

Recommendation Report for Planning Permission

REF NO: FG/1/19/PL

LOCATION: 63 Midhurst Drive
Ferring
BN12 5BQ

PROPOSAL: Variation of condition 4 imposed under FG/1/18/HH to read: The 2 bathroom windows on the east facing elevation of the dormer on the east side of the dwelling house shall at all times be glazed with obscure glazing and be fixed to be permanently non-opening where they are below 1.7 metres measured from the finished floor level of the room in which the windows are installed.

Variation of Condition 5 imposed under FG/1/18/HH for the first 2 No. west facing velux windows within the existing roof structure to be glazed with clear glass & to be fully opening. The remaining velux windows - 2 No. west within the proposed roof extension & 2 No. east - one within the existing roof structure & one within the proposed roof extension to be permanently obscured and permanently fixed shut with internal lock as per details submitted (VELUX locking handle) to a height of 1.7m. The obscured windows are agreed to be only opened 4 times per year to be cleaned & maintained and on each of these occasions the Council should be notified in advance of when this is to take place.

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION	As above
TOPOGRAPHY	Predominantly flat.
BOUNDARY TREATMENT	The boundaries to the front low dwarf wall. To the rear they are a mixture of 2m+ hedging and 2m wooden panel fencing.
SITE CHARACTERISTICS	The site is occupied by a detached bungalow with hipped roof and attached garage with flat roof to the west side. It is constructed of red/brown brick with a red/brown profiled concrete tile roof. To the side and in front of the garage there is parking for 2 to 3 cars, excluding the garage.
CHARACTER OF LOCALITY	The area is a residential one with a mixture of dwelling designs. Dwellings are largely bungalows or chalet type. Adjoining the site to the east is a chalet type dwelling with rooms in the roof. This has a relatively large dormer facing the application dwelling which also has 2 windows facing the site. To the rear and outside of the application site is Ilex Avenue a bridleway lined with mature Ilex trees.

RELEVANT SITE HISTORY

Condition 4 of FG1/18/HH states:

The 2 bathroom windows on the east facing elevation of the dormer on the west side of the dwelling hereby permitted shall at all times be glazed with obscured glass and be fixed to be permanently non-opening where they are above 1.7 metres from the finished ground floor level.

Condition 5 of FG1/18/HH states:

The 4 velux type roof lights in the west and 2 velux type roof light east facing roof planes of the extended dwelling hereby permitted shall at all times be glazed with obscured glass fixed to be permanently non-opening where they are above 1.7m from the finished ground floor level.

REPRESENTATIONS

REPRESENTATIONS RECEIVED:

Ferring Parish Council

Ferring Parish Council objects to this retrospective request for variation to Conditions 4 & 5 of the approved application FG/1/18/HH:

- There have been no exceptional grounds submitted to validate such a request.
- The original approval was only granted subject to the specific conditions to protect the privacy of neighbours and to mitigate the impact on their right to continue to enjoy the peaceful and secluded amenity of their gardens and property.
- The decision was issued to the agents, professional chartered surveyors and architectural consultants who would fully understand the conditions rightly imposed by A.D.C.
- This is a deliberate attempt to manipulate planning decisions and undermine the planning process.
- We are seeing a number of cases where planning conditions are being ignored in contempt of decisions made on valid planning grounds after undergoing due process.
- The variations requested would be almost impossible to monitor or enforce.
- There are no sound reasons for the requests to remove the permanently fixed windows and obscure glass conditions to be replaced by lockable windows and window film, both of which only offer a temporary and easily over-ridden alternative.
- It is crucial that Arun District Council enforces the decisions made in order to uphold public confidence in the integrity of the planning process which would be seriously jeopardised if such infringements are permitted except possibly in the most exceptional circumstances. No such exceptional circumstances apply to this case and it must therefore be refused.

Ferring Conservation Group

Ferring Conservation Group continues to object to the application to vary the conditions attached to the approval in 2018. The conditions were imposed in order to protect the privacy and amenities of the neighbours. The variations now proposed would substantially weaken that protection. Film over clear glass is no substitute for obscure glass and locked windows are no substitute for fixed windows. Film can be removed and locks can be unlocked. The applicant seems to have deliberately defied the conditions that were imposed, and rather than change the installation, seeks to change the conditions. Allowing him to do this would make a mockery of planning controls.

