

WELWYN HATFIELD BOROUGH COUNCIL
DEVELOPMENT MANAGEMENT COMMITTEE – 30 MARCH 2017
REPORT OF THE EXECUTIVE DIRECTOR (PUBLIC PROTECTION, PLANNING AND
GOVERNANCE)

6/2016/1855/VAR

45 NORTHAW ROAD EAST, CUFFLEY, POTTERS BAR, EN6 4LU

VARIATION OF CONDITION 2 (OBSCURED GLAZED DORMER WINDOWS) ON
PLANNING PERMISSION 6/2016/0391/VAR FOR THE VARIATION OF CONDITION 1
(APPROVED PLANS) ON PLANNING PERMISSION 6/2015/2223/HOUSE FOR THE
'ERECTION OF SINGLE STOREY SIDE/REAR EXTENSION, INCLUDING
EXTENDING THE ROOF TO FORM HABITABLE ACCOMMODATION'

APPLICANT: Mrs K Anklesaria

AGENT: Apcar Smith Planning

(Northaw and Cuffley)

1 Site Description

1.1 The site is located on the east side of Northaw Road East. The topography of the site is such that the land slopes away from Northaw Road East. The site contains a bungalow style dwelling hosting 3 dormer windows within the north facing roof slope (adjacent to No.43 Northaw Road East) and 3 dormer windows within the south facing roof slope (adjacent to No.47 Northaw Road East). To the front of the dwelling, the roof is part-hipped part-gabled, whereas the rear of the dwelling hosts a gable end. The bungalow benefits from a single storey side projection to the south which hosts a parapet wall.

2 The Proposal

2.1 The application requests the variation of condition 2 attached to application referenced 6/2016/0391/VAR which approved the "*Variation of condition 1 (approved plans) on planning permission 6/2015/2223/HOUSE for the 'Erection of single storey side/rear extension, including extending the roof to form habitable accommodation'*".

2.2 Section 73 of the Town and Country Planning Act 1990 (as amended) allows the determination of applications to develop land without compliance with conditions previously attached. In this case, the applicant requests the variation of condition 2, which states "*All side facing dormer windows of the building shall be glazed with obscured glass and shall be fixed so as to be incapable of being opened below a height of 1.8 metres above floor level, and shall be retained in that form thereafter. Obscured glazing shall be installed within 3 months of the date of this decision and shall be retained in that form thereafter.*" The reason for the imposition of this condition on the approval was to protect the residential amenity of the occupiers of adjoining dwellings.

- 2.3 The proposed variation would re-word the conditions so as to alter the height from 1.8m to 1.7m and allow the windows below 1.7m to have a restricted opening of 15 degrees alongside the removal of the windows within the foremost dormer on the north facing elevation from the condition. Accordingly, the condition would be worded as follows –

“All side facing dormer windows within the south facing elevation, as well as the rearmost and central side facing dormer windows within the north facing elevation of the proposed building shall be glazed with obscured glass and shall be fixed so as to be incapable of being opened beyond 15 degrees below a height of 1.7 metres above floor level. The works described above shall be completed within 3 months of the date of this decision, and shall be retained in that form thereafter.

REASON: To protect the residential amenity of adjoining occupiers in accordance with Policy D1 of the Welwyn Hatfield District Plan 2005.”

- 2.4 The key considerations in this case, are whether the revised condition would sufficiently protect the amenity of the occupiers of adjoining premises, and whether the proposed condition would comply with the six tests of conditions as laid out in paragraph 206 of the National Planning Policy Framework (NPPF) (hereby referred to as the six tests).

3 Reason for Committee Consideration

- 3.1 This application is presented to the Development Management Committee because Northaw and Cuffley Parish Council have objected.

4 Relevant Planning History

- 4.1 Application Number: 6/2016/0391/VAR Decision: Granted Decision Date: 19 August 2016

Proposal: Variation of condition 1 (approved plans) on planning permission 6/2015/2223/HOUSE for the 'Erection of single storey side/rear extension, including extending the roof to form habitable accommodation'

- 4.2 Application Number: 6/2015/2223/HOUSE Decision: Granted Decision Date: 23 December 2015

Proposal: Erection of single storey side/rear extension, including extending the roof to form habitable accommodation

- 4.3 Application Number: S6/2008/0322/FP Decision: Granted Decision Date: 15 April 2008

Proposal: Erection of two storey rear extension and loft conversion including five dormer windows

