



---

# Appeal Decision

Site visit made on 19 September 2023

**by A James BSc (Hons) MA MSc MRTPI**

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

**Decision date: 13 October 2023**

---

**Appeal Ref: APP/D1590/W/23/3316028**

**11 The Drive, Westcliff-on-Sea, Southend-on-Sea SS0 8PL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr and Mrs M Champ against the decision of Southend-on-Sea Borough Council.
- The application Ref 22/02329/AMDT, dated 2 December 2022, was refused by notice dated 30 January 2023.
- The application sought planning permission to install terrace to rear, install roof lantern to existing single storey rear extension, install rooflights, alter elevations (amended proposal) (retrospective) without complying with a condition attached to planning permission Ref 22/01385/FULH, dated 12 September 2022.
- The condition in dispute is No 03, which states that: *'Notwithstanding any indication to the contrary on the approved plans, within three months from the date of this permission, the glazing within the roof and the window at first floor level on the southern elevation shall be obscure glazed to at least Level 4 on the Pilkington Levels of Privacy or such equivalent, and thereafter retained as such for the lifetime of the development.'*
- The reason given for the condition is: *'In the interests of residential amenity and to ensure that the development complies with the National Planning Policy Framework (2021), policy KP2 and CP4 of the Core Strategy (2007), and policy DM1 of the Development Management Document (2015).'*

---

## Decision

1. The appeal is allowed and planning permission to install terrace to rear, install roof lantern to existing single storey rear extension, install rooflights, alter elevations (amended proposal) (retrospective) at 11 The Drive, Westcliff-on-Sea, Southend-on-Sea SS0 8PL in accordance with application Ref 22/02329/AMDT made on the 2 December 2022 without complying with Condition No 03 set out in planning permission Ref 22/01385/FULH granted on 12 September 2022 by Southend-on Sea Borough Council, is granted subject to the deletion of Condition 03 and its substitution with a revised condition and subject to the conditions set out below:
  - 1) The development shall only be retained in accordance with the following approved plans: 010 Rev E, 011 Revision C, 012.
  - 2) The obscure glazed 1.8 m high screen, installed in the position shown on approved drawing 011 Revision C shall be retained for the lifetime of the development with obscured glass of at least Level 4 on the Pilkington Levels of Privacy or such equivalent.

- 3) Notwithstanding any indication to the contrary on the approved plans, within three months from the date of this permission, the glazing within the roof on the southern elevation shall be obscure glazed to at least Level 4 on the Pilkington Levels of Privacy or such equivalent, and thereafter retained as such for the lifetime of the development.

## **Background and Main Issue**

2. Retrospective planning permission was granted on 12 September 2022 (Ref 22/01385/FULH), which included the provision of a rooflight on the south facing roof slope and new gable on the south elevation, which incorporates a window at second floor level. The planning permission was subject to Condition 03, which requires these windows, plus an additional window at first floor level on the south elevation to be obscure glazed.
3. The main issue is the effect that removing Condition 03 would have on the living conditions of occupants of 15 The Drive (No 15).

## **Reasons**

4. The appeal property is a two-storey detached dwelling, with accommodation in the roof. The level of land slopes downwards in a southerly direction. As a result, the neighbouring property at No 15, is sited on lower level land than the appeal property. The appeal property is also set further back in its plot than No 15 due to the curve in the road.
5. The appeal property has been extended and altered. A triangular shaped feature window has been installed in the new gable on the south elevation at second floor level. This window serves the landing, which is adjacent to the master bedroom. The appellants have installed an obscure glazed film to the lower part of this window to help minimise overlooking to the neighbouring property.
6. No 15 has a rooflight on its north facing roof slope, which serves a bedroom and faces the appeal property. While the rooflight at No 15 is at an oblique angle from the gable window on the appeal property and partially screened by an intervening chimney, it is possible to see from the clear glazed section of the gable window into the bedroom of No 15 at a relatively close distance. During my site visit, while looking out of the gable window, I was able to see movements of the neighbouring occupant within the bedroom. Views are also available of the neighbour's second floor balcony at a relatively close distance. The gable window results in a harmful level of overlooking to the occupants of No 15. Even if the appellants were to permanently obscure glaze the lower section of this window, this would not mitigate the harm that I have identified.
7. Standing next to the rooflight in a natural position there are clear views at a slight angle of the neighbour's balcony. Oblique views are also available into the neighbour's second floor bedroom, through the glazed doors. While I appreciate that the rooflight is a secondary window, it results in a harmful level of overlooking and loss of privacy to the occupants of No 15.
8. While the balcony at No 15 is visible from neighbouring properties and in public views from the highway, these are not at such a close distance. I also appreciate that the Council did not consider it necessary to impose a condition that the rooflight window needed to be fixed shut and non-opening. Although views would be available of the neighbouring property when the rooflight is

