



Appeal Decision

Site visit made on 9 October 2023

by G Roberts BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th October 2023

Appeal Ref: APP/X1735/D/23/3322265

17A North Shore Road, Hayling Island, PO11 0HL

- 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 a condition subject to which a previous planning permission was granted.
 - The appeal is made by Mr & Mrs Dickinson against the decision of Havant Borough Council.
 - The application Ref. APP/23/00144, dated 17 February 2023, was refused by notice dated 17 April 2023.
 - The application sought planning permission for the demolition of detached double garage and replacement with gymnasium and garage with log store, including mezzanine floor above gymnasium without complying with condition 5 attached to planning permission Ref. APP/21/00460.
 - The condition in dispute is No.5 which states that: *The 1st floor high level windows in the south eastern elevation of the building hereby permitted shall at all times be and remain glazed with obscure glass. The particular type of which glass shall provide a degree of obscuration no less obscure than that which is provided by Pilkington's Texture Glass Obscuration Level 4 and only openable above a height of 1.7 metres above the internal floor level of the room to which it serves.*
 - The reason given for the condition is: *In the interests of the amenities of the occupiers of nearby properties having due regard to policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.*
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of detached double garage and replacement with gymnasium and garage with log store, including mezzanine floor above gymnasium at 17A North Shore Road, Hayling Island, PO11 0HL in accordance with the application Ref. APP/23/00144 made on the 17 February 2023 without complying with condition 5 set out in planning permission Ref. APP/21/00460 granted on 1 July 2021 by Havant Borough Council, but otherwise subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 22107/101; 22107/102; 22107/103; 22107/104.
 - 2) The building hereby permitted shall be used only for purposes incidental to the enjoyment of the dwellinghouse known as 17A North Shore Road and shall not be used for any business, commercial or industrial purposes whatsoever nor occupied as a separate residential unit.

- 3) No alterations to the height of the internal first floor (mezzanine) level hereby permitted, as shown on approved plans 22107/103 and 22107/104, shall take place unless and until full details of any such alterations to the height of the mezzanine floor level have been submitted to and approved in writing by the Local Planning Authority.

Preliminary Matters

2. The reason for imposing condition 5 refers to the National Planning Policy Framework (Framework), but since the refusal was issued the Framework has been revised, in September 2023. Whilst the Council have not referred to a specific part of the Framework, I have assumed that this should be paragraph 130 f), which requires new development to secure a high standard of amenity for existing and future occupiers. This paragraph remains unchanged in the September 2023 version of the Framework.

Main Issue

3. The main issue is whether the condition is reasonable and necessary in the interests of protecting the living conditions of neighbouring occupiers.

Reasons

4. The first floor windows are located on the south east elevation of the permitted building. The condition required these windows to be fitted with obscure glazing and only openable above a height of 1.7 metres above the internal floor level of the room it serves.
5. The work in constructing the replacement building has been completed and the high level windows are already in place, and have been installed with clear glazing and not obscure glazing as required by the condition. As I observed on my site visit and as shown on the approved plans, the high level windows are located above the small mezzanine floor which has been carpeted and contains a small sink and cupboard. The ground floor, below the mezzanine, contains various gym equipment and there is a separate garage and log store as per the approved plans.
6. The south east elevation of the replacement building faces onto the rear elevations and gardens of 15 and 17 North Shore Road (No's 15 & 17). Whilst the new building and high level windows are visible from these properties, there are no direct views from these windows towards or over the rear gardens or rear elevations of No's 15 & 17. This is due to the fact that the windows in question, as permitted and built, are located at a high level with their sill height approximately 2 metres above the floor level of the mezzanine. As such, the windows do not result in any direct overlooking of No's 15 & 17.
7. High level windows and roof lights are commonly used to provide light to new extensions and roof accommodation and where they are positioned above eye level, normally a height of 1.7 metres, it is accepted that they will restrict or prevent the overlooking of adjacent properties. As I confirmed above, the sill height of the new windows is above 1.7 metres and as such the use of the mezzanine floor does not result in any direct overlooking of or loss of privacy to the neighbouring occupiers.
8. The Council contend that the windows would increase the "*perception of overlooking*" for the occupiers of the neighbouring properties. I am not

persuaded by that argument. Even though, as I mentioned above, the windows are visible from neighbouring properties, that is not an uncommon relationship where a new building or extension has been constructed and its design includes high level windows or roof lights. In this case, the design and siting of the new windows precludes any direct overlooking of No's 15 & 17.

9. In view of the above and based on my observations on site, I am entirely satisfied that the requirement for the windows to be obscure glazed is neither necessary nor reasonable. As to the "*perception of overlooking*", in view of the above findings I am also not convinced that this alleged impact could alone amount to significant harm or justify the refusal of planning permission.
10. These findings are, in my view, supported by policy CS16 of the Havant Borough Local Plan (Core Strategy) (March 2011) (HBLP). This policy seeks to ensure, amongst other requirements, that new development does not result in unacceptable harm to the amenities of neighbours through a loss of privacy or overlooking. The supporting text at paragraph 7.42 simply states that new development should sit well with its neighbours and should not have any adverse effect on existing amenity. The clear emphasis is on ensuring that there is no overlooking or loss of privacy, and there is nothing in the policy or in the supporting text that would support the Council's objection in relation to the harm that they contend would arise from the increased "*perception of overlooking*". My attention has also not been drawn to any supporting design or similar guidance that would justify such an approach.
11. Given the above, I find that the requirement in condition 5 for obscure glazing is neither necessary nor reasonable, and that the retention of the clear glazing to the high level windows in the south east elevation of the permitted as built development is acceptable and would not conflict with the aims and objectives of policy CS16 of the HBLP or paragraph 130 f) of the Framework.

Conditions

12. The application sought to vary condition 5 by removing the requirement for obscure glazing in the as built first floor windows. In doing so, the Appellant suggested revised wording for condition 5 in order to safeguard the living conditions of neighbouring occupiers. However, I am not convinced that this suggested wording would be precise or enforceable and in referring to the height of 1.7 metres appears confusing given the high level windows approved and installed on site. I have, therefore, varied condition 5 (now condition 3 as listed in my 'Decision' above) to reflect the wording suggested by the Council in their Appeal Questionnaire. Also, as is required, I have reimposed the relevant remaining conditions from the original planning permission.

Conclusion

13. For the reasons given above and having taken all other matters raised into account, I conclude that the appeal should be allowed.

G Roberts

INSPECTOR