- 4.4 Application Number: S6/2007/1547/LU Decision: Granted Decision Date: 02 January 2008

Proposal: Certificate of lawfulness for conversion of loft, including side elevation dormer window to first floor

- 4.5 Application Number: S6/2007/1545/FP Decision: Granted Decision Date: 17 December 2007

Proposal: Conversion of loft, including dormer window and erection of two storey rear extension

- 4.6 Application Number: S6/2007/0333/FP Decision: Granted Decision Date: 26 April 2007

Proposal: Single storey rear extension

5 Planning Policy

- 5.1 National Planning Policy Framework 2012
- 5.2 Welwyn Hatfield District Plan 2005
- 5.3 Supplementary Design Guidance, February 2005 (Statement of Council Policy)

6 Site Designation

- 6.1 The site lies within the specified settlement of Cuffley as designated in the Welwyn Hatfield District Plan 2005.

7 Representations Received

- 7.1 The application was advertised through neighbour notification. Two neighbours (No. 43 and No.47 Northaw Road East) as well as Northaw and Cuffley Residents Association have objected to the revised condition. Their comments may be summarised as:

- Significant loss of amenity through overlooking
- Breach of human rights act right to privacy
- The decision made at committee in regards to the condition should be upheld

8 Town / Parish Council Representations

- 8.1 Northaw and Cuffley Parish Council have objected to the proposed development as follows:

“The Parish Council OBJECTS to this application. The issue of dormer windows on both side elevations of 45 Northaw Road East has previously been considered by the Parish Council and WHBC on more than one occasion and the resolution has been that the all the glazing on both elevations should be non-opening and obscured glass. Obscured glass is essential to protect the privacy of both neighbouring properties and particularly to the north where a bedroom is overlooked. The submitted drawings appear to confuse the north and south elevation, the north is actually to the left of 45 when viewed from the road; as it is our view that both elevations should have

obscured glass this may not be relevant but if there is different treatment of each elevation care needs to be taken when referring to north and south on the drawings.”

9 Analysis

- 9.1 The main planning issues to be considered are:
- 1. Would the revised condition maintain the amenity of the occupiers of adjoining premises (Policy D2 of the Welwyn Hatfield District Plan 2005)**
 - 2. Would the proposed condition pass the six tests of conditions laid out in paragraph 206 of the National Planning Policy Framework (NPPF)**
 - 3. Any other consideration**
1. **Would the revised condition maintain the amenity of the occupiers of adjoining premises**
- 9.2 As the original condition was imposed in the interest of protecting the amenity of the occupiers of adjoining premises, the principal consideration is whether the proposed variation would retain the amenity of the occupiers of adjoining premises to an acceptable level.
- 9.3 The principal issues in regards to the amenity of the occupiers of adjoining premises in regards to the condition applied to be varied is loss of privacy. The representations received make reference to this issue, and a discussion in this light follows.
- 9.4 In regards to loss of privacy, privacy is lost through direct overlooking which can be achieved casually without effort. The aim, in this case, is to find an acceptable scenario, where there would be no casual loss of privacy to neighbours or occupiers of the host dwelling, and the living conditions of the occupiers of the host dwelling are not unreasonably impinged.
- 9.5 The key differences in the proposed variation of condition are that the height of the restriction on obscure glazed windows be reduced to 1.7m from 1.8m, and restricted opening to a maximum of 15 degrees below the adjusted 1.7m height as opposed to non-opening.
- 9.6 In regards to the height stated within the condition, 1.7m is the nationally accepted condition for obscured glazed and non-opening side windows as established by conditions within Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) for the extensions, alterations and additions to dwellinghouses.
- 9.7 The host dwelling retains its permitted development rights. Accordingly, were the occupants of the host dwelling so inclined, side facing roof lights could be installed within the existing dwelling. The roof lights would not, in line with the GPDO, be required to be non-opening if above 1.7m from the floor level. This would give rise to the same level of loss of privacy as the proposed condition, whereby the occupier of the dwelling could theoretically open the window fully above 1.7m, stand beside the window and look into the habitable rooms of the occupiers of adjoining premises. There would be no planning controls available to curtail the installation of such a roof light under permitted development rights.

This is a strong indication that the height within the existing condition could be seen to be unreasonable and thereby not meet one of the six tests of conditions.

