



Appeal Decision

Site visit made on 31 July 2023

by S. Hartley BA(Hons) Dist.TP (Manc) DMS MRTPI MRICS

an Inspector appointed by the Secretary of State

Decision date: 09 August 2023

Appeal Ref: APP/L3245/D/23/3322703

41 Torrin Drive, Shrewsbury, Shropshire SY3 6AW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with a condition subject to which a previous planning permission was granted.
- The appeal is made by Mr S Uddin against the decision of Shropshire Council.
- The application 23/00667/VAR, dated 13 February 2023, was refused by notice dated 4 April 2023.
- The application sought planning permission for the erection of a single storey extension without complying with a condition attached to planning permission Ref 21/04923/FUL, dated 17 February 2022.
- The condition in dispute is No. 2 which states that "*The development shall be carried out strictly in accordance with the approved plans and drawings*".
- The reason given for the condition is: "*For the avoidance of doubt and to ensure that the development is carried out in accordance with the approved plans and details*".

Decision

1. The appeal is allowed, and planning permission is granted for a single storey extension at 41 Torrin Drive, Shrewsbury, Shropshire, SY3 6AW, in accordance with the terms of the application ref 21/04923/FUL, dated 17 February 2022, and subject to the following conditions:-
 - (i) The development shall be carried out in accordance with drawing No. 03 'proposed rear extension VAR' dated 13/02/2023'
 - (ii) Within two months of the date of this decision, and notwithstanding what has been submitted alongside the planning application relating to the window in the side elevation of the approved rear extension facing No. 43 Torrin Drive, details including samples of a double glazed, opaque glass window to the side elevation of the approved rear extension facing No. 43 Torrin Drive shall be submitted to and thereafter approved in writing by the local planning authority. The approved double glazed opaque glass window shall be installed within a further 2 months of the approval of the local planning authority. The window shall be permanently sealed

and shall be non-openable. The window shall thereafter be permanently fitted with the approved double glazed opaque glass to the same level of opacity as approved by the local planning authority and the window shall be permanently sealed and non-openable.

Background and Main Issue

2. Planning permission was approved in February 2022 for a single storey, rear extension. This was subject to several conditions including No. 2, as detailed above, which stipulated that the extension should be carried out in strict accordance with the approved drawings. The appellant has carried out development which does not strictly accord with the approved plans in so far that a ground floor window has been formed in the side elevation of the rear extension facing No. 43 Torrin Drive and a single rooflight (instead of two approved rooflights) installed in the roof slope facing this neighbouring property.
3. In the context of the above, and, considering the Council's reason for refusal, the main issue in respect of this appeal is whether the window and roof light are acceptable in terms of their effect upon the living conditions of the occupiers of No. 43 Torrin Drive in respect of privacy and outlook.

Reasons

4. The occupiers of the neighbouring property and the Town Council object to the proposal for various reasons including loss of privacy. The ground floor side, secondary window of the rear extension is near to the common boundary with No. 43 Torrin Drive and, in its current form, the objection is that it causes unacceptable harm to the living conditions of the occupiers of this property in terms of overlooking and hence has had a materially adverse impact upon privacy. The matter is exacerbated by the appeal property, and hence the side window in particular, being set at a higher level than No. 43 Torrin Drive, and which allows overlooking over the adjoining boundary fence into the rear space of the latter and into its own secondary and side window.
5. Owing to the position and height of the proposed roof light, I do not consider that it has caused material harm to the privacy of the occupiers of the neighbouring property. It is noteworthy that two single roof lights were, in any event, approved as part of planning permission 21/04923/FUL and so the roof slope would include a very similar level of glazing compared to what has already been approved.
6. I do not find that the ground floor side window has caused harm to the occupiers of the neighbouring property in terms of having an enclosing or dominating impact. It has not added any additional scale or bulk to the extension relative to planning permission 21/04923/FUL. In this regard, I do not agree with the local planning authority (LPA) that the proposed development '*appears overbearing*'. Hence, no material harm has been caused to the occupiers of No. 43 Torrin Drive in respect of outlook.
7. The appellant acknowledges concerns raised relating to loss of privacy for the occupiers of No. 43 Torrin Drive. By way of mitigation, he therefore proposes that the ground floor side window facing this neighbouring property be fitted with Pilkington's Artic obscure glass (as shown in the design and access statement) and by ensuring that the window is non-openable.