31 letters of objection (20 from 6 separate addresses). The following points are made:

- Conditions need to be complied with to ensure there is no overlooking of neighbours.
- A fixed shut velux window would require no maintenance other than cleaning which can easily be achieved from the outside.
- Original condition required frosted glass not a removeable film.
- Who will monitor and enforce the 4 occasions when the window can be opened for cleaning and maintenance? No faith in the Council.
- What action is available were the film to be removed?
- Like the original condition it is not clear whether the variation will be complied with. Applicant cannot be trusted to comply with a variation.
- The neighbours should also be notified of when the windows are to be opened.
- Making them openable the windows can be freely opened.
- Future occupiers will not comply.
- Applicant wrongly advised by agent.
- The Council will be burdened with unnecessary communication and monitoring. Stressful for neighbours who will need to monitor.
- Original condition has been ignored and should be insisted on for the Council to retain credibility.
- The way this has been presented on the web site seems to imply that decision to approve has already been agreed and is about appeasing the applicant to bypass the condition.
- This is proposed to deal with the heat that will be generated in the roof space and windows will be frequently opened as a result.
- Sets an undesirable precedent.
- The windows will not be permanently fixed shut but rather a temporary measure that can easily be reversed.
- We fail to understand that a perfectly reasonable planning condition has not been enforced. It is also extraordinary that the Planning Officer appears to have drafted the recent application on behalf of the applicant. If true, we cannot believe that this is proper procedure as the Planning Officer will, in effect be adjudicating an application he has prepared himself. Why is it the planning dept.'s role to assist the applicant to avoid a condition of approval?
- Applicants should be open to Court procedures for breaching planning regulations.

Representations made by the planning agent:

- It is not possible to buy Velux windows which are fixed shut or indeed with obscured glass. It is therefore quite normal to adjust them afterwards to meet planning conditions. Under no circumstances was the applicant waiting to see if she could simply get away from having to comply with the planning conditions.
- Two of the windows merely look onto the blank roof slope of the neighbouring property, (No 65) and it therefore seemed logical to apply to have these two windows as clear glass and openable.
- It is very difficult to clear Velux windows from the outside, due to their sloping nature, together with the restricted nature of the access down the sides of this property.
- This application relates to side facing windows, which by definition only impact on the two immediate neighbours, one of which (No65) has raised no objection. As such there can only be one objection worthy of consideration, (from No 61). Despite this there have been a total of 31 objections, albeit several have come from the same property. I do not see how anyone other than the two immediate neighbours could possibly be effected by this proposal, especially people living in different parts of Ferring or as far afield as Hove. I can therefore only assume that all of these objections have come from a result of being canvassed and do not have any real bearing on the case.
- I also consider the level of objection to be completely unreasonable bearing in mind that a total of twelve properties in Midhurst Drive have loft conversions with side facing windows, all of which have clear glass and fully openable windows. Included in this list of twelve are three properties which have objected to this proposal ! These include numbers 61, 57 and 55, all of which have objected to this proposal, but enjoy the benefit of side facing opening windows themselves, with clear glass.

In response to the agents representation above objectors state:

- Velux is not the only manufacturer of pitch roof windows. Fakro make pitch roof non opening windows and so does a company called ECO+RESET, full details are on their websites and roofing supply company websites.
- Velux do in fact supply their top opening roof windows with an obscure/ opaque glass. An example is GPUMK040034. I found out this information in less than 10 minutes.
- So asking to open a window that should not be openable, is like saying I am here now, I must be opened. A bit like putting the cart before the horse.
- Other people manage to clean and maintain their windows from the outside. Why not number 63.
- The main objection is to the two windows in the extension part which overlooks several gardens. This situation is not repeated anywhere else in Midhurst Drive.
- People have a right to object to this proposal no matter what their address is.
- The proposed monitoring system is new and setting a precedent, depending on neighbours to enforce it's operation.
- The Agent should have obtained the permission of the various homeowners, before photographing their properties and putting them on a public website.
- We don't understand why this is being dragged out, as it has been, when we know full well that you are going to pass it by reading the comments between yourself and the Agent.
- You have allowed the Agent's statement to be put on the website at this very late stage to back up your decision.
- The complaint mainly is the fact that there were very few planning conditions that have been deliberately ignored. What is the point of planning conditions if they can be ignored and do exactly as they like.

COMMENTS ON REPRESENTATIONS RECEIVED:

With regards to neighbouring objectors:

The application property is the subject of an enforcement investigation. Any future action is held in abeyance pending the outcome of this application.

