



Appeal Decision

Site visit made on 20 October 2025

by C Housden BSc(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 DECEMBER 2025

Appeal Ref: APP/K3605/W/25/3371456

14 Mizen Way, Cobham, Surrey KT11 2RH

- 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 Mr & Mrs A Castle against the decision of Elmbridge Borough Council.
 - The application ref is 2025/1403.
 - The application sought planning permission for detached two-storey house with integral garage, outdoor swimming pool, detached pool house, entrance gates and driveway following demolition of existing house and garage without complying with conditions attached to planning permission ref 2024/3277, dated 07 March 2025.
 - The conditions in dispute are:
Condition No 2 which states that:
The development hereby permitted shall be carried out in strict accordance with the following list of approved plans: Proposed Street Scene 2024-P-683- 005 and Proposed Sliding Gates and Pool section 2024-P-683-007 received 17 December 2024, Proposed Location and Site Plan 2024-P-683-001 Rev A, Proposed Floor Plans 2024 P 683 002 Rev C, and Proposed Elevations 2024- P-683-003 Rev C received 14 February 2025.
Condition 6 which states that:
Prior to the first occupation of the development hereby permitted the first floor rear window(s) serving the "gym" on the rear elevation(s) of the development as identified on the approved plans hereby permitted shall be glazed with obscure glass that accords with level three obscurity as shown on the Pilkington textured glass privacy levels (other glass suppliers are available) and fixed shut to the room to which it serves. The window shall be permanently retained in that condition thereafter.
 - The reason given for the condition are:
Condition No 2: To ensure that the development is carried out in a satisfactory manner.
Condition No 6: To preserve the reasonable privacy of neighbouring residents in accordance with policy DM2 of the Elmbridge Development Management Plan.
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Decision

1. The appeal is allowed and planning permission is granted for detached two-storey house with integral garage, outdoor swimming pool, detached pool house, entrance gates and driveway following demolition of existing house and garage at 14 Mizen Way, Cobham, Surrey, KT11 2RH in accordance with the application ref 2025/1403, without compliance with condition numbers 2 and 6 previously imposed on planning permission ref 2024/3277 dated 07 March 2025 and subject to the conditions set out in the accompanying schedule.

Applications for costs

2. An application for costs was made by Mr & Mrs A Castle against Elmbridge Borough Council. This application is the subject of a separate decision.

Background and Main Issue

3. Planning permission was granted for a replacement detached dwelling under reference 2024/3277. On my visit I observed that works had commenced, and the original dwelling had been demolished. The appellant is seeking to alter the first-floor internal layout through swapping the location of bedroom 3 to the rear and the gym to the front of the property. They are also seeking to remove the condition requiring the rear facing window, now proposed to serve bedroom 3, to be obscurely glazed.
4. The main issue is the effect of amending condition 2 and removing condition 6 on the living conditions of the occupiers of 16 Mizen Way (No 16), with specific regard to privacy.

Reasons

5. The area has a spacious character and appearance achieved through detached properties being set back from the road with deep gardens following a broadly linear building line. The pattern of development predominantly consists of dwellings at an orientation so that their rear facing windows have direct outlook down their own gardens.
6. The proposed dwelling at the appeal site is set off both neighbouring boundaries with its building line broadly consistent with its adjacent neighbours, although the proposed rear building line would protrude slightly further than No 16. The proposed dwelling would be set further down the plot and closer to the adjacent boundary with No 16 than the original dwelling. The window subject to the appeal would also be fairly large, would serve a bedroom and have a Juliette balcony. However, the window would have a rear facing orientation and would only allow future occupiers to have direct outlook down the garden of 14 Mizen Way (No 14) and oblique views towards No 16. This would ensure that there would be no direct overlooking from the future occupiers of No 14 towards the plot of No 16. Furthermore, this relationship between the properties would be in keeping with the pattern of development which would ensure this regular appearance would not result in the perception of overlooking towards No 16. In these circumstances I do not consider condition 6 of 2024/3277 to obscurely glaze this window to be necessary or reasonable. Whilst conditions have been suggested to limit the window to be top opening only and to secure tall boundary landscaping, given my findings, I do not consider these conditions to be necessary to make the development acceptable.
7. My attention has been drawn to a previous appeal decision at No 16¹. Whilst I don't have the full details of the case before me, I understand that in this case the inspector required a first-floor side window of a proposed side extension to be obscurely glazed to protect the living conditions of the adjacent occupiers at 18 Mizen Way. However, as this relates to a side facing window it is not directly comparable to the appeal before me which has rear facing outlook. Furthermore, each case should be assessed on its individual merits which I have done so.
8. Reference has also been made to compliance with the 45 degree test and separation distances of back-to-back properties as outlined in the Elmbridge Design Code (2024). However, the 45 degree BRE Guideline relates to daylight

