



Appeal Decision

Site visit made on 29 October 2012

by **J.P. Watson BSc MICE FCIHT MCMi**

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

Decision date: 23 November 2012

Appeal Ref: APP/E2530/D/12/2181655

Hollydew, 39 Station Road, Castle Bytham, Lincolnshire NG33 4SJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 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 conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr and Mrs P Holland against the decision of South Kesteven District Council.
- The application Ref S12/0750/HSH, dated 12 March 2012, was refused by notice dated 29 May 2012.
- The application sought planning permission for front extension (garage), side and rear extension to existing dwelling without complying with a condition attached to planning permission Ref S11/0828/HSH, dated 8 April 2011.
- The condition in dispute is No. 2 which states that: "Before the first occupation of the extension hereby permitted, the ground floor window of the playroom shall be fitted with obscure glazing (to a minimum obscurity of Pilkington Level 3 or equivalent) and if any part of the window(s) is less than 1.7m above the floor of the room in which it is installed, it shall be non opening. The window shall be retained as such thereafter."
- The reason given for the condition is: "To safeguard the privacy of the occupiers of the adjoining property and in accordance with the guidance contained in national Planning Policy Statement PPS1."

Decision

1. The appeal is dismissed.

Preliminary

2. When I visited the appeal property the playroom window was fitted with clear glass in its opening panes and in those that are fixed. This was contrary to the disputed condition by virtue of the nature of the glass and the ability of the window to be opened below 1.7 metres above floor level. A letter dated 9 March 2012 from the Appellants' daughter Mrs MacGillivray says that plain glass was fitted at that time, which was before the application was made. Section 73A of the Town and Country Planning Act 1990 allows planning permission to be granted for development carried out before the date of the application without complying with some condition subject to which planning permission was granted.

Main Issue

3. The main issue is whether the disputed condition is necessary and reasonable, having regard to the privacy of the occupiers of the neighbouring property known as "The Cutting House".

Reasons

4. Looking out through the playroom window that is the subject of the appeal, I could easily see over the intervening solid post and panel fence and into windows at The Cutting House, including a utility room and another room, described by the residents of The Cutting House as the main living space. Such overlooking would be intrusive there, by virtue of the short distance between the windows in question. The appellants contend that the post and panel fence obstructs more light than the slatted fence they had erected on the common boundary, but the matter at issue in this appeal is not the intensity of natural light in the playroom (which I am not persuaded would be affected by the introduction of obscure glass) but the degree of overlooking into The Cutting House. I am satisfied that Condition No. 2 of planning permission Ref S11/0828/HSH would, if implemented, provide a necessary and reasonable safeguard against overlooking from the appeal property into The Cutting House and associated loss of privacy there.
5. The Council draws various policy provisions to my attention. The reason for imposing the condition arose from Planning Policy Statement 1, but no reference was given and in any event PPS1 was replaced by the National Planning Policy Framework in March 2012. The 29 May 2012 Decision Notice and the Officer Delegated Report both refer to Section 11 of the Framework ("Conserving and enhancing the natural environment") and to Policies SP1 and E1 of the South Kesteven Core Strategy. Policy SP1 deals with Spatial Strategy, and E1 is about Employment Development. No indication is given of the relevance of any of these to the appeal proposal, and I find none.
6. But there is no contention that a loss of privacy in a neighbouring property is not a consideration that should be taken into account in this appeal. It is clear to me that it should be taken into account and it seems to me that paragraph 64 of the Framework, with its rejection of poor design, supports that view. I conclude that the appeal should be dismissed.

J.P. Watson

INSPECTOR