- 9.8 Turning to the restricted opening proposed, it is considered that the proposed variation of condition would retain the privacy afforded to adjoining occupiers. Views afforded through a 15 degree opening would be oblique, and not result in the direct overlooking afforded through the existing full opening, non-obscured glazing.
- 9.9 The resultant living conditions of the occupiers of the host dwelling is a material planning consideration in regards to this application and should be given weight in favour of the proposed condition. The restricted opening and unobscured high level window would allow emergency exit and a better living standard for the occupant of the building, while maintaining an acceptable relationship in regards to privacy with the adjoining property.
- 9.10 Having visited both the site, as well as the neighbouring property located to the north, No.43 Northaw Road East, it is not considered that the window within the foremost dormer, closest to the street, in the north facing elevation of the host dwelling results in any loss of privacy. Limited views from the windows in the dormer are afforded into the garage, however, by virtue of the garage not being habitable living space, no significant loss of privacy results from the existing un-obscured, opening glazed windows. It is therefore considered that there is no requirement for this particular window to be obscured.

2. Would the proposed condition pass the six tests of conditions laid out in paragraph 206 of the National Planning Policy Framework (NPPF)

- 9.11 Having established that the proposed condition would maintain the amenity of the occupiers of adjoining premises from undue overlooking and loss of privacy, the proposed condition must comply with the six tests laid out in paragraph 206 of the National Planning Policy Framework.
- 9.12 It is considered that the condition would be necessary to prevent undue, casual overlooking and loss of privacy to neighbouring premises. The condition would also be relevant to planning, and to the development permitted, in that loss of privacy, as a part of the living conditions of neighbouring properties is a material consideration and potentially impacted as a result of the first floor, side facing dormer windows. The condition is considered enforceable and precise. It is not considered that the condition would be unreasonable in any other respect.
- 9.13 As the built form, and resultant harm on neighbouring amenity, is already in place, the condition shall include a time within which the condition must be complied with. A reasonable period of time is considered to be 3 months.

3. Any other consideration

- 9.14 Elements of the neighbour representation and consultation responses received have been dealt with and discussed above in accordance with the relevant planning policies. Those which do not form material planning considerations above shall be discussed in turn below.
- 9.15 The decision was made at Development Management Committee (DMC) to apply a condition recommended to ensure all dormer windows in the side

elevations are obscured glazed and non-opening unless 1.8m above the floor level. The powers of non-determination afforded to Local Planning Authorities through the Town and Country Planning Act 1990 do not apply to this application. Accordingly, the Local Planning Authority must, upon application, consider the material planning matters, in this case, the amenity of the occupiers of adjoining premises and compliance of the condition with the six tests in paragraph 206 of the NPPF.

- 9.16 A representation has mentioned the drawing submitted with this application being an inaccurate representation of existing fenestration detailing within the dormer windows. This is accepted, however, the drawing is indicative only, and would not form part of the approved drawings on any potential approval.

10 Conclusion

- 10.1 Having regards to the limitations in terms of the assessment of an application for the variation of a condition, the proposed revised condition would respect the amenity of the occupiers of adjoining premises while maintaining an acceptable living standard within the host dwelling and meet the six tests of conditions. Accordingly, the proposal complies with policies D1, D2 and GBSP2 of the Welwyn Hatfield District Plan 2005, the Supplementary Design Guidance Statement of Council Policy 2005 and the National Planning Policy Framework 2012.

11 Recommendation

- 11.1 It is recommended that planning permission be approved subject to the following conditions:

1. All side facing dormer windows within the south elevation, as well as the rearmost and central side facing dormer windows within the north elevation of the proposed building shall be glazed with obscured glass and shall be fixed so as to be incapable of being opened beyond 15 degrees below a height of 1.7 metres above floor level. The works described above shall be completed within 3 months of the date of this decision, and shall be retained in that form thereafter.

REASON: To protect the residential amenity of adjoining occupiers in accordance with Policy D1 of the Welwyn Hatfield District Plan 2005.

Drawing Numbers

2. The development/works shall not be started and completed other than in accordance with the approved plans and details:

Plan Number	Revision Number	Details	Received Date
nor/plan/16	01	Existing and Proposed Elevations and Plans	27 July 2016
nor/plan/15	2	Site Location Plan	23 March

2016

nor/plan/15

3

Block Plan

23 March
2016

REASON: To ensure that the development is carried out in accordance with the approved plans and details.

Positive and Proactive Statement

The decision has been made taking into account, where practicable and appropriate the requirements of paragraphs 186-187 of the National Planning Policy Framework and material planning considerations do not justify a decision contrary to the development plan (see Officer's report which can be viewed on the Council's website or inspected at these offices).