¹ APP/K3605/A/07/2043464

and sunlight and No 14 and No 16 are not back-to-back properties, so neither relates to the main issue before me.

9. I therefore conclude that amending condition 2 and removing condition 6 would not lead to overlooking, or the perception of overlooking, which would result in a loss of privacy and harm to the living conditions of the occupiers of No 16. As such, the proposal would comply with Policy DM2 of the Elmbridge Local Plan Development Management Plan (2015). This policy, amongst other matters, seeks to ensure development protects the amenity of adjoining occupiers with particular regard to privacy.

Other Matters

10. I have been provided with representations from interested parties, some of which relate to matters which have already been addressed by the original application. Planning Practice Guidance (PPG) is clear that under section 73, the decision maker must only consider the disputed conditions that are the subject of the application and that it is not a complete re-consideration of the application². As such, my decision has focused on the disputed conditions.

Conditions

11. The PPG³ sets out that decision notices for the grant of planning permission under section 73 should restate the conditions imposed on earlier permissions that continue to have effect.
12. However, as the development has commenced, there are a number of conditions where this approach would not be appropriate as they can no longer be imposed without amendments to the wording. This relates to conditions 3, 9 and 10 of planning permission ref 2024/3277 which each have triggers that have now been exceeded by the works at the site. I sought views from the parties specifically on these three conditions, and it was confirmed that conditions 3 and 9 of planning permission ref 2024/3277 had been discharged under application ref 2025/0725 on 14 May 2025. I have been provided with the details approved by the Council and therefore have altered the wording of these respective conditions to comply with these details.
13. Furthermore, in relation to condition 10 of 2024/3277 relating to tree protection measures, as the development has commenced, I have amended this wording to also be in compliance with the previously approved details.
14. Condition 1 of 2024/3277 relates to time limits for commencement. As the development has commenced it is no longer necessary to impose this condition.
15. For the avoidance of doubt and in the interests of certainty I have updated the plans compliance condition with the relevant plans relating to the amendments proposed under this application.
16. In relation to the remaining conditions imposed on the original planning permission, as I have little information before me about the status of these other conditions, I shall impose all those that I consider to remain relevant. In the event

² Paragraph: 031 Reference ID: 21a-031-20180615

³ Paragraph: 040 Reference ID: 21a-040-20190723

that some have in fact been discharged, that is a matter which can be addressed by the parties.

17. Proposed plan ref 2024-P-683-050 proposes 3.5m tall pleached trees as a landscaping buffer along the shared boundary with No 16. However, as previously mentioned, given my findings I do not consider the pleached tree boundary of such a height to be necessary to make the development acceptable. Therefore, I have not included this proposed plan in the approved plans condition, nor have I imposed a condition requiring the boundary planting to be 3.5m in height. Furthermore, I am re-imposing the hard and soft landscaping condition of the original permission whereby the boundary treatment would be secured.
18. Similarly, for the reasons that I have given relating to the main issue, I do not consider a condition restricting the window to be top opening only to be necessary.

