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13<sup>th</sup> April 2018

Emma Chisnall  
Planning Officer  
Development Management  
Havant Borough Council  
Public Service Plaza  
Civic Centre Road  
Havant  
PO9 2AX

Dear Emma,

Re: APP/18/00134 – Fair Acre, Church Lane, Hayling Island

Like many other interested parties, I find myself writing for the third time, on behalf of my clients Mr and Mrs Rhodes the owners of Church Cottage, to object to the above application. It is clear the applicant continues to amend their application days before the date of determination to avoid the inevitable refusal. The latest attempt muddies the waters even further because they claim to seek approval to vary Condition 3 but in reality they are looking to change numerous design details at the same time. This approach is not acceptable for a conservation area such as this, not least because they introduce rainwater downpipes, soil vent pipes, bigger window sizes and designs that have not been approved and have a direct impact on 'means of escape'. Although this reflects a poorly thought through design, it is becoming more and more apparent that the applicant simply cannot accept that Condition 3 was included for good reason and that they should comply with it like every law abiding person. They may either have the mistaken belief that stakeholders will eventually give in to their wishes to trample over the rights of others, ignoring assurances previously given and accepted because they are somehow above Civil Society or that their wishes take priority.

Furthermore they continue to introduce misleading concepts to justify non-compliance rather than just taking what is relatively inexpensive and straightforward remedial action. This approach cannot be condoned otherwise public confidence in the planning system is undermined. It is very reassuring that Havant Borough Council are taking this matter

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seriously. However, as a Surveyor with 30 years experience in planning and development work, it seems your attempts to negotiate a solution as an alternative to 'enforcement action' is not working. Although worth trying it is now obvious that the applicant cannot accept they have breached planning permission multiple times. Remarkably, there are no signs of contrition but a determined willingness to cause distress and bad feeling to others whilst wasting the resources of our planning authority.

This may appear a harsh opinion, but the latest attempt to vary Condition 3 underscores contempt for authority. In response to clear guidance issued by you in an email published on this planning portal, dated 27<sup>th</sup> March 2018, when you said:

***" As we discussed, the obscure glass is considered to be the appropriate measure for the window in the west elevation in order to address the concerns and that is my opinion."***

It is disappointing that the applicant's agent, presumably acting on instructions from their client, replies:

***"While I note your recommendation we feel that it would be best to pursue the film option, and I note below the suggested amended wording of condition 3"***

Best for whom? The cost of complying with Condition 3 at the time of construction would have been no more expensive than was the case for this non-compliant design. Obscure glass on the inside of a double glazed unit is, of course, no more expensive than clear glass. A fixed pane window would have been marginally less expensive than the hinged windows they ultimately selected.

For reasons discussed below, I suspect the applicant chose to make the design changes once initial discussions with Building Control led to more detailed consideration about the means of escape from the first floor bedroom. It is a reasonable assumption they knew the revised design would not be approved by the planning authority and therefore the decision was taken not to apply for a variation before or during building works, but to chance their luck in the hope it went undetected. Their agent would almost certainly have advised them that whenever obscure glass is specified for privacy no authority would permit windows to open below 1.8m from finished floor level. As such it must have been obvious to them that the West facing windows could not be the means of escape from the first floor bedroom.

#### Obscure glass or film?

There is little point repeating the same arguments that we presented the first time around. I think you understand my client's feelings on this and the vast weight of opinion from local residents. Furthermore you have explained that Havant Borough Council does not accept film in lieu of obscure glass for reasons of permanence and longevity. However, the

continued idea that film is appropriate for the South Facing bathroom window must be resisted. Given that the applicant's plans show this window sits inside the shower cubicle it is worth considering that the largest manufacturer of film in Europe, 3M Europe Ltd, does not recommend its use in humid or moist environments and specifically excludes the usual 1-3 year warranty for such locations. These are further reasons why the authority should stick to its insistence that obscure glass be used for all windows specified in the original GA drawings approved in November 2016.

Out of interest, we approached a number of glaziers in the Portsmouth area and have obtained quotes to replace the existing clear glass units. The cost to supply and deliver double glazed units with obscure glass inner and clear glass external panes to fit the existing frames would be slightly less than £500 (for the three West facing windows). It would take less than a day to install, they advise.

#### Opening or not?

An unwillingness to fix shut the West facing windows is another example of being difficult for no justifiable reason. In January 2018 the planning authority tried to guide the applicant in pre-enforcement discussions by suggesting uni-directional screws could be fitted, as an afterthought, to remedy the breach. This would ensure the windows could not be opened 'thereafter', thereby complying with the original November 2016 permission. This would involve minimal hassle and expense and would avoid having to replace the entire window frame. It seemed a sensible compromise, but in reply to this suggestion the applicant wrote on the 31<sup>st</sup> January 2018 that it is:

***" Inappropriate to damage windows by screw fixing into frame."***

Remarkably, rather than accepting the wishes of the planning authority the applicant's latest submission introduces new reasoning; presumably because they were told their previous attempt to vary Condition 3, by offering to forever 'latch' the windows instead of them being fixed shut thereafter, would not receive officer approval. They now imply the windows must open for fire safety reasons to comply with B.1 of Fire Safety, Approved Document B, Building Regulations 2010 as amended. However, I am critical of this explanation for the reasons explained below.

