

2 **Planning History**

APP/13/01150 - Erection of two storey rear extension following removal of existing conservatory. Conditional permission 24 January 2014

APP/14/00322 - Variation of Conditions 4(i) and 4(ii) of Planning Permission

APP/13/01150 to allow changes to fenestration at first floor level. Refused 6 May 2014

3 **Proposal**

- 3.1 Condition 4 of planning permission APP/13/001150 was imposed to control the two rooflights on the sides of the extension as follows:

"4. Notwithstanding Condition 3, the windows at first floor level in the side elevations of the development hereby approved shall:

(i) consist of at least two lights divided horizontally with only the top light capable of being opened, and shall be maintained in that condition at all times; [and]

ii) at all times be and remain glazed entirely with obscure glass, the particular type of which glass shall provide a degree of obscuration no less obscure than that which is provided by Pilkington's Texture Glass Obscuration Level 4.

Reason: *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 2012."*

- 3.2 Because the 2 roof light windows within the bedroom, the subject of this planning application, were installed as opening windows, they are in breach of this condition. This application has therefore been submitted as a variation of condition 4 of APP/13/01150, seeking to allow retention of the existing openable Velux obscure glazed windows, but with a locking device to be added such that the windows would be kept shut and locked except for cleaning. The locking device is a Velux recommended product, reference ZOZ 012, involving a small cylinder to be inserted into the window frame - please refer to Appendix C below.

4 **Policy Considerations**

National Policies

NPPF especially paras 203 & 206

Local Plan (Core Strategy) 2011

CS16 (High Quality Design)

Supplementary Planning Documents

The Borough Design Guide SPD, 2011

Listed Building Grade: Not applicable.

Conservation Area: Not applicable.

5 **Statutory and Non Statutory Consultations**

Building Control, (Fire Access Consultation):

The rear window provides sufficient fire safety exit. The two rooflights do not need to be openable for this purpose.

6 **Community Involvement**

This application was publicised in accordance with the Council's Code of Practice for Publicity of Planning Applications approved at minute 207/6/92 (as amended), as a result of which the following publicity was undertaken:

Number of neighbour notification letters sent: 12

Number of site notices: Not applicable.

Statutory advertisement: Not applicable.

Number of representations received: 2

Summary: From No 8: Re windows W19 & W24 - windows were fitted after first application to vary the condition was refused in breach of that decision being fully openable; to avoid a breach of condition notice this further application submitted and plays on the error of wording of original condition; cill height is 1.3m (not 1.6m as shown on plans) enabling easy views out; even if slightly opened gives a sense of being watched; previous decision should remain i.e. be permanently non-opening and obscure glazed to protect residential amenity.

If loss of value to neighbour not a material consideration then costs or inconvenience to applicant should not be a material consideration either; cleaning is not considered a valid reason for having openable windows – there is an available alternative 'Fakro' non-opening self-cleaning windows, or a window cleaner could be employed, the stairwell velux not cleanable from inside so window cleaner for that window could do these too.

The internal lock control absurd and is un-enforceable; windows to date been regularly opened; Re window W20 – still currently clear glass; All 3 windows must be permanently non-openable as only viable means to maintain and protect privacy.

From No 4: Condition 4 was imposed 'in the interest of the occupiers of nearby properties' unfortunately incorrect wording used which is not the fault of neighbours; previous application. In the previous refusal to retain openable rooflights the officer report concluded roof lights should be both obscure glazed and permanently non-opening to protect residential amenity; this refusal was dated 6th May but opening windows were fitted on 14th May in direct contravention of that decision.

This application for locking device to be kept locked except for cleaning would be impossible to monitor and enforce and not be binding on future owners; obvious temptation to open rooflights. Permanently non-opening windows could be cleaned with long brush or by professional window cleaners.

