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## Appeal Decision

Site visit made on 16 June 2021

**by Jonathan Edwards BSc(Hons) DipTP MRTPI**

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

**Decision date: 22 June 2021**

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**Appeal Ref: APP/P0240/W/21/3266418**  
**10 Digby Road, Leighton Buzzard LU7 1BX**

- 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 Catherine McCann against the decision of Central Bedfordshire Council.
  - The application Ref CB/20/03083/FULL, dated 28 August 2020, was approved on 20 November 2020 and planning permission was granted subject to conditions.
  - The development permitted is single storey side extension & loft conversion with flat roof dormer to rear, pitched roof dormers to front and removal of existing hips.
  - The condition in dispute is No 2 which states that: "Within 3 months of the date of this permission, the first floor windows in the northern elevation (north facing rear elevation) of the development shall be permanently fitted with obscured glass of a type to substantially restrict vision through it at all times and shall be non-opening, unless the parts of the window(s) which can be opened are more than 1.7m above the floor of the room(s) in which the window(s) is installed and these obscure windows shall be retained. No further windows or other openings shall be formed in the northern elevation.
  - The reason given for the condition is: "To safeguard the privacy of occupiers of adjoining properties."
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The submissions refer to an emerging local plan. The policies of this plan attract limited weight as I am unaware whether they are the subject of any unresolved objections.
3. The disputed condition relates to the windows in the rear dormer element of the approved development. On my visit I saw this had been constructed, albeit that only 2 of the 4 windows were provided with obscured glazing, the others being clear-glazed. My assessment has had regard to the development carried out to the property but is based on the appeal plans.

### Main Issue

4. The main issue is whether the disputed condition is necessary and reasonable having regard to the effect of the development on the living conditions of the occupiers of 10 and 12 King Street (Nos 10 and 12) in respect of privacy.

## Reasons

5. The development has allowed the introduction of bedrooms and bathrooms into the roof space of the appeal property, which was previously a bungalow. By virtue of their height above ground level and proximity to the boundary, the rear dormer windows allow the potential for clear views over a fence into the back gardens and rear windows of Nos 10 and 12. The outbuilding in No 10's garden is not high enough to prevent overlooking. A small tree in the garden of the appeal site partially obscures views, particularly from the larger bedroom window towards No 12. However, the tree's screening effect would be limited at times of leaf-fall and cannot be relied upon in the long term.
6. The Central Bedfordshire Design Guide 2014 (DG) states that overlooking should be avoided and recommends a distance of 21 m between rear habitable rooms of houses that back onto each other. The figures provided by the appellant indicate the dormer windows are less than the recommended distance away from the rear windows in No 12 and the ground floor windows to No 10. The separation distances are not mandatory and the shortfall is marginal. Nevertheless, the failure to comply with this guidance indicates that overlooking from the rear dormer windows could be harmful.
7. The DG indicates the 21 m distance may not be appropriate where there is an established pattern. However, regardless of the existing layout of development, the appeal scheme introduces potential overlooking from an elevated position which did not exist prior to its construction. No objections have been received from the occupiers of No 10 and No 12 but, even so, the rear windows could cause a significant loss of privacy.
8. The dormer windows do not directly overlook 8 King Street and are far enough away to avoid a harmful effect to this property. Also, the windows provide only limited views at an acute angle of 8 Digby Road. However, the acceptability of the scheme in these regards does not address or override the identified potential harm in respect of Nos 10 and 12.
9. The disputed condition addresses the potential overlooking concerns as the requirements for obscure glazing and fixed windows prevent clear views from the appeal property to the rear. Therefore, I conclude the condition is necessary to ensure the scheme is acceptable in terms of its effect on the living conditions of occupiers of Nos 10 and 12 in respect of privacy. In these regards, the disputed condition is necessary to ensure the appeal scheme accords with policies BE8 and H8 of the South Bedfordshire Local Plan Review 2004. These aim, amongst other things, to ensure development has no adverse effect upon residential amenity. For the same reasons and as the appeal plans indicate the use of obscure glazing to the rear windows, I conclude the disputed condition is reasonable.

## *Other Issues*

10. The appeal property benefits from a certificate of lawful development that relates to works to the roof, including a rear dormer. The appellant contends this represents a fallback position should the appeal be dismissed.
11. The dormer deemed lawful would be narrower than that subject of this appeal and it would include less windows, albeit there would be no stipulation for these to be obscured glazed or fixed. As it would require the removal of part of

the dormer which has already been provided, it is uncertain that this alternative would be constructed even if this appeal was dismissed. Little evidence has been provided to demonstrate otherwise. Moreover, the proposed removal of the disputed condition would result in more clear-glazed and unfixed windows and so more overlooking towards Nos 10 and 12 compared to the suggested lawful alternative. As such, the fallback position is less harmful than the appeal scheme without the disputed condition and so it fails to justify allowing the appeal.

12. Also, reference is made to previous planning permissions that allow a rear dormer including windows at the appeal property. The decision notices for these have not been provided but the evidence indicates that the permissions are subject to a condition similar to that subject of this appeal. As such, they do not allow development which would cause worse overlooking onto Nos 10 and 12 as would be the case if the disputed condition was removed. Therefore, the fallback position provided by these other permissions attracts limited weight in my consideration of the appeal.
13. Concern is raised that the planning condition requirement for fixed windows results in a breach of building and fire safety regulations. The Council dispute such a claim as fire doors could be provided as an alternative. In the absence of any clear information on the matter, I am unable to find the disputed condition would lead to any conflict with non-planning regulations.
14. The above issues fail to address or override the identified harm should the disputed condition be removed. As such, they do not affect my overall conclusion on the appeal.

### **Conclusion**

15. For the above reasons, I find the disputed condition is necessary and reasonable. As such, I conclude the appeal should be dismissed.

*Jonathan Edwards*

INSPECTOR