The Planning Inspectorate

Appeal Decision

Site visit made on 15 February 2017

by Keith Manning BSc (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 22 February 2017

Appeal Ref: APP/B3438/W/16/3162019
Orchard Corner, 108 Caverswall Road, Blythe Bridge, Stoke-on-Trent ST11 9BG

- 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 Tony Castrey against the decision of Staffordshire Moorlands District Council.
- The application Ref SMD/2016/0310, dated 9 May 2016, was approved on 19 August 2016 and planning permission was granted subject to conditions.
- The development permitted is 'Proposed two-storey side extension and single storey rear extension. Proposed vehicular access and parking area.'
- The condition in dispute is No 4 which states that: All of the proposed windows at first floor in the south side elevation of the proposal hereby approved, facing No.92 Caverswall Road shall be fitted with obscure glazing to level 5 (minimum) from the Pilkington range or equivalent. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or as subsequently may be amended or re-enacted) this/these window(s) shall not be re-glazed with any transparent materials or enlarged or otherwise altered, nor shall any additional door, window or other opening be formed in that elevation unless a further planning permission has first been granted on application to the Local Planning Authority.
- The reason given for the condition is 'to protect the amenity and living conditions of the neighbouring residential property from overlooking or perceived overlooking'.

Decision

1. The appeal is dismissed.

Preliminary Matter

2. On attending the 'access required' site visit I found the approved extension to be at a relatively advanced stage of construction such that the builder working on the site was able to give me access to the aperture for the first floor bedroom window facing No 92 Caverswall Road.

Main Issue

3. The main issue is whether the condition in dispute is necessary in its current form, having regard to the privacy of occupiers of 92 Caverswall Road.

Reasons

4. The extension under construction brings the new flank wall of 'Orchard Corner' substantially closer to the existing flank wall of 92 Caverswall Road, from which it remains separated by the residual side garden, a narrow lane and the

boundary features of both properties, which are quite low. The extension includes what appears to be a prospective 'master bedroom' at first floor level served by a principal window directly facing the flank wall of No 92 and a smaller but not insubstantial secondary widow on the front elevation of the extension.

5. What appears to be currently used as a dining room at No 92, at ground floor level, is served by a principal window to the front but also by a secondary window in the flank wall facing the principal window to the 'master bedroom' in the new extension under construction. The view down into the dining room from that bedroom is very direct and, in view of the proximity of No 92, the secondary window serving the dining room at that property would itself require obscured glazing or net curtains or some other device to prevent the occupants being closely observed by users of the new bedroom at Orchard Corner. As the front window to the dining room is adequate but not generously proportioned, I would think that the extra light and outlook afforded by the secondary window thus affected is relatively significant to users of that room.

6. In essence, therefore, the privacy of occupiers of No 92 would be harmfully compromised by the ability of their neighbours to overlook them in the dining room and by the perception that they could be observed from the vantage point of their master bedroom. The Council's original concerns in that regard were well founded and I note from the officer's report that there was verbal agreement to a condition of the type now at issue in respect of the new bedroom window.

7. Be that as it may, the decision as to whether it is necessary turns on its merits and in this context I am aware that the occupier of No 92 has written to confirm contentment with the alternative condition suggested by the appellant.[1] However, her comments are only specific in respect of the tri-fold doors at ground floor level, which are not at issue, notwithstanding that in general terms she refers to clear glass being installed in the side windows generally, which would literally but unintentionally include the proposed first floor bathroom as well as the bedroom that is the Council's cause for concern.

8. Whatever view is taken by the current occupier, who may only use the dining room on an occasional basis as the as the appellant's statement could be taken to imply,[2] a future occupier of the house might wish to make more regular use of the room currently used as a dining room, for example by using it as a living room, and therefore it cannot be assumed that there would not be a harmful impact on living conditions of the type identified by the Council.

9. The Council's Space About Dwellings SPG unsurprisingly classifies the side window to the dining room at No 92 as 'secondary' but the determinative relevance of that in this case is questionable. The guidance is precisely that. It is guidance not prescription and in any event the relevant concept is not the distance to the property boundary but the distance between windows and it seems to me that the more relevant guideline, by analogy, is A3.4 (4) on page 126 which would in any event require a separation of 14 metres rather than the 10 metres or thereabouts which is a consequence of the permitted extension. The analogous situation is relevant because the side of the house at

[1] Email to PINS from occupier of 92 Caverswall Road dated 01/01/17 @13:51
[2] Paragraph 5.8 of appellant's statement

the appeal site is now (in effect) proposed to have a principal upper floor window with clear glazing, of the type more generally found on rear elevations.

10. There would therefore be conflict with the basic intention of the SPD to maintain adequate distance for privacy and I do not accept, moreover, that a condition to require the maintenance of what would need, in context, to be unusually tall boundary vegetation, such as the bulrushes shown on the original drawings, would adequately address the problem, owing, amongst other considerations, to potential enforcement difficulties.

11. Clearly, it is germane to consider the living conditions of users of the bedroom in the permitted extension, but I am conscious that there would be adequate light from a relatively large obscure glazed window and that outlook would be available also, by virtue of the window on the front elevation facing Caverswall Road. I do not therefore consider the Council's requirement to obscure glaze the side window would give rise to unacceptable living conditions at the appeal site.

12. The National Planning Policy Framework includes securing a good standard of amenity within its core planning principles and policy DC1 of the Council's Core Strategy seems to me to be consistent with this intention. Conditions should only be imposed if, inter alia, they are both reasonable and necessary. In this instance, for all the above reasons, I am satisfied that the condition in dispute is, in its current form, both reasonable and necessary if the privacy of occupiers of 92 Caverswall Road is to be adequately protected, in accordance with the intentions of both the development plan and national policy. On that basis, and having taken all other matters raised into account, I conclude that the appeal should be dismissed.

Keith Manning

Inspector