The extension has destroyed 98% of our privacy; the cill height of 1.3m allows clear views into our sitting/dining room; fitting of a lock would not adequately protect our amenities and there is no justification for this instead of permanently non-opening windows. The incorrect wording by HBC of the original planning condition and fitting of incorrect windows by applicant is not the responsibility of neighbours but result impacts us which is unjust; please reject.

Before and after photos have been supplied from both neighbours showing the impact of the extension generally, as well as the windows opened.

Comment: The issues raised are covered below. The reference to financial matters not being a material consideration is correct regarding the impact of development on property values. In this case material considerations are concerned with impact on amenities

7 Planning Considerations

7.1 Having regard to the relevant policies of the development plan it is considered that the main issues arising from this application are:

- (i) Principle of development
- (ii) Reason for the original condition and wording clarification
- (iii) Impact on neighbouring amenities

(i) Principle of development

7.2 The site lies within the urban area where the principle of development is acceptable, subject to policy and development control considerations. In this instance it is the impact on neighbouring residential amenity that is the key consideration.

(ii) Reason for the original condition and wording clarification

7.3 The original application APP/13/01150 was previously considered at Committee and Members undertook a site visit, including viewing the proposal from the neighbours gardens, considering the impact of the proposed development on the amenity of neighbours. As a result condition 4 was imposed and the intention of the condition had been to protect residential amenity of both the adjacent neighbours at 4 and 8 Kings Road when using their private sitting out areas and the internal living area of No 4.

7.4 However, the precise wording of clause (i) of condition 4 was ill-suited and in retrospect can be seen as a mistake. The wording used relates to traditional windows in side elevations having top lights, and is less suited to roof lights, which usually comprise a single, undivided window. The condition does not specify the height of the horizontal division and therefore the height of the opening element. Furthermore, such divided roof light windows do not appear to be readily obtainable so the applicant may not be able to comply with the literal interpretation of this condition without commissioning a bespoke design.

7.5 Therefore, whilst the intention of the planning permission was to achieve obscure glazed windows, which either did not open or opened at a high level, the actual condition does not adequately control the opening height, and in any event the openable section could cause overlooking. The condition is also hard, if not impossible, to comply with.

(iii) Impact on neighbouring amenities

7.6 This application seeks a compromise to the original condition. The applicant proposes retaining the already installed, obscure glazed and openable windows in positions W19 and W24 but fitting them with a locking device. The applicant states that the windows

would be kept locked at all times except for cleaning.

- 7.7 The locations of windows W19 and W24 in the side elevation of the rear projection, are such that they are beyond the rear elevations of the adjacent properties enabling, when open, direct views in both directions into the living room of No 4 and the private sitting out patio areas of both nos 4 and 8. There is no doubt that if opened, both these roof light windows result in a direct loss of privacy and overlooking detrimental to the amenities of the occupiers of nos 4 and 8. The very presence of the roof lights affects the outlook from the neighbours living areas and private rear gardens and are only considered acceptable if there is no threat of them being generally openable. However, it must also be noted that the other roof lights within the property, on the original rear roof slope, are allowed as permitted development with clear glass and opening, and do enable standard views across the rear garden areas of surrounding residential properties. In such a residential built up areas there will often be a degree of overlooking and views across gardens – it is the additional impact of these side roof lights into such private areas of the neighbours properties that is the concern.
- 7.8 The existing boundary treatments do not provide any screening - the western boundary with No 4 is a low beech hedge and the eastern boundary includes a block work wall of approximately 2m in height which screens the side elevation but not the roof slope containing W19 which is visible above the wall. There are no existing trees on this boundary as alleged on the submitted plans.
- 7.9 Since being installed, during construction works and during internal decorations, these roof lights have been fully opened regularly. The neighbours have supplied photographs of the roof lights in the open position - please refer to Appendix D. It is clear that when opened, as the photographs demonstrate, these roof lights certainly have a detrimental impact on the amenity of the adjacent neighbours. However, at the time of writing, the applicant is still in the process of moving-in and is not yet living there as a residential dwelling – he assures the Council that once occupying the property he will not open the roof lights, except for cleaning.
- 7.10 Accordingly, it is considered that these two side roof lights, W19 and W24, need to be kept closed to protect the privacy of the adjacent neighbours. It is the method of achieving them to be kept closed that is the issue to be considered. The original, ideal scenario was to have fitted non-opening windows. However, rather than going to the expense of changing the windows themselves to non-opening frames, the applicant has submitted this application, offering to fit a lockable device to the windows. He would then pledge to keep the windows closed except for cleaning. The existing obscure glass would remain unaffected.
- 7.11 The determination of this application must consider whether, in planning terms, this compromise is acceptable. The NPPF paragraph 206 and supporting Planning Practice Guidance, 2014 provides 6 tests for the imposition of conditions on planning permissions, which should only be imposed if the condition satisfies all of the following: i) be necessary; ii) relevant to planning; iii) relevant to the development to be permitted; iv) enforceable; v) precise; and vi) reasonable in all other respects. If this application were to be permitted, the existing condition 4 would be varied to allow the use of the existing openable window frame with a locking device to be kept locked except for cleaning. It would be necessary to precisely define the number of occasions or frequency of cleaning, including time taken to clean, in order to make the revised condition precise and enforceable. Then the Local Planning Authority would be reliant on the neighbours informing the Council of any breaches of the frequency or duration of opening.
- 7.12 Consideration must also be given to the long term and the fact that this requirement would be in perpetuity i.e. any future occupier of No 6 would also need to be aware of the need to keep the windows locked except for the agreed opening frequency and duration.