open, the provision of obscure glazing would help to minimise the impact of overlooking on the occupants of the neighbouring property, particularly when the window is closed.

9. Condition 03 also requires that the south facing first floor window is obscure glazed. The appellants argue that this is an existing window, which was previously clear glazed and this is not disputed by the Council or neighbouring occupant. The first floor window appears on the existing plans for application 22/01385/FULH. The appellants have obscure glazed the lower pane of this window, which reduces overlooking from this window compared to the original situation. Given that this window was previously clear glazed, it is unreasonable and unnecessary to require that this window is obscure glazed. Nevertheless, given that this window serves a staircase and any glimpses of the neighbour's balcony, patio and kitchen are at an angle and transitory in nature, I do not find that the existing clear glazed window results in a significantly harmful level of overlooking to No 15.
10. For the reasons given above, I conclude that it is not necessary or reasonable to require the first floor south facing window to be obscure glazed. However, in order to protect the privacy and living conditions of the occupants of the neighbouring property, a condition is necessary which requires the glazing within the south facing part of the roof to be obscure glazed. I therefore recommend Condition 03 is deleted and replaced with a revised condition, which omits reference to the first floor south facing window.
11. A revised condition is necessary to secure compliance with the aims of Policy KP2 of the Southend-on-Sea Core Strategy (CS) adopted December 2007 and Policy DM1 of the Southend-on-Sea Development Management Document (DPD) July 2015. These policies among other things require that development has a good relationship with existing development and that the amenity of immediate neighbours is protected, having particular regard to privacy and overlooking. The proposal would also conflict with paragraph 130 of the National Planning Policy Framework (the Framework), which requires that development provides a high standard of amenity for existing and future users.
12. I do not find that Policy CP4 of the CS and Policy DM3 of the DPD are relevant to this appeal. Policy CP4 of the CS does not refer to living conditions. Although Point 2 of DM3 refers to living conditions, this point relates to backland and infill development only, which is not applicable in this case. While the reason for refusal refers to the Council's Design and Townscape Guide 2009, there is no reference within the Council's case to where this conflict arises, neither have I been provided with a copy of this guidance. I have therefore determined the appeal against the policies within the development plan.

### **Other Matters**

13. The appellants argue that obscure glazing would reduce light to the master bedroom. Given that the obscure glazing still allows light to pass through it and that the master bedroom is served by a large window on the rear elevation and a rooflight on the northern roof slope, I do not find that obscure glazing the rooflight or gable window on the southern elevation would result in a harmful loss of daylight or sunlight to the master bedroom.
14. I appreciate that the appellants wish to retain the picturesque views towards the estuary and that they have no interest in looking into their neighbour's

property. I also acknowledge that replacement windows would be expensive and would cause disruption to the occupant through further construction works to the property; however, the appellants carried out the works at their own risk without the necessary consent in place. The loss of view and the cost and disruption to the appellants does not outweigh the harm that I have identified.

### **Conclusion**

15. For the reasons given above I conclude that the appeal should be allowed. I will grant a new planning permission substituting Condition No 3 with a new condition, which omits reference to the first floor window and reinstates those undisputed conditions that continue to have effect.

*A James*

INSPECTOR