



Appeal Decision

Site visit made on 19 February 2019

by Steven Rennie BSc (Hons), BA (Hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 May 2019

Appeal Ref: APP/X1735/W/18/3209039

The Railway Inn, 95 North Street, Emsworth, Hampshire, PO10 7PQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr David Lucas against the decision of Havant Borough Council.
- The application Ref APP/18/00535, dated 5 June 2018, was refused by notice dated 24 July 2018.
- The application sought planning permission to raise the roof height and form 1No self contained managers flat to second floor roof area with internal staircase from first floor, without complying with conditions attached to planning permission APP/16/01311, dated 14 March 2017.
- The conditions in dispute are Nos 4 and 5 which state that:

Condition 4-

Notwithstanding the provisions of any Town and Country Planning (General Permitted Development) Order 2015, prior to first occupation of the extension hereby permitted the rooflight window and first floor window in the newly created stairwell in the south elevation shall be fitted with non-opening lights and textured glass which obscuration level is no less than Level 4 of the Pilkington Texture Glass scale (or equivalent) and retained as such thereafter.

Condition 5 –

The flat roof area at first floor level adjacent to the shared boundary with No. 93 and 93a North Street shall not be used for the purposes of a terrace or balcony at any time whatsoever, but shall only be used for infrequent and occasional maintenance purposes only.

- The reasons given for the conditions are:

Condition 4 –

In the interests of the amenities of the occupiers of nearby properties and having due regard to policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.

Condition 5 –

To safeguard the amenities of the occupiers of the neighbouring property and having due regard to policy CS16 of the Havant Borough Core Strategy 2011 which forms part of the Local Development Framework and the National Planning Policy Framework.

Decision

1. The appeal is dismissed.

Procedural Matters

2. Although the proposal submitted to the Council related to conditions 4 and 5 of the approval reference APP/16/01311, the Council appears to have assessed the proposal as relating to conditions 5 and 6 of this permission. However, as there was no formal agreement of this between parties that I am aware of, I have considered the proposal as stated on the planning application form, which relates to conditions 4 and 5 only.
3. The appellant has provided comment on the proposal after the site visit, stating that he believed there should be no requirement for obscure glazing as required by condition 4. However, this is not what was applied for and therefore not what was considered by the Council or consultees/neighbours. I have therefore considered the appeal proposal as that which was before the Council.

Main Issues

4. The main issue is:
 - The effect of the development on the living conditions of neighbours to the site if neither condition 4 or 5 are imposed as originally included with the decision for application APP/16/01311.

Reasons

Condition 4

5. The appellant is seeking to use specialist windows (automatically opening (AOV) windows) as a means of complying with Building Regulations. It is stated that these windows would still be installed with obscure glazing and should only open in times of fire emergency.
6. The appellant has submitted an amended plan which includes the AOV windows. However, this shows that the first-floor window serving the staircase has been omitted from the drawing. I also note that there are other amendments from that of the approved drawings, with a new AOV rooflight and the door which was to open onto the flat roof area to be replaced by a new window. These changes go beyond that which relates to condition 4, which referred only to the requirement for obscure fixed-shut windows in the development.
7. It is condition 6 that lists the approved plans, but as confirmed by the appellant this appeal does not relate to any proposed alterations to this condition. I am also not satisfied that any variation of condition 6 with an amended plan would have been apparent or clear to be considered by consultees or neighbours, which would question whether fairness to all parties has been ensured. Therefore, I cannot accept an amended plan under a replaced condition 4 as this would contradict the approved plans listed under condition 6, which is not subject to this appeal.

8. On this basis, due to this lack of clarity, I am not satisfied that the amendments put forward in varying Condition 4 relating to the fenestration would ensure the living conditions of neighbours to this site are safeguarded against significant harm.
9. Therefore, in that regard, condition 4 is necessary and reasonable to ensure against unacceptable harm to neighbours living conditions and so the proposal to replace this condition conflicts with policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011, which seeks to, amongst other things, ensure that development does not cause unacceptable harm to the amenity of neighbours.

Condition 5

10. On the submitted amended plan the first floor door that opened onto the flat roof to the side of the building has been replaced by a window. The appellant argues that without this door there is no need for a condition to restrict the use of this flat roof area, which is not part of the development which was approved.
11. However, as explained above, as the proposal has not proposed to amend condition 6 to include the amended plan then accepting it in reference to condition 5 would result in a clear contradiction in what are the approved drawings. As I do not accept the amended plan as part of a replacement condition 5, then the door onto this flat roof area would remain part of the approved development, based on the approved plans.
12. With the door as approved in this location there could potentially be increased activity on the flat roof area over and above the existing arrangement. The flat roof is immediately adjacent to the rear garden of 93 North Street, which would be significantly overlooked if the flat roof was used as a terrace or balcony, for example. It would also have a harmful overbearing effect on occupants of this neighbouring property.
13. As such, condition 5 is necessary and reasonable to ensure against unacceptable harm to neighbours living conditions, as required by policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011. Removal of this condition would conflict with this policy.

Conclusion

14. For the reasons given above, the appeal is dismissed.

Steven Rennie

INSPECTOR