



Appeal Decision

Site visit made on 24 June 2025

by R Cahalane BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 August 2025

Appeal Ref: APP/K1128/D/24/3355216

4 Alma Terrace, Higher Town, Malborough, Devon TQ7 3RN

- 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 (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 Mr Andrew Notton against the decision of South Hams District Council.
- The application Ref 1415/24/VAR, dated 27 April 2024, was refused by notice dated 16 August 2024.
- The application sought planning permission for variation of condition 2 (approved drawings) following planning consent 2895/22/HHO, to introduce external access door onto right of way at rear of terrace without complying with a condition attached to planning permission Ref 2895/22/HHO, dated 27 February 2023.
- The condition in dispute is No 2 which states that: *"The development hereby approved shall in all respects accord strictly with drawing number(s) 2644.SBP A received by the Local Planning Authority on 26th August 2022 and 2644.03D received on 17th February 2023."*
- The reason given for the condition is: *"To ensure that the proposed development is carried out in accordance with the drawings forming part of the application to which this approval relates."*

Decision

1. The appeal is dismissed.

Background and Main Issue

2. Planning permission was first granted in February 2023¹ for development including a replacement single storey rear extension. This original permission was then amended in March 2024² under Section 73 of the Town and Country Planning Act 1990, which varied the approved plans condition (condition 2).
3. This appeal relates to the Council's refusal of a further proposal under Section 73, as set out in the banner heading above. The submitted evidence shows that the main parties are in dispute in respect of the installation of an external access door on to the side elevation of the approved single storey rear extension. I have therefore utilised the description of development from the decision notice rather than the application form, as it refers specifically to this access door.
4. The application form confirms that development started on 01 August 2023. I was able to see the single storey rear extension, and its side access door subject of this appeal. I have therefore determined the access door as retrospective in nature.
5. The main issue is the effect of the external access door on the living conditions of the occupiers of No 3 Alma Terrace, with particular regard to privacy and noise and disturbance.

¹ Council Ref: 2895/22/HHO

² Council Ref: 0106/24/VAR

Reasons

6. The appeal site (No 4) comprises a two-storey end-terraced dwelling within the centre of Malborough village. The terrace (Nos 1-4 Alma Terrace) faces the road of Higher Town on an elevated position, which necessitates several steps up to No 4's front door.
7. The external access door subject of this appeal is on an extended ground floor side elevation that projects at a right angle slightly beyond the adjoining rear outshot of No 3. This door provides direct access to an open-plan living area of No 4, and faces immediately on to a neighbouring rear garden decking area that is adjacent to No 3's rear elevations.
8. Although my site visit was a snapshot in time, I noted that this decking serving No 3 contained a table and two chairs towards its rear edge, near to No 4's side access door and a private access route from Hay Lane that runs across the decking. Whilst the side access door does not contain any glazing, it can be opened at various times and for varying time periods, and even when not used solely for access purposes. This allows for direct views towards the primary area of No 3's decking at very close proximity. This amounts to an unacceptably adverse impact on No 3's living conditions in terms of privacy.
9. Even when this door is closed, its presence immediately facing No 3 would still feel unsettling and intrusive, as it could be opened internally at any time, without prior indication. This would unacceptably hamper the useability of No 3's decking area as a private outdoor seating area adjacent to the main dwelling in which it serves.
10. Whilst there is already a degree of mutual overlooking between these two adjoining dwellings, including their rear elevations, the dense shrubbery along the side boundary separating the two gardens significantly obstructs ground level views. By comparison, installation of the side access door substantially increases the opportunity for direct overlooking towards No 3's decking area, and therefore has an additional and adverse intrusive impact on No 3's privacy.
11. I therefore conclude that the external access door subject of this appeal unacceptably harms the living conditions of the occupiers of No 3 with particular regard to privacy. It thus conflicts with Policy DEV1 (1) of the Plymouth and South West Devon Joint Local Plan (JLP) 2014-2034 (adopted 2019). This policy requires, amongst other things, new development to provide for satisfactory privacy for both new and existing residents.
12. The proposal also fails to satisfy the relevant guidance set out in paragraphs 13.17 and 13.20 of the JLP Supplementary Planning Document 2020. This advises that any alteration or extension should not have an unacceptable effect on the standard of living offered to neighbouring properties, and that overlooking may be unacceptable where it would result in an intrusive, direct and uninterrupted view from a main room to the main sitting out area adjacent to the property of a neighbouring house.
13. When compared to No 4's front entrance door, the side access door provides a more level route along the rear elevations of Nos 1-4 Alma Terrace. Access for less able users is however somewhat restricted by a stepped change of level from the path along the rear of No 2 to the raised decking of No 3. I also observed pinch points caused by drain pipes on the neighbouring rear elevations, and some

overhanging shrubbery on the other side of the path. This rear access route therefore also presents restrictions for less able users, and thus does not justify allowing the appeal.

14. Existence of private legal rights, such as a right of way for access, does not in itself justify the grant of planning permission. This is because the planning system governs development having regard to matters of public interest, including safeguarding living conditions.
15. The side access door contains a lock and is adjacent to a ground floor habitable room window, which is at a right angle on the rear outshot elevation of No 3. The submitted evidence refers to a smaller gate that already provided access to the rear garden of No 4, prior to the construction of the existing extension and side access door. Having regard to that previously established baseline situation, I do not envisage an adverse additional impact in terms of noise and disturbance, even when accounting for the potentially greater frequency of use of the side access door when compared to the previous gated access.

Other Matter

16. The submitted evidence indicates that the Council assessed a proposed external access door as part of a previous application³ that was ultimately withdrawn. For clarity, that previous application has not had a bearing on my determination of this appeal, which I have determined having regard to the current submitted evidence and my site visit observations.

Conclusion

17. For the reasons given above, the proposal conflicts with the development plan as a whole and the material considerations before me do not indicate that a decision should be made otherwise than in accordance with it. The appeal is therefore dismissed.

R Cahalane

INSPECTOR

³ Council Ref: 4768/21/HHO