Informatives

1. The granting of this permission does not convey or imply any consent to build upon or access from any land not within the ownership of the applicant.

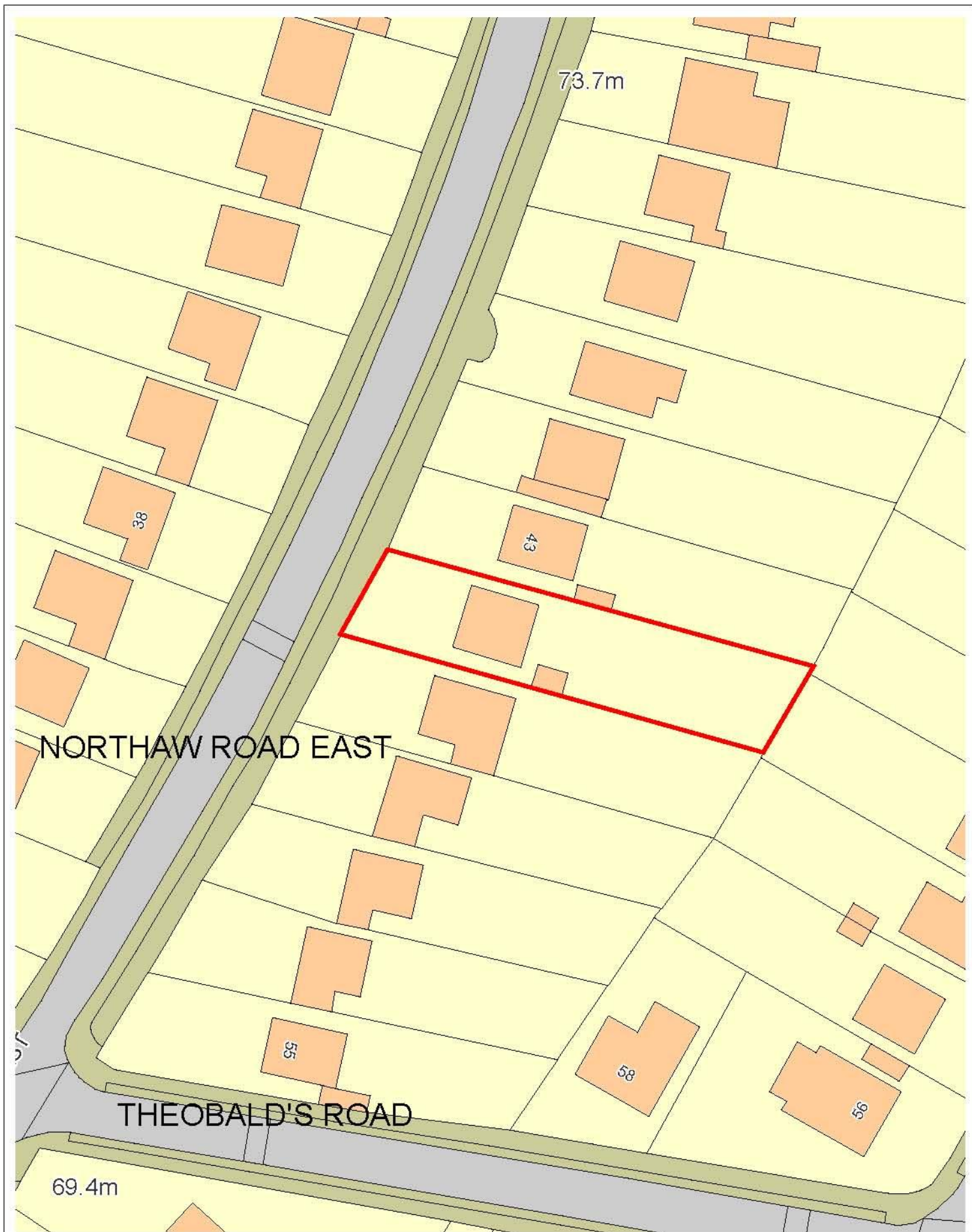
Sam Dicocco, (Planning)

Date

14 February 2017

Expiry date

04 November 2016



Council Offices, The Campus,
Welwyn Garden City, Herts. AL8 6AE

Title: 45 Northhaw Road East, Cuffley

Scale: DNC

Date: 2016

Project: DMC Meeting

Drawing Number: 6/2016/0391/VAR

Drawn: Baras Mast-Ingle