



Appeal Decision

Site visit made on 9 April 2025

by **B J Sims BSc (Hons) CEng MICE MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 25 April 2025

Appeal Ref: **APP/X1165/W/24/3355185**

53A Woodville Road, Torquay, Torbay, TQ1 1LP.

- 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 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 Ian Cumptsey against the decision of Torbay Council.
 - The application Ref is P/2022/1306.
 - The application sought planning permission for alterations and change of use from builders workshop/garage to one-bedroom dwelling (as revised by letters dated 9/2/01 and 13/2/01 and plans received 13/2/01) without complying with a condition attached to planning permission Ref 2000/0434/PA, dated 16 February 2001.
 - The condition in dispute is No 2 which states that: *The windows indicated on the plans hereby approved as obscure glazed shall be retained as fixed, obscure, and double glazed windows at all times.*
 - The reason given for the condition is: *In the interests of privacy of the adjoining occupiers.*
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Ian Cumptsey against Torbay Council and this is the subject of a separate Decision.

Procedural Matters

3. The letters and plans referenced in the description of the development originally approved in 2001 are evidently missing from any record now available. Be that as it may, this appeal is strictly limited to consideration of a single disputed condition of that approval, such that the present proposal is able to be assessed from inspection and this appeal determined on its current planning merits.
4. Obscure-glazed opening windows have already been fitted facing the adjoining property, No 53 Woodville Road, in breach of the disputed condition No 2. The application originally sought permission for the obscure-glazed windows to be fully opened but was amended and considered by the Council in terms that condition 2 should be varied to read: *'the windows indicated on the plans hereby approved as obscure glazed shall be retained as open, obscure, and double-glazed windows at all times. The windows will comprise [of] a bottom hung window which will only be opened using the bottom hinge. The windows (including any subsequent repaired*

or replacement window) shall be maintained and retained [thereafter] in accordance with this detail.' I deal with this appeal on the same basis.

5. As well as visiting the appeal premises, I also inspected the disputed windows from the neighbouring dwelling at No 53 Woodville Road.
6. A third-party objection to the original change of use is not for consideration in this appeal.

Main Issue

7. From the written representations, including submissions from the adjoining property, No 53 Woodville Road, it is clear that this appeal turns on whether allowing the windows subject to this appeal to be able to be opened would give rise to unacceptable overlooking, loss of privacy or disturbance, harmful to amenity at the adjoining property.

Reasons

Overlooking, Privacy and Disturbance

8. The obscure-glazed windows in question have been installed to open by way of bottom hinges, permitting a relatively narrow opening at the top, mainly for ventilation. Views of the adjacent residential property, No 53, from within the appeal dwelling would therefore remain limited, unless the windows were to be opened fully by way of side hinges.
9. Importantly, however, the obscure-glazed windows of No 53A are hard against the shared boundary with No 53, facing into a narrow passageway and thence closely towards the side door of the kitchen.
10. There is no suggestion that the present occupiers of No 53A would deliberately seek to invade the privacy of neighbouring residents, or cause undue disturbance with excessive noise; that is bearing in mind that the obscure-glazed windows, with limited opening, clearly also serve to protect their own privacy.
11. Nevertheless, with the subject windows literally opening directly to the outdoor amenity space at the side of No 53, there remains potential for a degree of actual loss of privacy and also disturbance, even from voices or music at normal volumes within No 53A.
12. It is further material, and evident from inspection, that there is a strong sense of perceived loss of privacy at No 53, due to the presence of the adjacent disputed windows, especially in warm weather when doors and windows are likely to be open and outdoor spaces most frequently occupied.
13. I consider that this actual and perceived loss of privacy and potential for disturbance amounts to a substantive planning objection to the proposed removal of Condition 2 of the original permission. To do so would accordingly conflict with Policy DE3 of the adopted Torbay Local Plan, as well as national policy, with respect to the protection of residential amenity.

Other Matters

14. I am alert to the potential of fixing shut the windows of No 53A Woodville Road to give rise to a loss of natural ventilation, in turn causing condensation and mould,

especially in the bathroom. This is a material consideration which carries a degree of weight in favour of the appeal, to be balanced against the foregoing amenity objection.

Planning Balance

15. Given that artificial means of ventilation are widely available, I consider that the objection with respect to privacy and disturbance in this case carries significantly greater weight than any inconvenience or cost to the property owner or tenants arising from the need for improved ventilation.

Conclusion

16. For the reasons explained, I conclude that this appeal should be dismissed.

B J Sims

INSPECTOR