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## Appeal Decision

Site visit made on 1 November 2016

by **Graeme Robbie BA(Hons) BPI MRTPI**

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

Decision date: 23 November 2016

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### Appeal Ref: APP/Y2736/W/16/3157303

#### Manor Farm plot 1, Leppington, Malton, North Yorkshire YO17 9RL

- 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 Peter Stacey against the decision of Ryedale District Council.
- The application Ref 16/00008/73A, dated 4 January 2016, was approved on 29 February 2016 and planning permission was granted subject to conditions.
- The development permitted is variation of the Plans Condition added to approval 07/00586/FUL dated 04.09.2007 by approval 14/01311/AMEND dated 28.01.2015 to replace Drawing Nos. 2007-8-40 and 2007-8-40-P1 by Drawing Nos.02A.2015.PA01 Proposed Floor Plans & Elevations and 02A.2015.PA02 Proposed Site Block Plan and remove Drawing No. 2007-8-40 Street (Revisions to dwelling on Plot land revision to access).
- The conditions in dispute are Nos 5, 6 and 7 which state that:
  - Condition 5  
*Notwithstanding the submitted plans the door on the south elevation which is to serve the garage shall be of solid construction with no part of it glazed.*
  - Condition 6  
*The ensuite window on the south elevation of the dwelling shall be non-opening and be permanently glazed with frosted or opaque glass of a type to be submitted and approved in writing by the Local Planning Authority prior to the occupation of the building.*
  - Condition 7  
*Prior to the commencement of the development hereby approved the developer shall submit a plan showing the exact siting and species of tree to be planted following the substantial completion of the development, opposite to the bedroom windows on the south elevation of the southern boundary of the site.*
- The reasons given for the conditions are:
  - Condition 5  
*In the interest of protecting the amenity of the neighbouring property and in accordance with the aims of Policy SP20 of the Ryedale Plan – Local Plan Strategy and the NPPF.*
  - Condition 6  
*To protect the privacy of adjoining properties and in accordance with the aims of Policy SP20 of the Ryedale Plan – Local Plan Strategy and the NPPF.*
  - Condition 7  
*In the interest of protecting the amenity of the neighbouring property and in accordance with the aims of Policy SP20 of the Ryedale Plan – Local Plan Strategy and the NPPF.*

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### Decision

1. The appeal is allowed and the planning permission Ref 16/00008/73A for variation of the Plans Condition added to approval 07/00586/FUL dated
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04.09.2007 by approval 14/01311/AMEND dated 28.01.2015 to replace Drawing Nos. 2007-8-40 and 2007-8-40-P1 by Drawing Nos.02A.2015.PA01 Proposed Floor Plans & Elevations and 02A.2015.PA02 Proposed Site Block Plan and remove Drawing No. 2007-8-40 Street (Revisions to dwelling on Plot land revision to access) at Manor Farm plot 1, Leppington, Malton, North Yorkshire YO17 9RL granted on 29 February 2016 by Ryedale District Council, is varied by deleting conditions 5 and 6 and substituting for them the following conditions, and by deleting condition 7:

- 5) Notwithstanding the details shown on the submitted plans, prior to the occupation of the dwelling hereby permitted, full details of the door on the south elevation of the dwelling to serve the garage shall be submitted to and approved in writing by the local planning authority. If any part of the door is to be glazed, the glazed elements shall be fitted with frosted, opaque or obscure glazing of a type to be submitted to and approved in writing by the local planning authority prior to the occupation of the dwelling. The agreed details shall be implemented and installed prior to the occupation of the dwelling and shall thereafter be retained in accordance with the agreed details.
- 6) The en-suite window on the first floor south elevation of the dwelling hereby permitted shall be permanently glazed with frosted, opaque or obscure glass of a type to be submitted to and approved in writing by the Local Planning Authority prior to the occupation of the dwelling, and only the top sash shall be an opening element. The agreed details shall be implemented and installed prior to the occupation of the dwelling and shall thereafter be retained in accordance with the agreed details.

### **Background and Main Issue**

2. Planning permission was originally granted in 2007<sup>1</sup> (the 2007 permission) for the erection of 2no four bedroom dwellings with integral double garages and formation of vehicular access to Plot 2 on land at Manor Farm. A subsequent application sought, and was granted, permission<sup>2</sup> (the 2014 permission) to add a plans condition to the 2007 permission. The case now before me (the 2016 permission) stems from an application to vary the wording of condition No 2, and therefore amend the approved plans, of the 2014 permission.
3. The application the subject of this appeal was refused in part, in relation to the introduction of a larger flat roof extension with balcony above. However, it is the matter of conditions attached to the approval, and specifically conditions relating to the type of external personnel door fitted to the integral garage; the glazing and opening details of a first floor en-suite bathroom window, and the type and nature of boundary planting opposite a first floor bedroom window, that are the subject of this appeal.
4. I therefore consider the main issue to be whether the conditions giving effect to these requirements are necessary and reasonable having regard to the effect of the proposal on the living conditions of occupiers of Manor Farm, with particular reference to privacy.