Whilst the applicant has been in negotiations with the case officer this is in line with Government guidance which encourages agreement between those submitting planning applications and the Council as the Local Planning Authority. None the less the final decision needs to be based on sound planning grounds.

All other matters raised will be addressed in the Conclusions section of this report.

CONSULTATION RESPONSES RECEIVED:

None.

COMMENTS ON CONSULTATION RESPONSES:

Not applicable.

POLICY CONTEXT

Designation applicable to site:

Within built up area boundary.

DEVELOPMENT PLAN POLICES

[Arun Local Plan 2011 - 2031:](#)

DDM1	D DM1 Aspects of form and design quality
DDM4	D DM4 Extensions&alter to exist builds(res and non-res)
SDSP2	SD SP2 Built-up Area Boundary

[Ferring Neighbourhood Plan 2014 Policy 1A](#)

A Spatial Plan for the Parish

PLANNING POLICY GUIDANCE:

NPPF	National Planning Policy Framework
NPPG	National Planning Practice Guidance

POLICY COMMENTARY

The Development Plan consists of the Arun Local Plan 2011 - 2031, West Sussex County Council's Waste and Minerals Plans and Made Neighbourhood Development Plans.

The policies are published under Regulations 19 and 35 of the Town and Country Planning (Local Planning) (England) Regulations 2012.

The Neighbourhood Development Plan

Where applicable, Neighbourhood Development Plan's (more commonly known as a neighbourhood plan or NDP), once made by Arun District Council, will form part of the statutory local development plan for the relevant designated neighbourhood area.

Arun District Council will make reference to an NDP when it has, by the close of planning application consultation, been publicised for pre-submission consultation(Reg.14).

DEVELOPMENT PLAN AND/OR LEGISLATIVE BACKGROUND

Section 38(6) of the Planning and Compulsory Purchase Act 2004 states:-

"If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."

The proposal is considered to comply with relevant Development Plan policies in that the proposed change to the conditions will not result in unacceptable overlooking of neighbouring properties.

OTHER MATERIAL CONSIDERATIONS

It is considered that there are no other material considerations to warrant a decision otherwise than in accordance with the Development Plan and/or legislative background.

CONCLUSIONS**BACKGROUND**

Planning permission was granted in March 2018 for a rear extension plus conversion of the loft space at the application property. Conditions 4 & 5 were imposed which required that all the velux windows on the converted roof (2 on the east facing slope and 4 on the west facing slope) be permanently fixed shut and glazed with obscured glass where they are above 1.7m from the finished ground floor. It also required

that the two bathroom windows on the east side of the converted loft be similarly fixed shut and obscure glazed.

The reason for imposing these conditions was to protect the amenities and privacy of the adjoining properties.

Following neighbour complaints an enforcement investigation found that none of the velux windows were permanently fixed shut or glazed with obscure glass. The two bathroom windows were fixed shut and fitted with obscure glass up to a height of 1.7m from the finished ground floor.

At the time of the investigation the works to convert the loft were ongoing and the applicants were informed that if once completed the situation remained the same formal enforcement action would follow.

An application was then submitted to rectify the breach.

PRINCIPLE

Government guidance on the use of planning conditions contained in the National Planning Policy Framework. Paragraph 55 states that planning conditions can only be imposed 'where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.' It goes on to say that 'Agreeing conditions early is beneficial to all parties involved in the process and can speed up decision making.'

4 WEST FACING VELUX WINDOWS

The case officer has witnessed that the view out from the first velux window nearest Midhurst Drive is wholly of the roofslope of number 65 Midhurst Drive. Given that there is no impact on the amenities and privacy of the adjoining properties by having an openable and clear glazed window in this location the condition is therefore not necessary.

The second velux window is positioned at the top of a staircase leading into the converted roofspace. It is therefore in a location where the occupiers will be passing through only and these passing views are of the roofslope at number 65 and oblique views of their rear garden. The impact from this window on the privacy enjoyed by the use of the rear garden at number 65 is therefore limited making it unreasonable to require such a condition.

The third and fourth velux windows provide close and interrupted views of the rear garden of number 65 from the application site. It is therefore clearly necessary to control the views out from these windows.

2 EAST FACING WINDOWS

The two velux windows on the east side of the converted roofspace provide damaging and intrusive views out onto number 61 Midhurst Drive. That nearest the road in close proximity to a clear glazed window serving the loft bedroom at number 61. The velux window has direct views into this bedroom.

