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## Appeal Decision

Site visit made on 5 February 2020

**by Christopher Miell MPlan MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 02<sup>nd</sup> March 2020**

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**Appeal Ref: APP/L1765/W/19/3238416**

**2 Boyne Mead Road, Kings Worthy SO23 7QZ**

- 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 Miss Joanne Germaine against the decision of Winchester City Council.
  - The application Ref 19/00404/FUL, dated 22 February 2019, was approved on 4 June 2019 and planning permission was granted subject to conditions.
  - The development permitted is Application Reference Number: Planning Application Reference: 16/02528/HOU Date of Decision: 20/12/2016, Condition Number(s): 2 The development hereby approved shall be constructed in accordance with the following approved plans: 1616-202 C Proposed Elevations, 1618-201 C Proposed GA Plans, 3 The materials to be used in the construction of the external surfaces of the development hereby permitted shall be those as detailed in section 11 (materials) of the associated application forms and the email from Paul Cashin dated 16.12.2016. Amendments to approved plans.
  - The condition in dispute is No (5) which states that: *"The timber clad decking wall on the north-western (front) and south-western (side) elevations shall be installed prior to the use of the terrace area and shall be retained for the lifetime of the development hereby permitted"*.
  - The reason given for the condition is: *"To protect the amenity and privacy of the neighbouring residential properties"*.
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### Decision

1. The appeal is allowed and the planning permission Ref 19/00404/FUL for Planning Application Reference: 16/02528/HOU Date of Decision: 20/12/2016, Condition Number(s): 2 The development hereby approved shall be constructed in accordance with the following approved plans:, 1616-202 C Proposed Elevations, 1618-201 C Proposed GA Plans, 3 The materials to be used in the construction of the external surfaces of the development hereby permitted shall be those as detailed in section 11 (materials) of the associated application forms and the email from Paul Cashin dated 16.12.2016. Amendments to approved plans at 2 Boyne Mead Road, Kings Worthy, SO23 7QZ granted on 4 June 2019 by Winchester City Council, is varied by deleting condition No (5).

### Background and Main Issue

2. Planning permission was granted on 16 December 2016 for alterations and extensions to the appeal property, which included the erection of a raised decking terrace. On 22 February 2019 the appellant submitted a planning application to the Council for the development of the land without complying with conditions Nos (2) and (3) of the original planning permission. Planning permission was granted for the revised proposals on 4 June 2019.

3. The latest planning permission permits alterations and extensions to the appeal property, which also includes the erection of a raised decking terrace, albeit that the size of the raised decking terrace would be reduced when compared to the original proposal. The permission is subject to a condition which requires the timber clad decking wall, which would be constructed around the edge of the raised decking terrace, to be installed prior to the use of the raised decking terrace and retained as such thereafter. The appellant disputes the acceptability of the condition and seeks its removal from the permission.
4. Therefore, the main issue in this appeal is whether the condition is reasonable and necessary in the interests of protecting the living conditions of the neighbouring occupiers of No 13 Nations Hill, in respect of overlooking.

### **Reasons**

5. Paragraph 55 of the National Planning Policy Framework (the 'Framework') states that "*Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects*".
6. The raised decking terrace would be sited to the side and rear of the host building and the timber clad decking wall around the terrace would be approximately one metre high.
7. The raised decking terrace would be approximately two metres away from the rear boundary of No 13 Nations Hill. The boundary is defined by a timber fence and mature evergreen hedge. No 13 is set at a lower level than the appeal property and the hedge defines the bottom of the neighbouring rear garden.
8. On my site visit I observed that the raised decking terrace would be sited in a similar location to an existing patio area to the side of the host building. The appellant explains that the patio has been in use for approximately ten years. The Council do not dispute that this has been the case. The existing fence and hedge provide a suitable degree of screening between the appeal property and No 13, which largely prevents overlooking into the neighbouring rear garden from the existing patio.
9. The raised decking terrace would be larger than the existing patio and the finished floor level of the raised decking terrace would be built up so that it would align with the internal finished floor level of the host building. However, despite these changes, the existing fence and hedge would provide a suitable degree of screening between the appeal property and No 13, which would prevent any significant overlooking into the neighbouring rear garden.
10. The Council state that the existing hedge falls within the ownership of No 13 and is beginning to show areas of dieback. Whilst I acknowledge that the existing hedge cannot be relied upon in perpetuity to provide screening between the appeal site and No 13, especially as it is located on land outside of the appeal site, there is no evidence before me to suggest that the existing fence would be removed, which in and of itself, owing to the extent to which the raised decking terrace would be set away from the boundary, would provide a suitable degree of screening between the two properties. Moreover, I see no substantive reason why a replacement hedge could not be planted, if desired by either of the respective owners of the appeal site and/or No 13, as such works would not constitute development.

11. For the above reasons, I conclude that condition No (5) is unreasonable and not necessary, taking into account the advice within the Framework and the Planning Practice Guidance on the use of planning conditions.

### **Other Matters**

12. The Council explain that the appellant agreed to the imposition of the pre-commencement condition prior to the grant of planning permission. Whilst this is the case, it does not preclude the appellant from submitting an appeal against the imposition of the planning condition at a later date.
13. Reference has been made with regards to the Council's handling of the planning application. However, this is not in itself relevant to the consideration of the merits of the appeal proposal.
14. The occupiers of No 13 have expressed concern about the method of obscure glazing agreed by the Council in relation to the velux windows on the roof slope. Whilst I understand the concerns, based on the evidence before me, I do not disagree with the Council's assessment in respect of this matter. In addition, I note that condition No (4) controls the obscuration level and requires the obscure glazing to be retained for the lifetime of the development.
15. Concern has been expressed by the occupiers of No 13 that the works undertaken in relation to the original planning permission were not undertaken in accordance with the approved drawings. In addition, they state that there was not any community engagement by the appellant prior to the submission of the respective planning applications. Whilst this may or may not be the case, I have considered this appeal proposal on its individual planning merits only and have concluded that it would be acceptable for the reasons set out above.
16. None of the other matters raised alter or outweigh my conclusions on the main issue.

### **Conclusion**

17. For the reasons given, and having regard to all other matters raised, I conclude that the appeal should succeed. I will vary the planning permission by deleting the disputed condition.

*Christopher Miell*

INSPECTOR