Having spoken to Havant Building Control officer, Paul Coleman (Ref: 17/00-394/AP), West Sussex Fire Safety Area Manager Adrian Murphy and consulted the appropriate sections of the Building Regulations I am confident the applicant's claim is misleading. The building control officer explained to me that there were many other options available to the applicant and the West-facing window was the option Fair Acre chose to pursue very early on in the consultation process. Quite why is not clear, but it is reasonable to assume the applicant was

aware this decision would breach their planning permission and the agreement reached with neighbours. An application to vary the approved plans was never brought forward for discussion during construction.

We all appreciate Building Control is a separate governing authority, but it is recognised that applicants must work through the requirements of the Building Regulations within the confines of what they have planning permission to build. Building control does not lead accepted design, particularly when alternative means of compliance are available that would not breach planning control. For example, it would have been easy for the applicant to have installed an additional fire door to form a protected lobby between the two bedrooms as a means of conforming with fire regulations; alternatively they could have formed a direct access door between the two bedrooms so that the window in the East lying bedroom became the acceptable means of escape for both bedrooms; or they could have used either the original south facing window or the adjacent bathroom window of the West lying bedroom as the means of escape because either of these windows would, as originally designed, have complied with the 450x450 minimum and 0.33m<sup>2</sup> rules. Unfortunately they took the unilateral decision to change the window designs without seeking the necessary Conservation Area approval. The existing multi-pane design with fanlight has been built instead of the simple casement design approved by the Conservation Area Officer and, probably as an unintended consequence, it fails the aperture rule for acceptable means of escape. As demonstrated above there were and still are numerous alternatives the applicant could adopt as an acceptable means of escape from the first floor west bedroom other than through the fixed window approved in the original planning consent. It is entirely unnecessary for Condition 3 to be varied just because it is the applicant's 'preferred' solution. It would take only modest expenditure to comply with both planning and building control if the applicant were so minded. But it seems someone is determined to prove a point here. Why else not just comply?

#### Other variations

As referred to above, over the past week or so the applicant has submitted a further drawing, giving it the same Revision Reference E and saying it is for clarification. This is an attempt to push through several design variations within a Conservation Area without proper consultation. Including these in their application to vary Planning Condition 3 is misleading to the local community and a proper consultation process should be encouraged. For example, by attempting to sweep these changes through, issues such as the means of escape would be prejudiced because the introduction of fanlights in the north and South elevation windows has knock-on implications for the size of the exit point. It appears the fanlight reduces the area to below the accepted 0.33m<sup>2</sup> and this wouldn't have been so if the originally approved

casements had been built. The applicant's agent will be aware of this point.

The planning authority is trying to be fair to all parties whilst dealing with this deliberate breach of planning control. I do not wish to comment on the agent's suggestion that the enforcement officer "implied that she was happy to live with the film if the windows were screwed shut". Or that "someone telephoned my client subsequent to Penny's visit - don't know name, but we think it might have been the Enforcement line Manager - advising that we apply to have condition 3 removed." If this statement is true and I have no means of knowing one way or another, then serious questions would need to be asked as such an approach would surely breach NPPF guidance on ensuring effective enforcement and undermine trust in the planning process.

In conclusion

The applicant's latest attempt to vary Condition 3 should be rejected. Film is not an acceptable substitute for obscure glass and it would not be expensive or difficult for a retrospective solution to comply. The West-facing window frame should be replaced or screw fixed permanently shut. This may well mean the Building Control Certificate should be revoked until such time as further internal works can be carried out. Alternatively one of the non-compliant South facing casement windows could be replaced with one that does not have a fanlight. It seems to me this would be the most cost effective and least disruptive option to comply with both planning and Building Regulations.

Finally, given the levels of prevarication and wriggling that has been displayed, after the deliberate breaches of permission were brought to the attention of planning control and after extensive attempts to negotiate a solution continue to be ignored, is it not time for the authority to take a more robust approach to enforcement by issuing a breach of condition notice? The applicant and their agent has had ample time and fair opportunity to address the concerns raised by objectors and yet they continue to ignore the recommendations and opinions of the planning authority? This is wasting precious resources that could be better spent elsewhere. It would help focus minds that this conduct is inappropriate.

Kind regards,

A large black rectangular redaction box covering the signature of James A Fawcett.

James A Fawcett BSc (Hons) MRICS