

**Application Number:** 16/11106 Variation / Removal of Condition

**Site:** 8 BRACKENS WAY, LYMINGTON SO41 3TL

**Development:** Removal of Condition 3 of Planning Permission 09/93569 to allow clear glazing to the first floor east elevation

**Applicant:** Mr Claydon

**Target Date:** 14/10/2016

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## 1 REASON FOR COMMITTEE CONSIDERATION

Contrary decision to Town Council

## 2 DEVELOPMENT PLAN, OBJECTIVES AND POLICIES

### Constraints

Flood Zone  
Plan Area

### Plan Policy Designations

Built-up Area

### National Planning Policy Framework

NPPF Ch. 7 - Requiring good design

### Core Strategy

CS2: Design quality

### Local Plan Part 2 Sites and Development Management Development Plan Document

No relevant documents

### Supplementary Planning Guidance And Documents

SPD - Lymington Local Distinctiveness

## 3 RELEVANT LEGISLATION AND GOVERNMENT ADVICE

Section 38 Development Plan  
Planning and Compulsory Purchase Act 2004  
National Planning Policy Framework  
NPPF Ch. 7 - Requiring good design

#### 4 RELEVANT SITE HISTORY

Proposal	Decision Date	Decision Description	Status
09/93569 First floor front extension	20/03/2009	Granted Subject to Conditions	Decided

#### 5 COUNCILLOR COMMENTS

No Comments Received

#### 6 PARISH / TOWN COUNCIL COMMENTS

**Lymington & Pennington Town Council:** recommend refusal.  
Contravene the conditions imposed in the original planning permission to protect neighbour from visual intrusion.

#### 7 CONSULTEE COMMENTS

**Natural England:** comment Only

Comments in full are available on website.

#### 8 REPRESENTATIONS RECEIVED

One representation of objection received from the occupier of the adjacent property at 1 Tranmere Close for reasons of overlooking and loss of privacy.

Comments in full are available on website.

#### 9 CRIME & DISORDER IMPLICATIONS

None Relevant

#### 10 LOCAL FINANCE CONSIDERATIONS

From the 6 April 2015 New Forest District Council began charging the Community Infrastructure Levy (CIL) on new residential developments.

Local financial considerations are not material to the decision on this application

#### 11 WORKING WITH THE APPLICANT/AGENT

In accordance with paragraphs 186 and 187 of the National Planning Policy Framework and Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015, New Forest District Council takes a positive and proactive approach, seeking solutions to any problems arising in the handling of development proposals so as to achieve, whenever possible, a positive outcome by giving clear advice to applicants.

In this case all the above apply and as the application was acceptable as submitted no specific further actions were required.

## 12 ASSESSMENT

- 12.1 The property is at the end of a row of similar dwellings in a cul de sac. The property was originally built with one clear glazed first floor window on the east elevation serving a bedroom. Following planning consent in 2009 (09/93569) the property was extended to the front with a two storey addition. This consent contained a condition restricting the first floor windows on the east elevation of the extension to be obscure glazed and only fanlight opening.
- 12.2 This application is for the removal of this aforementioned condition. Currently the en-suite bathroom window is obscure glazed and opening and the window serving the bedroom is clear glazed and also opening. Therefore the main consideration when assessing this application is the impact on the neighbouring property to the rear number 1 Tranmere Close in terms of overlooking.
- 12.3 The approved plans for the extension initially included three new first floor windows on the east elevation however this was amended under a Minor Amendment Application (plans 09/09 - 03B & 09/09 - 05B) and thus retained the position of the original bedroom window on the east elevation. Therefore this original window is not covered under the condition which only referred to windows within the extension.
- 12.4 The neighbour at 1 Tranmere Close has objected to the application in that the views from the windows on the first floor of the 8 Brackens Way result in a loss of their privacy. This neighbouring property has a particularly large garden to the rear of the property. The views from the first floor windows to their property can only be gained at an acute angle and with a distance of approximately 40 metres there is not an overlooking issue in respect of the property. Therefore the main views are to the very rear of this neighbour's garden which is separated from the main garden area, directly behind the property, with hedges. Furthermore there are a number of trees close to the windows which further restrict the views. As the property was built with a window on the east elevation there was already a degree of overlooking before the extension, the subject of the planning condition, was built. The window serving the en-suite is obscure glazed and therefore the views obtained from this window are only when it is open and are restricted as detailed above. The window serving the bedroom within the extension is the furthest from the neighbouring property and therefore the views of the neighbour's immediate amenity space are limited.
- 12.5 It is acknowledged that it was felt necessary at the time of the original planning approval, in 2009, to apply a condition for obscure glazing and restricted opening on the additional windows. However the condition was applied in connection with three new windows, with the original bedroom window being brought further forward toward the side boundary. When the plans were altered under a minor amendment the overlooking was reduced. Furthermore now that an Officer has been able to look from the windows it is clear that there are only limited views over the rear of the neighbour's garden. It should also be noted that the original side window serving a bedroom has always had direct views across the neighbour's property and that the additional overlooking from the window in the extension does not significantly increase the harm. Therefore the overall impact on this neighbour's amenity is not to such a degree to justify retaining the condition in its entirety. However it would

not be unreasonable for the condition to be altered for the retention of the obscure glazing within the en-suite bathroom window to ensure the degree of overlooking is not increased in the future. Therefore the application is recommended for approval subject to an appropriate condition maintaining obscure glazing in the en-suite bathroom window.

- 12.6 In coming to this recommendation, consideration has been given to the rights set out in Article 8 (Right to respect for private and family life) and Article 1 of the First Protocol (Right to peaceful enjoyment of possessions) of the European Convention on Human Rights. Whilst it is recognised that there may be an interference with these rights and the rights of other third parties, such interference has to be balanced with the like rights of the applicant to develop the land in the way proposed. In this case it is considered that the protection of the rights and freedoms of the applicant outweigh any possible interference that may result to any third party.

### **13. RECOMMENDATION**

#### **GRANT the VARIATION of CONDITION**

##### **Proposed Conditions:**

1. The development permitted shall be carried out in accordance with the following approved plans: A2a, A3a, 03B & A4a,  
  
Reason: To ensure satisfactory provision of the development.
2. The first floor window on the east elevation of the approved building, serving the en-suite bathroom, shall at all times be glazed with obscure glass.  
  
Reason: To safeguard the privacy of the adjoining neighbouring properties in accordance with policy CS2 of the Local Plan for the New Forest District outside the National Park (Core Strategy).

##### **Notes for inclusion on certificate:**

1. In accordance with paragraphs 186 and 187 of the National Planning Policy Framework and Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015, New Forest District Council takes a positive and proactive approach, seeking solutions to any problems arising in the handling of development proposals so as to achieve, whenever possible, a positive outcome by giving clear advice to applicants.

In this case all the above apply and as the application was acceptable as submitted no specific further actions were required.

##### **Further Information:**

Householder Team

Telephone: 023 8028 5345 (Option 1)



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**Planning Development  
Control Committee  
October 2016**

**Item No: 3w**

88

Brackens Way  
Lymington  
16/11106  
SZ3294

Scale 1:1250

N.B. If printing this plan from the internet, it will not be to scale.

