance between opposing windows, with no conditions requiring obscure glazing. The PPG advises that a local planning authority will be at risk of an award of costs for not determining similar cases in a consistent manner. Whilst some details of the other planning application have been provided, there is insufficient information for me to conclude that it was so directly comparable, that the two decisions were inconsistent.
7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Nick Davies

INSPECTOR