The Planning Inspectorate

Appeal Decision

Site visit made on 22 November 2016

by A J Mageean BA (Hons) BPl PhD MRTPI

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

Decision date: 20th December 2016

Appeal Ref: APP/Y3805/W/16/3157197
23 Hamilton Road, Lancing BN15 9NP

- 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 R Densley against the decision of Adur District Council.
- The application Ref AWDM/0345/16, dated 3 March 2016, was approved on 18 April 2016 and planning permission was granted subject to conditions.
- The development permitted is loft conversion to form new 1st floor including alterations to roof to form gable end and front and rear projecting dormers.
- The condition in dispute is No 3 which states that: '*The windows in the rear dormer extension shall at all times be obscure-glazed and non-opening (except that part which is above 1.7m above the floor of the room in which the window is installed) and they shall not subsequently be altered in any way*'.
- The reason given for the condition is: '*To prevent overlooking and to comply with saved Policy AH7 of the Adur District Local Plan*'.

Decision

1. The appeal is allowed and the planning permission Ref AWDM/0345/16 for loft conversion to form new 1st floor including alterations to roof to form gable end and front and rear projecting dormers at 23 Hamilton Road, Lancing BN15 9NP granted on 18 April 2016 by Adur District Council, is varied by deleting condition No 3 and substituting it with the following condition:

"03 The window to the bedroom in the rear dormer extension shall at all times be obscure-glazed and non-opening (except that part which is above 1.7m above the floor of the room in which the window is installed) and shall not subsequently be altered in any way. The window to the bathroom in the rear dormer extension shall be obscure-glazed and not subsequently altered in any way. Any opening mechanism which is provided for the bathroom window must be in accordance with details which have been previously submitted to and approved in writing by the local planning authority."

Background and main issue

2. The appeal relates to a semi-detached bungalow located on the eastern side of Hamilton Road. Planning permission has been granted for a loft conversion to create a new first floor. This includes the insertion of front and rear projecting dormers which would serve the master bedroom and bathroom. As the rear dormer would contain windows which would overlook the rear gardens of No 22 and No 24 Greet Road this approval was subject to the condition which requires these windows to be obscure glazed and non-opening below 1.7m. The dispute between the parties relates to this requirement.

3. The main issue is therefore whether the disputed condition is necessary and reasonable, having regard to the living conditions of the occupiers of No 22 and No 24 Greet Road with particular reference to privacy.

Reasons

4. The rear garden of the appeal property is, according to the Council, around 11m in length. The Council also states that the combined length of the rear gardens of both the Hamilton Road and Greet Road properties is just less than 22m. Additionally, No 22 Greet Road has a conservatory attached to its rear elevation, which reduces the overall distance between the appeal property and this dwelling to around 19m. Whilst a timber fence of reasonable height marks the shared boundary between these properties, it is clear that if clear glazed and opening windows were to be fitted in the rear dormer, this would lead to overlooking of the rear of the Greet Road properties.

5. The Council makes reference to its Supplementary Planning Guidance[1] which states that where dwellings are less than 22m from the principal windows of dwellings to the rear, dormers are unlikely to be acceptable due to the degree of overlooking which would be caused. It is clear that the distance between the dormer windows and the conservatory attached to No 22 Greet Road would breach this standard. This conservatory is, as is typical of such structures, open in nature, though I noted on my site visit that there are currently vertical blinds in place. Nevertheless, my view is that clear glazed dormer windows would allow views into this conservatory and therefore a loss of privacy for the occupiers of this property.

6. The appellant questions whether the restricted opening element of this condition is necessary, noting the benefit of opening windows for fire escape and ventilation. However, opening windows below 1.7m to the bedroom window could provide opportunities for overlooking the rear of No 22 and therefore privacy concerns. In this case as a further similarly sized window to this bedroom would be provided in the front dormer, it is clear that means of ventilation and escape would be provided.

7. I accept that it would be possible for the bathroom window in the rear dormer to be opening if the opening mechanism for this window was located on the right hand side when viewed from within the bathroom. This would ensure that the external view gained would be to the north, away from the rear of No 22 Greet Road.

8. The appellant also makes reference to the presence of other rear facing dormers with clear glazed and opening windows in the vicinity of the appeal site, some of which I was able to view on my site visit. However, it is clear that the particular circumstances of each case need to be carefully considered. In this respect I accept that the minimum privacy distances are met in relation to No 24 Greet Road and that the presence of these dormer windows would not lead to a loss of privacy for the occupiers of this property. However, I have found in this case that the extended nature of No 22, and therefore the reduced distances between these properties, means that a condition seeking to manage inter-visibility between these dwellings is necessary and reasonable.

[1] Development Control Standard No 3 'Extensions and Alterations to Dwellings' 1996.

9. Whilst I have found the disputed condition to be necessary in relation to the bedroom window, my view is that such restrictions are not required in full in relation to the bathroom window. If this window was obscure glazed but with a side opening mechanism, as suggested above, the development would still accord with Policy AH7 of the Adur District Local Plan which requires that development should not result in an unacceptable degree of overlooking for the occupiers of neighbouring properties. The condition in its current form therefore fails the test of necessity set out in the Framework.[2]

Conclusion

10. For the reasons given above, I therefore allow the appeal and vary condition No 3 on planning permission AWDM/0345/16. To ensure that it is precise and enforceable, the varied condition requires specific details of any opening mechanism for the bathroom window to be agreed in writing beforehand by the Council.

AJ Mageean

INSPECTOR

[2] National Planning Policy Framework, paragraph 206