



Appeal Decision

Site visit made on 30 May 2024

by J Downs BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 June 2024

Appeal Ref: APP/M1520/D/24/3337839

36 Crescent Road, Benfleet, Essex SS7 1JL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Lee Patston against the decision of Castle Point Borough Council.
 - The application Ref is 23/0640/VAR.
 - The application sought planning permission for demolition of existing garage and construction of part two storey part single storey side/rear extension including removal of chimney and window alterations (revised application) without complying with a condition attached to planning permission Ref 16/0372/FUL, dated 11 July 2016.
 - The condition in dispute is No 2 which states that: The proposed bedroom window in the north facing side elevation at first floor level and the proposed ensuite window in the south facing side elevation at first floor level shall be (i) obscure-glazed; and (ii) non-opening, unless the parts of the window which can be opened are more than 1.7 metres above the finished floor level of the room and permanently as such thereafter.
 - The reason given for the condition is: To protect the privacy and amenity of adjacent residents.
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Decision

1. The appeal is not determined, for the reasons set out below.

Procedural Matters

2. I have taken the address of the appeal site from the original decision notice in the interests of consistency. The planning application was submitted by Mr and Mrs Patston. The appeal has been submitted in the name of Lee Patston only and proceeds on that basis.
3. Section 73 of the Town and Country Planning Act 1990 (as amended) allows for applications to develop land without compliance with conditions previously attached. The Planning Practice Guidance¹ provides clear advice that s73 cannot be used if there is no relevant condition in the permission listing the originally approved plans. The original decision notice lists the approved plans. However, this is not in the form of a condition and it is clearly stated that conditions are listed separately.
4. The PPG does offer further advice as to how this situation could be addressed. A separate application for full planning permission could also be submitted. However this would be a matter for the parties and could not be addressed through the appeal process.

¹ Flexible options for planning permissions Paragraph: 018 Reference ID: 17a-018-20230726 Revision date: 26 07 2023

5. For the reason given above, the application the subject of this appeal was not validly made. I therefore have no authority to determine the appeal.

J Downs

INSPECTOR