The Planning Inspectorate

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Miss Karen Wooden
Havant Borough Council
Business Development & Support Team
Civic Centre
Havant
Hampshire
PO9 2AX

Your Ref: 10/00244

Our Ref: APP/X1735/A/11/2147724/WF

Date: 5 August 2011

Dear Miss Wooden

Town and Country Planning Act 1990
Appeal by Mr M Acton
Site at 65 Geoffrey Avenue, Waterlooville, PO7 5BH

I enclose a copy of our Inspector's decision on the above appeal.

If you have queries or complaints about the decision or the way we handled the appeal, you should submit them using our "Feedback" webpage at www.planningportal.gov.uk/planning/appeals/planninginspectorate/feedback. This page also contains information on our complaints procedures and the right of challenge to the High Court, the only method by which the decision can be reconsidered.

If you do not have internet access, or would prefer hard copies of our information on the right to challenge and our complaints procedure, please contact our Quality Assurance Unit on 0117 372 8252 or in writing to the address above.

Please note the Planning Inspectorate is not the administering body for High Court challenges. If you would like more information on the strictly enforced deadlines for challenging, or a copy of the forms for lodging a challenge, please contact the Administrative Court on 020 7947 6655.

Yours sincerely

Ruthe Nattee

Ruthe Nattee

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Appeal Decision

Site visit made on 12 July 2011

by R J Marshall LLB Dip TP MRTPI

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

Decision date: 5 August 2011

Appeal Ref: APP/X1735/A/11/2147724
65, Geoffrey Avenue, Waterlooville, Hampshire, PO7 5BH

- 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 M Acton against the decision of Havant Borough Council.
- The application Ref APP/10/00244, dated 10 October 2010, was approved on 26 November 2010 and planning permission was granted subject to conditions.
- The development permitted is rear conservatory to replace existing and new side conservatory.
- The condition in dispute is No. 3 which states that: *Notwithstanding the details included in the application, the windows in the south elevation of the rear conservatory and the north elevation of the side conservatory since marked x on the plans hereby approved shall: (i) be of a type not capable of being opened; and (ii) at all times be and remain glazed entirely with obscure glass, the particular type of which glass shall provide a degree of obscuration no less obscure than that which is provided by Pilkington's Texture Glass Obscuration Level 4.*
- The reason given for the condition is: *In the interests of the amenities of the occupiers of nearby properties and having due regard to saved Policy D1 of the Havant Borough District Wide Local Plan 1996-2011, which forms part of the Havant Borough Local Development Framework and Planning Policy Statement 1.*

Decision

1. The appeal is allowed and the planning permission Ref APP/10/00244 for rear conservatory to replace existing and new side conservatory at 65, Geoffrey Avenue, Waterlooville, Hampshire, PO7 5BH granted on 26 November 2010 by Havant Borough Council, is varied by deleting condition No. 3 and substituting for it the following conditions:

   - *Notwithstanding the details included in the application, the windows in the north elevation of the side conservatory shall: (i) be top opening only and (ii) be obscure glazed at a level no less than that provided by Pilkington's Texture Glass Obscuration Level 4. The windows shall thereafter be retained as such.*

   - *The windows in the south elevation of the rear conservatory shall: (i) be non-opening and (ii) be obscure glazed at a level no less than that provided by Pilkington's Texture Glass Obscuration Level 4. The windows shall thereafter be retained as such.*

Main Issue

2. The main issue in this appeal is whether the disputed condition is reasonable and necessary in the interests of protecting neighbours' living conditions.

Reasons

3. The planning permission on which the disputed condition is attached is for a side conservatory to the north of the appellant's bungalow and a replacement rear conservatory. The development permitted has not yet been undertaken.

4. The condition in dispute relates to both structures. The appellant has appealed against the condition in its entirety. However, his concern appears to relate to the condition in so far as it applies to the side conservatory. The application plans show the south elevation of the rear conservatory being obscure glazed and the appellant has raised no specific objection to the disputed condition in relation to this conservatory.

5. The south elevation of the rear conservatory would abut the side garden boundary of the neighbouring property. Although a fairly tall close board fence runs along this boundary at present there is no guarantee that it would remain in place in perpetuity. In its absence, and without obscure glazing on the south elevation of this conservatory, substantial overlooking of the neighbouring property could potentially occur. To protect the privacy of those on this side of the appeal site it is necessary to retain the requirements in the disputed condition insofar as they relate to this aspect of the permitted scheme.

6. The side conservatory is a relatively modest structure. The appellant says that it is required for wheelchair storage and thus would not give rise to a use that would cause overlooking. However, its future use could not be guaranteed. A condition, as suggested by the appellant, that it not be used as living accommodation would be difficult to enforce.

7. The north facing windows of this conservatory would look out onto the southern elevation of the neighbouring bungalow. Only a relatively narrow gap, of little more than a driveway width, exists between the appellant's house and this property. Oblique views would be obtained from the side elevation of the conservatory towards a newly created doorway and 2 small linked side windows in the neighbour's house. Rather more direct views, in the absence of obscure glazing, would be obtained onto a substantial side window of the neighbouring house located more at the western extremity of the property. This in particular would have the potential to cause a degree of overlooking than is presently the case and create an unacceptable loss of privacy. So too, even with the use of opaque glass, would the ability to fully open the conservatory windows. However, I see no objection to the windows being top opening. Top opening windows would provide necessary ventilation whilst preventing undue overlooking.

8. Concern was raised that the obscure glazing required in the side conservatory would limit light into the appellant's lounge. However, no conclusive evidence has been provided on this and given that the conservatory would lie forward of only a small high level lounge window such harm should not arise.

9. It is said that the neighbours to the north have recently replaced existing windows with clear glass. However, the full extent to which this may have made the interior of the neighbouring dwelling more open to view, and created greater opportunities for overlooking the appeal property, is not entirely clear. In any event this case should primarily be determined on how things stand at present and it is preferable to avoid further harm through overlooking.

10. It is concluded that the disputed condition is reasonable and necessary in the interests of protecting neighbours' living conditions in so far that it requires obscure glazing. Removal of the restriction in the condition in its entirety would conflict with Policy CS16 of the Havant Borough Core Strategy (2011), which replaces the requirements of the earlier Local Plan, in so far that it seeks to protect the amenity of neighbours.

11. It is not, however, reasonable or necessary to have so broad a restriction on the side conservatory on the windows remaining non-opening. Thus I have allowed the appeal by varying the permission and imposing conditions that still require obscure glazing but which limit the restriction on their opening in the side conservatory so that on this structure they may be top opening only. In attaching new conditions the opportunity has been provided to make their wording less convoluted.

12. In arriving at this view I have some sympathy with the appellant's observation that he has already bought the glazing. However, such matters do not justify a different decision to the one I have made.

R J Marshall

INSPECTOR

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