Conclusion

19. For the reasons given above, I conclude that the appeal should be allowed.

C Housden

INSPECTOR

-- Schedule of Conditions --

- 1) The development hereby permitted shall be carried out in strict accordance with the following list of approved plans: Proposed Street Scene 2024-P-683-005, Proposed Sliding Gates and Pool section 2024-P-683-007, Proposed Location and Site Plan 2024-P-683-001 Rev A, Proposed Floor Plans 2024-P-683-002 Rev D, and Proposed Elevations 2024-P-683-003 Rev D.
- 2) The materials to be used on the external faces and roof of the building and pool house, and gates shall be in accordance with the following details as set out in the External Material Schedule by Andrew Malcolm Architecture:
 - External walls of the main house and pool house to be 'monocoche render, colour: pointing no.2003'
 - External windows and doors to be painted timber casement windows, black metal framed doors to rear, painted timber entrance door, and painted metal garage door in 'no.256 pitch black' colour
 - Window surrounds, cills and feature stone detailing – Portland stone
 - Roof materials to be clay roof tile 'Staffordshire Blue Sandfaced'.

and as detailed on plan no 2024-P-683-007 Gates and Pool.

- 3) The flat roof to the extension hereby permitted shall not at any time be altered or adapted to form a balcony, roof garden or similar amenity area without the grant of a further specific permission from the Borough Council.
- 4) The development hereby permitted shall have no windows or other openings inserted into the east and west elevations and roof slopes unless planning permission has first been granted by the Borough Council.
- 5) Prior to occupation full details of both hard and soft landscaping works have been submitted to and approved in writing by the borough council and these works shall be carried out as approved. This scheme shall include indications of all hard surfaces, walls, fences, access features, the existing trees and hedges to be retained, together with new native planting to be carried out, and details of the measures to be taken to protect existing features during the construction of the development.
- 6) The development shall be carried out in accordance with the conclusions and recommendations in BAT REPORT - PRELIMINARY ROOST ASSESSMENT AND PRESENCE / ABSENCE SURVEY RESULT including any biodiversity enhancements by Assystem Energy & Infrastructure Ltd dated 30 January 2025.
- 7) The development shall be carried out in accordance with the Biodiversity Enhancement Plan ref 253100 by AAe Environmental Consultants dated March 2025.
- 8) The development shall be implemented in strict accordance with the approved details and method statements contained in:

CONSULTANT: DPA SITE: 14 Mizen Way, Cobham, KT11 2RH TPP:
EXISTING SITE_DPA-7273-02_PROPOSED SITE_DPA-7273-03_DATE: DEC
2024 AIA/AMS: DPA7273/AIA/REV1_SUPERVISION: SECTION5.0_DATE:
DEC 2024.

All tree protection measures must be maintained throughout the course of the development.

- 9) The completion schedule/report of all the agreed arboricultural site supervision and monitoring as approved in the arboricultural information:

CONSULTANT: DPA SITE: 14 Mizen Way, Cobham, KT11 2RH TPP:
EXISTING SITE_DPA-7273-02_PROPOSED SITE_DPA-7273-03_DATE: DEC
2024 AIA/AMS: DPA7273/AIA/REV1_SUPERVISION: SECTION5.0_DATE:
DEC 2024

shall be submitted to and approved in writing by the Local Planning Authority within 20 working days of the substantial completion of the development hereby approved. This shall include evidence of compliance through supervision and monitoring of the agreed activities by a suitably qualified arboriculturist.

- 10) All existing trees, hedges or hedgerows inside the identified site boundary shall be retained, unless shown on the approved drawings as being removed and paragraphs (a) and (b) below shall have effect until the expiration of 5 years from the first occupation of the proposed development.
- (a) No retained tree, hedge or hedgerow providing a screen shall be cut down, uprooted, or destroyed, other than in accordance with the approved plans and particulars.
- (b) If any retained tree, hedge, or hedgerow is removed, uprooted, or destroyed or dies, another tree, hedge or hedgerow of similar size and species shall be planted at the same place, in the next available planting season or sooner.
- 11) The development hereby approved shall not be occupied unless and until the proposed dwelling is provided with a fast-charge Electric Vehicle charging point (current minimum requirements - 7 kw Mode 3 with Type 2 connector - 230v AC 32 Amp single phase dedicated supply) in accordance with the approved plans by the Local Planning Authority and thereafter retained and maintained to the satisfaction of the Local Planning Authority.

-- End of Schedule --