The Planning Inspectorate

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Your Ref: PL/2023/08094
Our Ref: APP/Y3940/D/23/3335096

05 March 2024

Dear Sir/Madam,

Town and Country Planning Act 1990
Appeal by Mrs Harriet Baines
Site Address: 26 Horse Road, Hilperton Marsh, TROWBRIDGE, BA14 7PF

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

If you have queries or feedback about the decision or the way we handled the appeal(s), you should submit them using our "Feedback" webpage at https://www.gov.uk/government/organisations/planning-inspectorate/about/complaints-procedure.

If you do not have internet access please write to the Customer Quality Unit at the address above.

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The Planning Inspectorate cannot change or revoke the outcome in the attached decision. If you want to alter the outcome you should consider obtaining legal advice as only the High Court can quash this decision.

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Thank you in advance for taking the time to provide us with valuable feedback.

Yours sincerely,

Bridget Holden
Bridget Holden

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The Planning Inspectorate

Appeal Decision

Site visit made on 21 February 2024

by J Evans BA(Hons) AssocRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th March 2024

Appeal Ref: APP/Y3940/D/23/3335096

26 Horse Road, Hilperton Marsh, Trowbridge BA14 7PF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mrs Harriet Baines against the decision of Wiltshire Council.
- The application Ref: PL/2023/08094, dated 20 September 2023, was refused by notice dated 2 November 2023.
- The development proposed is described as a loft conversion to include a Juliet balcony, dormer windows and velux windows.

Decision

1. The appeal is dismissed.

Procedural Matters

2. It was evident to me during my site visit that the majority of the works relating to the loft conversion had taken place. Section 73A of the Town and Country Planning Act 1990 (the Act) makes allowance for the submission of a planning application for development which has been carried out before the date of the application.

3. I also observed at my visit to the appeal site that the development that has been undertaken differs from the submitted plans[1] in various aspects including the nature of openings on the rear elevation, which includes a window at first floor level serving proposed bedroom 1 instead of a Juliet balcony as delineated on the submitted plans. For the avoidance of doubt and notwithstanding any work that has been undertaken, my responsibility is to consider the appeal based on the scheme as it appears on the submitted plans.

4. Section 55 of the Act describes development as the carrying out of building operations or the making of material changes of use. The description of the development on the original application form refers to a number of matters relating to the background to the appeal proposals which do not fall within the meaning of development as described in Section 55 of the Act. As a result, I have revised the description of the development which includes referring to the Juliet balcony to better reflect the proposal before me.

Main Issue

5. The main issue is the effects of the development on the living conditions of existing and future occupiers of neighbouring properties.

[1] Such as Drawing No. 80756-2 Rev B

Reasons

6. The appeal property is located along a narrow back lane leading from Horse Road and is surrounded on all sides by residential properties. To the rear of the appeal property are the associated rear aspects and gardens of a number of these neighbouring properties, the predominance of which are of a single storey form.

7. The appeal development proposes a number of first floor openings through a flat roofed balcony on the rear elevation of the appeal property which orientate towards a northerly direction. As a result, elevated views at first floor level are possible out of these openings towards the north, with more angled views to the north-east and north-west.

8. The Council's concerns are with regard to overlooking from these rear first floor openings on the internal and outdoor living space of a number of the neighbouring properties, and the resulting implications of such on the living conditions of existing and future occupiers. Whilst the Council have been specific in their grounds for refusal on the neighbouring properties for which they have concerns about overlooking, as part of my assessment and also bearing in mind the comments received from third parties, I have considered the effects of the appeal development on all of the neighbours to the appeal property.

9. During my site visit I observed that it would be possible from the Juliet balcony serving proposed bedroom 1 (as shown on the submitted plans), to have direct views into an area of the rear garden space serving no. 24 Horse Road to the north-west. The elevated presence and proximity of this large opening would to my mind appear uncomfortably intrusive to users of this private section of garden space due to the almost immediate positioning of the opening to the neighbouring boundary, and the resultant ability to look directly into the garden space. Whilst views would not be possible into the internal space and the remainder of the garden of no. 24, it appeared to me that the area of garden which would be overlooked, which included a pond and adjacent bench at the time of my visit, represents a well used and secluded part of outdoor amenity space. As a consequence, the resultant impact of this opening would therefore be intrusive on this area of private garden space, and would be unduly harmful to the living conditions of no. 24.

