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PLANNING APPEAL STATEMENT

IN RELATION TO:

'APPLICATION FOR VARIATION OF APPROVED APPLICATION AWDM/0418/13 TO RELOCATE KITCHEN TO FIRST FLOOR (16, 18, 20 AND 22 SHIP STREET)'

---

16 Ship Street, Shoreham by Sea, West Sussex, BN43 5DH

Local Planning Authority Ref: AWDM/0441/15

October 2015

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1. INTRODUCTION

1.1 This Planning Appeal is submitted against the Local Planning Authorities (LPA) imposition of Condition No.1 attached to Adur District Council's planning permission reference: **AWDM/0441/15.**

1.2 This above planning permission was described as *"application for variation of approved application AWDM/0418/13/ to relocate kitchen to first floor (16,18,20 and 22 Ship Street)".*

1.3 The application sought retrospective planning permission for the relocation of the kitchens of the town houses from ground floor to first floor and for 3 - panel ground floor rear doors to replace 4-panel doors.

1.4 It will be noted from **Fig 1** and **Fig 2** that each of the proposed kitchens replaced a habitable bedroom. As part of the proposal, the first floor bedrooms were relocated to ground floor level.

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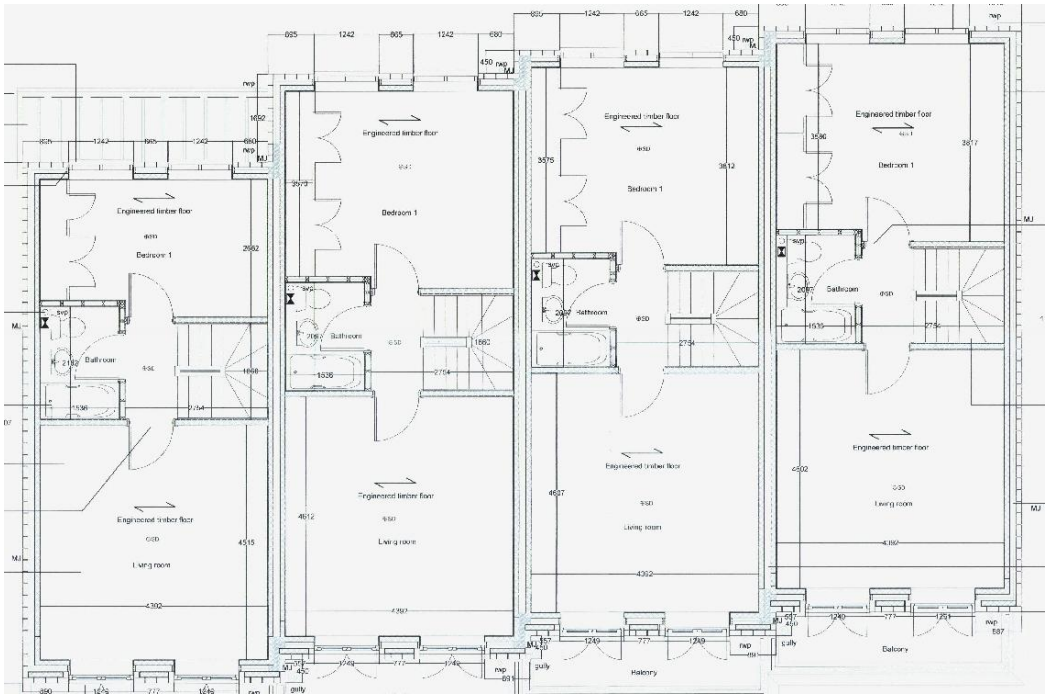

