

Planning Statement

Site: 29 Frobisher Way, Rustington, West Sussex BN16 2BB

1. Introduction

This application is made in response to Arun District Council's decision to allow planning application R/256/17/HH subject to conditions. In particular, the applicant is seeking the removal of Condition 4 of planning application reference: R/256/17/HH. Condition 4 sets out the following requirement of the planning permission:

Condition 4

The 3 new velux roof light in the east facing rear roof plane of the main existing roof of the dwelling shall at all times be glazed with obscured glass and fixed to be permanently non-opening.

Reason: To protect the amenities and privacy of the adjoining property in accordance with policies GEN7, DEV19 of the Arun District Local Plan.

The applicant is seeking to extend their existing property to provide a family home and was therefore grateful to receive confirmation of the planning permission being granted. However, the above condition appears to be unreasonable. Rather than appealing, the applicant is seeking to work with the Council, by reapplying for permission, but with the following supporting information to assist in the reconsideration of the application and in particular the planning condition.

2. Legislative background and planning policy advice

The main powers relating to local planning authority use of conditions are set out in Schedule 5 of the Town and Country Planning Act 1990. Section 70(1)(a) of the Act enables the local planning authority in granting planning permission to impose "such conditions as they think fit". This power must be interpreted in light of material factors such as the National Planning Policy Framework, National Planning Practice Guidance (NPPG) on the use of conditions, and relevant case law.

Paragraph 203 of the National Planning Policy Framework states "Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions.

Paragraph 206 of the National Planning Policy Framework states that planning conditions should only be imposed where they are:

1. necessary;
2. relevant to planning and;
3. to the development to be permitted;

4. enforceable;
5. precise and;
6. reasonable in all other respects.

The NPPG sets out that the 6 tests must all be satisfied each time a decision to grant planning permission subject to conditions is made. The NPPG sets out further guidance regarding each of the above condition tests, and this guidance is considered in the assessment below.

3. Assessment of condition

This application is being resubmitted in specific regard to the imposition of the above planning condition, which was applied to planning application reference: R/256/17/HH. During the consideration of the planning application, the agent acting on behalf of the applicant was advised that this condition would likely be applied, for the reason given above.

At the time this condition was proposed, the agent discussed this with the case officer as it did not appear to be a reasonable condition to apply given the sites characteristics and the proposed form of development.

The case officer report considered the impact upon “RESIDENTIAL AMENITY” and stated the following:

The development is considered to result in little impact on the amenity of adjoining dwellings. It does not cause unacceptable overlooking nor does it have an overbearing impact. Veluxes in the rear extension do not give rise to overlooking since they serve a vaulted roof area. Rear veluxes serve either a bedroom or a mezzanine area, overlooking from these can be controlled by a condition requiring them to be non opening and obscure glazed

The proposed roof lights within the rear facing roof slope, serving the mezzanine and master bedroom, would face towards the rear garden. They would not give rise to any direct overlooking of the neighbouring properties / gardens of No.s 27 or 31 given their orientation towards the rear garden and not the shared side boundaries.

In terms of potential overlooking of gardens to the rear, serving those properties which front Botany Close, these are set a significant distance from the proposed roof lights and are in any case two storey properties with rear facing ground and first floor windows, not just roof lights as proposed. Given the separation distance between these properties, the views from first floor windows do not currently allow any direct or unacceptable levels of overlooking of the appeal site, or the adjoining properties. Notably, the officer’s assessment, included above, does not refer to the properties the rear facing roof lights would affect.

The application includes detailed section plans (Drawing No. AO25 Revision P2) identifying the internal floor levels of the dwelling as proposed. This shows the roof

light set above the void above the ground floor accommodation. The mezzanine floor is set back from the roof lights and the staircase is also set away. Accordingly, close up views towards to the rear garden would not be achievable and only oblique glimpses could be achieved towards the rear end of the neighbouring garden to the south.

The roof light over the bedroom would be set at a higher level with its primary purpose being to allow light into the bedroom. It is a modest sized roof light, which again faces towards the rear garden of the property.

Given the set back of the mezzanine floor together with the general nature of roof lights following the line of the existing roof slope and their orientation towards the rear garden, the provision of the rear facing roof lights, as proposed, would not result in any direct or demonstrable overlooking of the neighbouring property.

It should also be noted that under permitted development, roof lights could be constructed in a rear facing roof slope, in which obscure glazing would not be required. If the proposed roof lights serving first floor accommodation were side facing, it is understood that these should be restricted / obscured, however, this is not the case for the 3 roof lights referred to above.

Additionally, the Council have not applied any conditions preventing the construction of any further roof lights within the roof slope, by removing permitted development rights. Nor have they removed permitted development rights for the construction of dormers, which would result in greater opportunity for overlooking given their nature and form. In the absence of such a restrictive condition, following completion of the extensions, further alterations to the roof could be made.

As set out above, the 6 tests of a condition must all be met when applying a condition. In considering the key considerations that are appended to the NPPG, the following are considered material to the determination of this appeal.

In considering whether a condition is 'necessary' the key considerations are as follows:

Will it be appropriate to refuse planning permission without the requirements imposed by the condition?

- A condition must not be imposed unless there is a definite planning reason for it, ie it is needed to make the development acceptable in planning terms.
- If a condition is wider in scope than is necessary to achieve the desired objective it will fail the test of necessity.

It is not considered that the refusal of the overall planning application would be warranted should this condition be removed. For the reasons set out above, it is not thought that the imposition of the condition would make the scheme acceptable in planning terms.

In considering whether a condition is 'relevant to planning' and 'relevant to the development to be permitted' the key considerations are as follows:

Does the condition relate to planning objectives and is it within the scope of the permission to which it is to be attached?

- A condition must not be used to control matters that are subject to specific control elsewhere in planning legislation (for example, advertisement control, listed building consents, or tree preservation).
- Specific controls outside planning legislation may provide an alternative means of managing certain matters (for example, works on public highways often require highways' consent).

Does the condition fairly and reasonably relate to the development to be permitted?

- It is not sufficient that a condition is related to planning objectives: it must also be justified by the nature or impact of the development permitted.
- A condition cannot be imposed in order to remedy a pre-existing problem or issue not created by the proposed development.

It is accepted that the reason for the condition, which is to protect residential amenity, is within the scope of the permission. However, the case officer has not identified what harm results from the rear facing rooflights. Given that they are rear facing, it is not confirmed whether it is views towards properties to either side of the application site, or properties to the rear. Accordingly, it is not considered that the condition is relevant to the development. It is not justified or explained in the officer's own assessment, nor following the detailed assessment set out above is it reflective of planning objectives.

4. Conclusion

The applicant is of the view that Condition 4 attached to the approved planning application fails to meet the '6 tests' of a condition. The officers' report does not provide any detailed assessment or justification for the claim that rear facing roof lights would result in overlooking of neighbouring properties.

The matter was discussed during the determination of the application with the Council's planning officers, but they maintained the view that the condition was reasonable. The applicant was advised that they could submit a Section 73 variation of condition application, should they not be agreeable to the condition, however, a resubmission of the earlier application is deemed appropriate.

The applicant maintains that the Condition has been applied unreasonably. It is therefore respectfully requested that the revised planning application be allowed, without the imposition of Condition 4, attached to the earlier planning permission.