
Appeal Decision

Site visit made on 29 August 2017

by Helen Hockenhull BA(Hons) B.PI MRTPI

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

Decision date: 14 September 2017

Appeal Ref: APP/L3245/W/17/3177029

37 Oak Drive, Oswestry, Shropshire SY11 2RX

- 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 Andrew Roberts against the decision of Shropshire Council.
 - The application Ref 17/01550/VAR, dated 28 March 2017, was approved on 23 May 2017 and planning permission was granted subject to condition.
 - The development permitted is the erection of a single storey rear/side extension.
 - The condition in dispute is No. 1 which states that: the recently installed ground floor window within the south east elevation shall be opaque glazed and non-opening. This work shall be implemented within 3 months of the date of this permission and the window shall remain opaque glazed and non-opening in perpetuity.
 - The reason given for the condition is: to protect the amenity of neighbouring property.
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Decision

1. The appeal is allowed and planning permission ref 17/01550/VAR to erect a single storey rear/side extension at 37 Oak Drive, Oswestry, Shropshire SY11 2RX, granted on 23 May 2017 by Shropshire Council is varied by deleting condition 1.

Background and Main Issue

2. Planning permission was granted for a single storey rear/side extension under planning permission reference 16/01109/FUL and the development commenced. However the proposal was not constructed in full accordance with the approved plans with the proposed shower room being repositioned and an extension being made to the kitchen. Application reference 17/01550/VAR sought to vary condition 2 of that permission which related to the approved plans. This revised permission included condition No.1, which required that the window serving the kitchen area on the side elevation of the dwelling be fitted with opaque glass and be non-opening. This was in order to protect the amenity of the occupant of the neighbouring property. It is this condition that the appellant seeks to remove.
3. In light of the above, the main issue in this case is the effect of deleting condition No.1 on the living conditions of the occupants of No. 38 Oak Drive with particular regard to overlooking and privacy.

Reasons

4. The window to which condition 1 relates is positioned on the side elevation of No. 37 and faces the side bay kitchen window of No. 38 with a separation

distance of around 2.5 metres. There is an intervening boundary fence. At the time of my site visit, that part of the fence between the windows in question had been raised in height. When viewed from the appellant's property, the raised fence obscured any view into the neighbouring window thus preventing any overlooking or loss of privacy.

5. I note in their response to the original planning application, the occupant of No.38 Oak Drive, states that the raised fence is not satisfactory in their view as it could be taken down by the existing or a future occupier of the property.
6. Notwithstanding the above, I have assessed the impact of the proposal with the original fence height of around 1.8 metres. The kitchen window in the neighbouring property consists of a larger lower pane and a smaller upper pane of glass. Looking from the appellant's kitchen, there would be no direct view into the neighbouring kitchen due to the presence of the fence but the upper pane of the window would be visible. Taking account of the height of the upper pane, I consider it would be unlikely that a person stood at the kitchen sink would be clearly seen, particularly to the extent that they would be overlooked or have their privacy materially reduced.
7. Condition 1 also required the kitchen window to be non-opening. The window installed opens outwards from the bottom. I viewed the window both open and closed at my site visit. Whatever position the window was in, it appeared to me to make no discernible difference to the view of the neighbouring window. I therefore consider it unnecessary for the window to be non-opening.
8. In conclusion, I consider that condition 1 is not necessary in order to protect the living conditions of the occupants of No. 38 Oak Drive in terms of overlooking and privacy. The development accords with Policy CS6 of the Shropshire Local Development Framework Core Strategy 2011 and Policy MD2 of the Site Allocations and Management of Development (SAMDev) Plan 2015. These policies seek to achieve a high standard of design and maintain residential amenity.
9. Therefore for the reasons given above, I find that the appeal should succeed. I will vary the planning permission by deleting condition 1.

Helen Hockenhull

INSPECTOR