Fig 1. First floor plan, as approved under **ref: AWDM/0418/13**

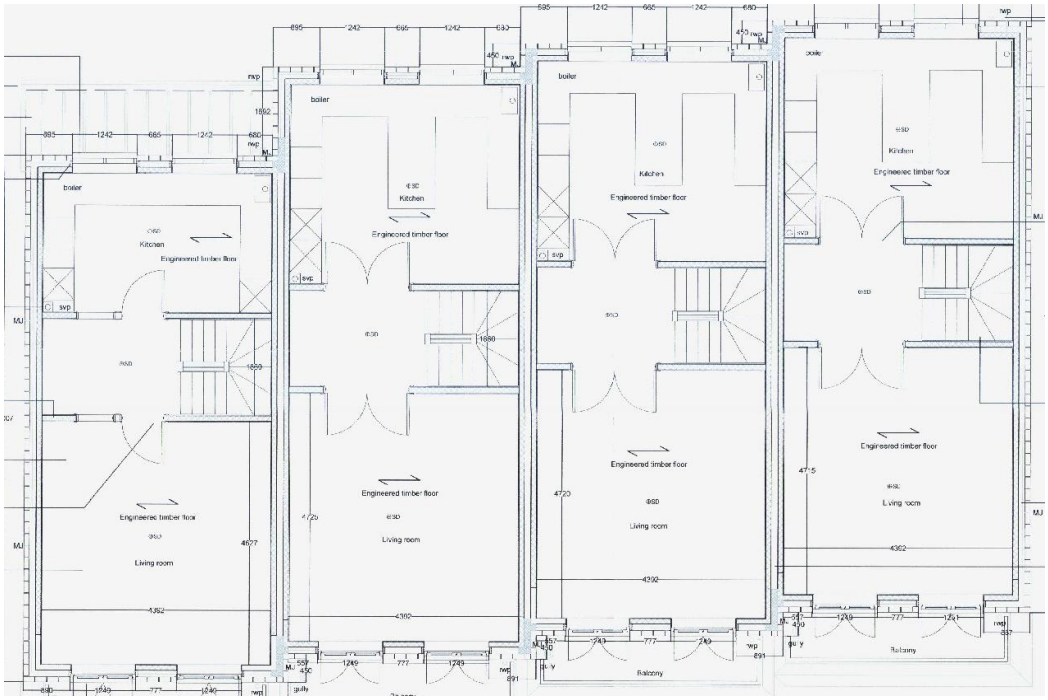

Fig 2. First floor plan, as built

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1.5 The planning application was submitted to Adur District Council ('The LPA') by Mr. James Breckell (planning agent) on behalf of Mr. Bruce Williams (the appellant). The application was received by the Council on Friday 27th March 2015 and was formally validated on Thursday 2nd April 2015. The application was submitted with a complete set of plans. In addition, the application was accompanied by a Design and Access Statement.

1.6 According to the LPA's online file, 6 no. letters of **SUPPORT** were received in relation to the proposal.

1.7 11 No. letters of objection were received in relation to the proposal, which can be summarised as follows:

- This is a major deviation from approved plans;
- Comments regarding retrospective nature of the proposal;
- Concerns over overlooking effect to neighbouring gardens and properties;
- Concerns over flooding;
- Design is out of keeping;
- Concerns over height of ten building;
- Concerns over parking provision.
-

1.8 Comments were received from Adur District Conservation Advisory Group, who *"agreed to approve this retrospective application. In view of objections in regard to overlooking, a condition should be imposed whereby glazing of the kitchen window should be opaque".*

1.9 The application was referred to the Councils Development Control Committee Meeting, whereby Councillors approved the planning application, in accordance with the case officer's recommendation. The decision notice was dated 15th June 2015, and approved the proposal, subject to 8 No. conditions

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1.10 This Planning Appeal relates to Condition 1, which reads as follows:-

"Within 2 months of the date of this permission, the kitchen windows hereby approved at first floor level shall be obscure glazed in accordance with details submitted to and approved in writing by the Local Planning Authority. Thereafter, the obscure glazing shall be retained at all times.

Reason: To safeguard the amenities of neighbours in accordance with Saved Adur Local Plan Policy AH2 and allied SPG Development Control Standard for Space around new dwellings and flats, and the Core Planning Principle of the National planning Policy Framework relating to the amenity of occupants".

1.11 It is our case that the imposition of this planning condition is unreasonable, and therefore does not accord with guidance contained within the NPPF.

1.12 This Statement accompanies a notice of Appeal being lodged against that condition.

2 SITE AND SURROUNDING AREA

2.1 This appeal relates to a newly constructed terrace of town houses, located to the west side of Ship Street, Shoreham by Sea.

2.2 The site is located within the designated built up area boundary for Shoreham by Sea.

2.3 It is also within the Town Centre Conservation Area and adjacent to Listed Buildings, which includes cottages along West Street.

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3 RELEVANT PLANNING HISTORY

3.1 The site that is the subject of this Appeal has the following planning history that is considered of relevance:-

- **Planning ref: ADC/0318/08/:** 4 x 4 bedroom terraced houses with 4 car parking spaces at the rear of the site. Approved Conditionally.

- **Planning ref: AWDM/0026/12/:** Proposed residential development comprising 4 x three bedroom terraced town houses.

3.2 The above application was approved, subject to 18 conditions. Importantly, none of these conditions refer to the obscure glazing of any windows. The decision notice is attached to this statement in full at **Appendix A.**

- **Planning ref: AWDM/0418/13/:** Variation of condition 2 (approved plans) imposed on AWDM/0026/12 to allow for variation to design of previously approved 4 x 3 bed terrace town houses.