The other velux window has close and direct views out to the rear of 61 Midhurst Drive and again there is a clear need to have control out of the views out of this window.

2 BATHROOM WINDOWS

These two windows are currently glazed with obscure glass and non opening up to 1.7m off the finished ground floor.

OBSCURE FILM AND LIMITED OPENING OF WINDOWS.

The 4 affected windows have been fitted with a locking system and a film where the case officer is satisfied that it prevents harmful views into the neighbouring properties below 1.7m below the finished

ground floor. The applicants have expressed a desire to be able to open the windows on up to 4 times a year to clean/maintain the windows. It is considered that on 4 occasions a year for what is likely to be a short period this is a reasonable request.

Concerns have been raised that the applied film can be taken away and to allow the windows to be openable would mean that they could remain open for more than the 4 yearly allowed, temporary, occasions. However, if this were to be the case then it would amount to a breach of the condition and the Council could take formal enforcement action to remedy this breach.

ENFORCEABILITY

In line with Government guidance in the NPPF conditions not only have to be necessary and reasonable they also need to be able to be enforced. An open and clear glazed window is readily identified and were this to be the case neighbours could make use of the Council's enforcement service and report it. Objectors claim that the condition could not be enforced/monitored. If the applicants wish to exercise their approval to open the windows for cleaning purposes they will need to first notify the Council in advance. Such notice would be recorded against the application and be available to view on the web site. If this does not take place and the windows are opened then that would constitute a breach of the condition.

CONCLUSION

The proposed variation of conditions 4 & 5 complies with Government guidance in that it serves a necessary purpose, is reasonable in nature and is able to be enforced. For these reasons it is recommended for approval.

HUMAN RIGHTS ACT

The Council in making a decision should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority such as Arun District Council to act in a manner, which is incompatible with the European Convention on Human Rights.

Consideration has been specifically given to Article 8 (right to respect private and family life) and Article 1 of the First Protocol (protection of property). It is not considered that the recommendation for approval of the grant of permission in this case interferes unreasonably with any local residents' right to respect for their private and family life and home, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general interest and the recommendation for approval is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

DUTY UNDER THE EQUALITIES ACT 2010

Duty under the Equalities Act 2010

In assessing this proposal the following impacts have been identified upon those people with the following protected characteristics (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation).

The proposal would have a neutral impact on the protected characteristics.

RECOMMENDATION

APPROVE CONDITIONALLY

- 1 The development hereby approved shall be carried out in accordance with the following approved drawings: Photos and specs of velux locking handle, Location Plan DRW NO 10 & Roof Plan DRW NO 4b.

Reason: For the avoidance of doubt and in the interests of amenity and the environment in accordance with policy DDM1 of the Arun Local Plan.

- 2 The 2 bathroom windows on the east facing elevation of the dormer on the east side of the dwelling house shall at all times be glazed with obscure glazing and be fixed to be permanently non-opening where they are below 1.7 metres measured from the finished floor level of the room in which the windows are installed.

Reason: To protect the amenities of adjoining residential properties in accordance with policy DDM1 of the Arun Local Plan.

- 3 The first 2 No. west facing velux windows within the existing roof structure to be glazed with clear glass & to be fully opening. The remaining velux windows - 2 No. west within the proposed roof extension & 2 No. east - one within the existing roof structure & one within the proposed roof extension to be permanently obscured and permanently fixed shut with internal lock as per details submitted (VELUX locking handle) to a height of 1.7m. The obscured windows are agreed to be only opened 4 times per year to be cleaned & maintained and on each of these occasions the Council should be notified in advance of when this is to take place.

Reason: To protect the amenities of adjoining residential properties in accordance with policy DDM1 of the Arun Local Plan.

- 4 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development)(England) Order 2015, (or any Order revoking or enacting that Order) no windows or other openings other than those shown on the plans hereby approved shall be formed in the east or west facing roof planes of the rear extension hereby permitted without the prior permission of the Local Planning Authority on an application in that behalf.

Reason: To protect the amenities of adjoining residential properties in accordance with policy DDM1 of the Arun Local Plan.

- 5 INFORMATIVE: Statement pursuant to Article 35 of the Town and Country Planning (Development Management Procedure)(England) Order 2015. The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern within the application (as originally submitted) and negotiating, with the Applicant, acceptable amendments to the proposal to address those concerns. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal, in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.