8. On my site visit, I was able to see that the side window had been blocked upon the inside of the room, albeit temporarily, and pending the outcome of the appeal. Therefore, I was not able to gauge the effect of any sample of obscure glazing when set within the window. The appellant did have a sample of the proposed glazing in his possession, but it was of such a limited size that it was not possible to draw any meaningful conclusions as to its effectiveness in providing privacy to the adjoining occupiers.
9. However, I am satisfied that it would be possible to fit obscure glass to provide such adequate privacy and if the window were sealed shut permanently. I note that the occupiers of No. 43 Torrin Drive are concerned about the opaque glass being changed by future occupiers of the appeal property, but the imposition of a planning condition would run with the land and hence the permanent retention of it would be capable of being enforced by the LPA.
10. I have afforded the main parties an opportunity to comment upon such a condition
11. The occupiers of the neighbouring property raise concerns about noise penetration arising from the provision of a side elevation window rather than the construction of a continuous solid wall. Subject to the window being double glazed, as also stipulated by condition, I do not find, in relative terms, that there would be unlikely to be any material difference in noise from the appeal property. While the occupiers of the neighbouring property raise concern about the removal of internal walls in the property, this is not in itself development requiring planning permission and, in any event, I am satisfied that subject to the imposition of a planning condition, levels of noise from the appeal building would be unlikely to be significantly adverse in the context of what has already been approved.
12. Despite the proposed mitigation above, the LPA raised a concern in its officer report about a '*feeling of overlooking*'. While the perception of being overlooked is a material planning consideration, I consider that, subject to the imposition of a condition, any overlooking can be suitably mitigated and limited to no more than obscure shapes or silhouettes, and as such the perception of being overlooked does not justify refusing planning permission.
13. For the reasons outlined above, and subject to the imposition of a planning condition, I conclude that the proposal would not cause harm to the outlook or privacy of occupiers of No. 43 Torrin Drive. Consequently, it would accord with the amenity requirements of policy CS6 of the Shropshire Local Development Framework Core Strategy 2011, policy MD2 of the Site Allocations and Management of Development Plan 2015 and paragraph 130(f) of the National Planning Policy Framework 2021.

Other Matters

14. The occupiers of No. 43 Torrin Drive raise a concern about light pollution from the ground floor side window and the roof light. Two single roof lights have already been approved by the LPA. In this context, I do not find that the single roof light would have a materially different impact in artificial light spillage terms. I acknowledge that the ground floor side window would potentially result in some light spillage, particularly in the evening, when compared to planning permission 21/04923/FUL which permitted a solid wall to the side elevation of the extension. Nonetheless, given the position and relatively small size of the

window, I do not consider that the level of artificial light spillage would be significantly adverse. Furthermore, and in any event, it is very likely that the occupiers of No. 43 Torrin Road would have the option of shutting curtains and/or blinds during the evening or periods of darkness, as would the appellant.

15. None of the other matters raised by other interested parties alter or outweigh my conclusion on the main issue.

Conditions

16. As the extension has already been built, it is not necessary to repeat some of the conditions that were imposed in respect of planning permission 21/04923/FUL. In the interests of precision and certainty, it is necessary to impose a drawing condition. In the interests of the privacy of the occupiers of the neighbouring property, it is necessary to impose a condition relating to the ground floor window of the side elevation of the rear extension.

Conclusion

17. For the reasons outlined above, I conclude that the appeal should be allowed.

S. Hartley

INSPECTOR