- 7.13 It is considered essential that W19 and W24 remain obscure glazed and closed to adequately protect the residential amenity of the occupiers of the adjacent properties. Regard must be had to the shortcomings of the existing condition 4 and that if it were possible to comply with its wording, would result in a roof light with a top half openable, likely to cause overlooking. This fall-back position would give rise to a degree of overlooking to both neighbours yet would be compliant with the condition and no further action would be possible. Therefore, on balance, it is considered that the proposed variation to the condition would achieve greater privacy to the adjacent neighbours. Whilst the revised condition might be difficult to enforce, being reliant on the neighbours to alert the Council to breaches, it nevertheless could be done and ultimately a Breach of Condition Notice could be served if the window opened more than the agreed times.
- 7.14 The alternative would be to refuse the application which would necessitate the applicant to comply with the literal wording of the original condition 4 (i.e. to obtain a roof light with a horizontal divide with top opening light). If refused the applicant's other options would be to appeal the decision or, with goodwill, change the opening window to a permanently non-opening window. However the Local Planning Authority are not in a position to legally insist on that change given the wording of the original condition 4.

8 Conclusion

- 8.1 The proposed variation of condition 4 to allow for a locking device to be fitted to the existing openable windows is considered an acceptable resolution which, provided it is complied with, would offer the neighbours satisfactory privacy and prevent direct overlooking to their living and patio areas. The proposal is therefore considered compliant with policy CS16.

9 RECOMMENDATION:

That the Executive Head of Planning and Built Environment be authorised to **GRANT PERMISSION** for application APP/14/00579 subject to the following new condition 4:

- 4 Windows W19 and W24 shall both be fitted with the hereby approved Velux locking device ZOZ 012 within one month of the date of this decision. Thereafter, in perpetuity, windows W19 and W24 shall be kept locked and closed at all times except for cleaning. Cleaning shall take place at a maximum frequency of once a month and the windows shall only be open for 15 minutes on each occasion for cleaning purposes. Furthermore, windows W19 and W24 shall be retained in perpetuity with obscure glass, achieving a degree of obscuration no less obscure than that which is provided by Pilkington's Texture Glass Obscuration Level 4.

Reason: In the interests of the amenities of the occupiers of the adjacent properties and having due regard to policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework 2012.

Appendices:

- (A) OS Location Plan
- (B) First Floor Layout
- (C) details of Velux Locking Device
- (D) Photographs of W19 & W24 Open