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<sup>1</sup> 07/00586/FUL

<sup>2</sup> 14/01311/AMEND

## **Reasons**

### *Garage Access Door*

5. Policy SP20 of The Ryedale Plan – Local Plan Strategy (LPS) is clear in that it states that new development will not have a material adverse impact on the amenity of present or future occupants of neighbouring land and buildings. It goes on to set out that such impacts may include loss of privacy. In this respect, LPS Policy SP20 can be said to be consistent with the National Planning Policy Framework (the Framework), and particularly with one of the core planning principles set out therein, in which planning should always seek to secure a good standard of amenity for all existing and future occupants of land and buildings.
6. The proposed dwelling at plot 1 would be a broadly L-shaped, two storey dwelling, with part of the L-shaped form comprising an attached double garage on the front wing of the dwelling. Vehicular access to the attached garage would be taken via a double-width garage door on that wing's north facing elevation. At the rear of the garage, on the dwelling's south facing elevation, and facing towards the neighbouring property at Manor Farm, would be a single personnel access door from the side garden into the garage, and vice-versa.
7. I note that the Council have not objected to the position of the garage door, per se, but rather their concern stems from its position relative to the kitchen window on the opposing side elevation of Manor Farm. The submitted plans do not, however, clearly indicate the type of door in this location, this lack of detail and clarity acknowledged in the Council's delegated report.
8. Given the location of the door broadly opposite the kitchen window of that property I understand that concern. However, I agree with the appellant that the amendment sought to this condition – to allow the installation of glazing panels, fitted with obscure glazing, rather than a solid door – would ultimately achieve the same thing. So, whilst closed, a door fitted with obscurely glazed panels would achieve the same result as a solid door in terms of preventing direct overlooking. When open, or in use, however the question of whether it is a solid door, or fitted with obscure glazing panels, becomes somewhat academic.
9. In their appeal submission, the Council introduces an additional concern likely, in their view, to arise from the installation of glazed elements within this door, namely the transmission of artificial light from within the garage towards the neighbouring property. However, in the context of a south facing elevation that would include two ground floor windows in addition to the bi-fold doors proposed in the rear ground floor element of the dwelling, with a further two first floor windows and two rooflights on the same elevation, the approach sought by the appellant would, in my judgement, be unlikely to have a significant material impact upon the neighbouring property in terms of the emission of artificial light.
10. Further, the matter of artificial light emissions from these other window sources was clearly not an issue for the Council in those instances, and I have not been presented with any objective assessment of any additional light that may be cast as a result of the proposed installation of glazed elements, be they obscurely glazed or plain. I note the relative ground levels of the two properties and the requirements set out in condition 8 and drawing O2A.2015.PA02

regarding the implementation of the landscaping proposals shown therein. These factors add weight to my conclusion set out above, in respect of the suitability of the alternative approach sought by the appellant in this instance.

11. Accordingly, I conclude that the proposed variation to the requirements of condition No 5 in the manner sought would not result in material harm to the living conditions of occupiers of the neighbouring property in terms of privacy, or harmful additional exposure to artificial light, thus ensuring that the proposal would continue to accord with LPS policy SP20. The disputed condition, in the form that it is worded, is not therefore necessary in the interests of the living conditions of occupiers of the neighbouring property. I shall however vary it accordingly to require the details of any proposed door in this location to be submitted prior to the occupation of the building, and, should it be proposed to be a non-solid door, that the glazing panels be fitted with obscure glazing and are retained as such thereafter.

*First Floor en-suite bathroom window*

12. The need for the south facing, first floor en-suite bathroom window in question to be fitted with obscure glazing is not in dispute between the main parties. However, the lack of natural (*ie*, non-mechanical) ventilation to this room, as required by condition 7, is a matter of dispute.
13. Windows fitted with obscure glazing in order to prevent overlooking between properties are clearly most effective when they are closed. As the parties are agreed that obscure glazing should be installed, some restriction to the opening of the window is therefore reasonable in order to prevent overlooking. However, it is also not unreasonable to allow the en-suite bathroom to enjoy a degree of natural (*ie*, non-mechanical) ventilation to the outside. I note the style of window indicated on the approved plans, but modification of the condition to allow a degree of opening for fresh air, and by limiting the opening extent of the window to the top sash but without also permitting views over and towards the adjacent property would be reasonable and justified. In this form, the proposal would still satisfy the overall amenity aims of LPS policy SP20.

*Tree Planting*

14. Although the Council justified the imposition of this condition on the basis of seeking to mitigate overlooking of the neighbouring property at Manor Farm from the first floor window of the proposed dwelling, their delegated officer report accepts that there would be no window-to-window overlooking between the properties. Rather, the Council's concern is that there may be a perceived sense of overlooking of the parking area and driveway of Manor Farm from that window.
15. LPS policy SP20 is entitled "Generic Development Management Issues" and refers in only generic terms to loss of privacy in relation to living conditions and amenity. I have not been directed towards any additional guidance regarding stand-off distances between properties and, as the Council have not identified any window to window overlooking, I find it difficult to reconcile the need for a condition of this nature, particularly given the difference in levels between the two properties and the proposed boundary treatment between the two, which would include a yew hedge.

16. Thus, on the basis of the evidence before me, I do not consider that the Council have adequately demonstrated, in terms of the effect on living conditions of occupiers of Manor Farm, the need for a condition of the nature proposed. The requirements set out in condition 8 of the 2016 permission, referring to drawing O2A.2015.PA02, will ensure an appropriate form of landscape and boundary treatment along the site's southern boundary, in accordance with LPS policy SP20. I therefore vary the original permission and remove the condition in question.

**Conclusion**

17. For the reasons given above, I conclude that the appeal should succeed. I therefore vary the 2016 permission by deleting the disputed conditions, Nos 5, 6 and 7, and substituting for conditions 5 and 6, the conditions set out in the decision, above. I have considered the other conditions attached to the permission, but there is no evidence before me that leads me to conclude that it is necessary to vary any of these. My decision modifies the existing planning permission and should be read in conjunction with it.

*Graeme Robbie*

INSPECTOR