10. I also noted during my site visit that from the opening serving proposed bedroom 2, which is a 3-pane wide window (as delineated on the submitted plans), it would be possible to have an almost direct line of view into a large window serving a habitable room to the rear of the property no. 40 Horse Road and it would also be possible to overlook areas of the private rear garden of this property. Whilst I acknowledge that both the Council and the appellant have indicated a separation distance of just over 21m between the proposed and the existing opening, it appears this figure is indicative only and has not been arrived at from measurements from a detailed plan and therefore I have uncertainty with regard to its accuracy. Nonetheless, the overlooking I observed during my site visit felt uncomfortably close to areas of otherwise private internal and outdoor living space serving this property due to the direct line of sight that was possible, these observations therefore lead me to conclude that the resultant effects of overlooking from this window would harm the living conditions of no. 40 with regard to loss of privacy.

11. Turning to the effects upon no. 39c directly to the west of no.40, I noted that that from all of the proposed openings, views internally and over private areas of garden associated with this property were restricted as a result of: the angles involved; intervening planting, boundary screening and outbuildings; and the limited openings on no.39c facing towards the direction of the appeal property. It seems to me that this property would therefore retain a good standard of both internal and outdoor privacy as a consequence of the appeal development.

12. This would be similar for the property no.39a, which is located further away from the appeal property than no.39c. Again, due to the distances and angles involved and intervening boundary enclosures, I am satisfied that the living conditions of this property would not be unduly impacted through the appeal development as a result of overlooking.

13. I am also satisfied that no.47 Marshmead, located to the north-east of the appeal property, would not be unduly impacted from any of the proposed openings as a consequence of intervening boundary screening, including a large evergreen tree, alongside the angular nature of the outlook and distances involved.

14. During my site visit, I observed that it would be possible to overlook at an angle, particularly from proposed bedroom 3 (as delineated on the submitted plans), an element of the rear garden of no.45 Marshmead, to the north-east. However, the angle of view would be oblique and the openings on the appeal property are set away from the boundary with this property, therefore it would be difficult to overlook significant areas of the garden of no. 45. It also seems to me, that it may be possible to obscure glaze the most easterly window to further reduce the outlook to the east.

15. On the matter of obscure glazing more broadly, the appellant has suggested to me that all of the openings could be obscure glazed and fixed to address any concerns I may have with regard to overlooking. Whilst I accept that it could be possible to control such matters via condition, I only consider this would be appropriate for openings serving bathrooms, secondary openings to rooms and rooflights where necessary, some of which have been suggested by the Council, in particular on openings to the east, west and south. Nonetheless, it seems to me that if all of the openings were obscure glazed and fixed, this would not be appropriate for habitable rooms such as bedrooms where clear glazing would be expected to provide for adequate living conditions for future occupiers. I am also not convinced this would address the perception of overlooking from neighbouring properties, particularly with regard to the Juliet balcony to serve proposed bedroom 1. I have also given thought as to whether further boundary screening and landscaping within the appeal site could resolve my concerns, but again I am not satisfied this could address all of the matters I have raised. Therefore, I do not consider the concerns I have expressed could be appropriately mitigated via conditions.

16. The appellant has referred me to a recent planning decision granted on the property no. 17a Horse Road. Whilst I acknowledge these submissions, it is not clear to me what were the full circumstances behind this decision, and nonetheless, I am required to determine the appeal proposal on its own individual merits. As a result, the decision at no. 17a has not materially changed my view of the proposals.

17. Consequently, for the reasons I have set out above, the proposed development, in particular from the proposed openings to serve bedrooms 1 and 2 (as delineated on the submitted plans), would result in harm to the living conditions of existing and future occupiers of neighbouring properties nos. 24 and 40 Horse Road, as a consequence of overlooking and loss of privacy. I therefore find conflict with Policy 57 of the Wiltshire Core Strategy Adopted January 2015 which amongst other matters, requires development to demonstrate regard to the compatibility of adjoining buildings and uses, the impact on the amenities of existing occupants, and ensuring that appropriate levels of amenity are achievable within the development itself, including the consideration of privacy. The proposal would also conflict with paragraph 135 of the National Planning Policy Framework 2023 (the Framework), which amongst other matters requires development to create places with a high standard of amenity for existing and future users.

Other Matters

18. The appellant has suggested that the removal of permitted development rights on the appeal property when it originally obtained planning permission was not reasonable, and that the proposals would also fall within permitted development rights if they were in place. However, these are not relevant matters to the consideration of the case before me, which as I have highlighted, I am required to determine on its own individual merits.

Conclusions

19. The proposed development would have a detrimental effect on the living conditions of existing and future occupiers of neighbouring properties.

20. As a result of these negative effects, the proposal is in my view unacceptable, and contrary to the development plan, when read as a whole. There are no material considerations that would justify a decision contrary to the provisions of the development plan, in this case.

21. For all of the above reasons, having regard to all matters raised, I conclude that the appeal should be dismissed.

J Evans

INSPECTOR