ADUR & WORTHING
PLANNING SERVICES

PLAN	AWDM/ 1764/14
DATE VALID	- 6 JAN 2015

Planning Statement

Variation of Condition #10

86 Berriedale

Lancing

BN15 0L

December 2014

LPA: *Adur District Council*

0957/OWCWC

1. Introduction

1.1 This application seeks to vary Condition #10 attached to permission reference AWDM/0976/14 – *"Erection of a timber granny annexe for ancillary residential use"*.

1.2 The condition we seek to vary is;

- *#10 - The window in the southerly side elevation of the extension hereby permitted shall be obscure-glazed and non-opening and it shall not subsequently be altered in any way.*

1.3 This application is made under Section 73 of the Town and Country Planning Act (1990). The applicant wishes to vary the condition to allow for an opening window to the southern elevation.

1.4 This report will set out;

- The 6 tests of a condition
- Suitability of the condition and a recommended alternative

2. Policy Advice

2.1 The National Planning Policy Guidance (NPPG) states that *"The objectives of planning are best served when the power to attach conditions to a planning permission is exercised in a way that is clearly seen to be fair, reasonable and practicable. It is important to ensure that conditions are tailored to tackle specific problems, rather than standardised or used to impose broad unnecessary controls"*.

2.2 On a number of occasions the courts have laid down the general criteria for the validity of planning conditions. In addition to satisfying the court's criteria for validity, the Secretaries of State take the view that conditions should not be imposed unless

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they are both necessary and effective, and do not place unjustifiable burdens on applicants.

2.3 Paragraph 206 of the National Planning Policy Framework states that planning conditions should 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.

2.4 The policy requirement above is referred to in this guidance as the **six tests**.

2.5 If a condition fails to satisfy any single criteria then it should be removed or varied

3. Suitability of Condition #10

The window in the southerly side elevation of the extension hereby permitted shall be obscure-glazed and non-opening and it shall not subsequently be altered in any way.

3.1 The reason behind the condition as stated on the decision notice is to prevent overlooking and to comply with saved policy AH7 of the Adur District Local Plan.

3.2 Policy AH7 seeks to ensure that development does not result in an unacceptable degree of overlooking, loss of natural light or overbearing effect on neighbouring dwellings.

3.3 While the applicant is happy to accept that the window is obscure glazed in order to reduce any overlooking from that habitable room, the need for the window to be fixed and non-opening is not considered to be **necessary** or **reasonable** for the following reasons.

3.4 To the southern boundary is a 6ft fence which provides a good level of screening, in itself reduces overlooking and increases privacy. The nearest neighbouring habitable room is approximately 27m away from the window in question. The window serves the bedroom which the majority of time will be used at night, when the neighbouring garden will less likely be in use.

3.5 In addition the annexe is required to comply with building regulations, with regards to the window this relates to two parts of the regulation:

Part L

3.6 To comply with the regulation all habitable rooms must have 2 forms of ventilation; background and purge. **Background ventilation of 5,000EA** - The window to be supplied will have 2No trickle vents fitted in the sash head of 5,000EA each **Purge Ventilation equivalent of 1:20th** of floor area "The room is 3.08 x 3Mtrs = .46Mtr2" The widow to be supplied has openings of .46 x 1.02Mtrs x 2 = .94Mtr2

Part F

3.7 To comply with the regulation, all habitable rooms must have a secondary means of escape in the event of a fire; where there is not a direct means of escape to the outside from that room. This is achieved by making the windows in a given room fire escape compliant; to do which they must comply with the following;

3.8 **Height from finished floor to bottom of actual opening [above the frame] Min 800mm / Max 1,100mm**. The window proposed has a height of 900mm to the actual opening.

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3.9 **A clear unobstructed opening must be a minimum of 450mm in both width and height; and provide an unobstructed exit of .33Mtr2;** [this requires that one of the dimensions "width or height" must be a minimum of 740mm] The opening sashes have an opening width of 460mm; with a height of 1,020mm giving an unobstructed opening of .469Mtr2 to each sash.

3.10 In order to comply with building regulations the window has to be able to be opened. If the window does not comply with the above regulations the planning permission will not be able to be implemented – which is a considerable material consideration.

3.11 It is considered that any potential overlooking or privacy issues will be mitigated due to the position of the adjacent fence, the siting of the annexe to the rear of the garden and that the applicant is happy to retain obscured glazing.

3.12 Therefore the condition requiring that the window be non-opening is not necessary in order to protect overlooking or privacy, and the building regulations limitation is, by virtue that it prevents construction and use of the permitted annexe, is a material consideration.

Recommended Condition

3.13 The window on the southern elevation of the extension hereby permitted shall be obscure-glazed and shall not subsequently be altered in any way without the prior express consent in writing of the Local Planning Authority. (Replacement of the glass of an identical type would not necessitate the Council being notified.)

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