3.3 The above application was approved, subject to 11 No. conditions. As is commonplace with revisions to previous applications, the conditions imposed followed the same pattern as those previously imposed (albeit with some omissions or amendments where the required information had previously been submitted). Again, none of these conditions refer to the obscure glazing of windows. This decision notice is attached to this statement in full at **Appendix B.**

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4 PLANNING POLICY CONTEXT

a. National Policy Context

(i) The National Planning Policy Framework (NPPF)

4.1 The National Planning Policy Framework (NPPF) was published on 27th March 2012, and at that time the policies in the Framework came into use, with immediate effect. This guidance is now the most-up-to date Government Guidance and replaces all planning policy statements/ guidance that were previously in place.

4.2 Paragraphs 203 through to 206 of the NPPF relate specifically to Planning conditions and obligations.

4.3 Paragraph 203 states that *"Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations"*. It goes on to state at paragraph 206, 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"*.

b. Local Planning Policy

4.4 Within their decision notice, the Council refers to Saved Adur Local Plan **Policy AH2** and the associated SPG Development Control Standard for Space around new dwellings and flats. Consequently this Appeal submission will focus on this policy and guidance.

(i) Adur Local Plan

4.5 The Adur Local Plan (Adopted April 1996) continues to be the most relevant local planning policy document.

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4.6 Saved **Policy AH2** relates to Infill and Redevelopment. This policy reads as follows:-

"New residential development by way of infilling or redevelopment will be acceptable in the built-up area, providing the site is not allocated for any other purpose in this Local Plan. Any proposal will be expected to be designed so that:-

(a) its appearance, character and scale create a pleasant place in which to live and is in keeping with and enhances the existing local environment with particular attention being paid to the architectural form, height, materials, density and layout of both buildings and associated structures and hard surfaced areas;

(b) it respects the existing natural features of the site, including land form and trees;

(c) it does not have an unneighbourly effect on existing dwellings by reason of unacceptable loss of privacy, daylight/sunlight, outlook or open amenity space;

(d) it incorporates adequate standards of residential amenity for the new dwelling(s) in terms of open amenity space, daylight/sunlight, outlook, and privacy;

(e) access arrangements to the public highway and on-site parking arrangements are acceptable under Policy AT12, and

(f) it accords with the standards adopted by the District Planning Authority.

. (ii) <u>Supplementary Planning Guidance</u>

4.7 'Development Control Standard 2' relates to Space around new dwellings and flats.

4.8 Amongst other things, this development control guidance note provides minimum standards for residential development. It is largely aimed at the provision of dwelling houses and flats on small infill and redevelopment sites.

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5 ASSESMENT OF THE COUNCILS REASON FOR REFUSAL

5.1 As outlined above, paragraph 206 of the NPPF lists the 6 tests against which any planning condition should comply with in order to be considered reasonable and justified in being applied to any certain planning permission.

5.2 As a matter of policy, conditions should only be imposed where they satisfy all of the tests described in paragraphs 206. In brief, these explain that planning conditions should be:

i. necessary;
ii. relevant to planning;
iii. relevant to the development to be permitted;
iv. enforceable;
v. precise; and
vi. reasonable in all other respects.

5.3 It is the Appellants case that the imposition of condition 1 to planning **ref: AWDM/0441/15** is unreasonable, and therefore does not accord with guidance contained within the NPPF.

5.4 The recently approved retrospective planning application to which the planning condition relates (condition no.1) followed the granting of planning permission by the LPA in June 2012 for the redevelopment of land south of White Lion Court, Ship Street with a '*proposed residential development comprising 4 x three bedroom terraced town houses*' (**ref: AWDM/0026/12**).

5.5 The Appeal Site lies on the west side of Ship Street. Following the grant of the above planning permission, construction works progressed and the development has since been completed and occupied.

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5.6 The amendment (subject under retrospective application **ref: AWDM/0441/15**) sought a minor internal alteration to the layout, as well as a minor changes to the door design. The approved drawings showed the kitchen sited on the ground floor, however the development has been built with the kitchens located on the first floor.

5.7 At the time of submission, it was the view of the Appellant that the proposed modification was purely an internal alteration, which under normal circumstances (i.e. post development) would be considered as permitted development. However as the 4 No. houses were on the market, a view was taken that it would be prudent to seek a formal revision to the proposal from the District Council.

5.8 No other alterations were sought as part of this application.

5.9 The reason for the internal alterations being made was that it was considered that the kitchen would have a better relationship to the living room by being on the first floor.

5.10 Therefore the recent retrospective planning application was for a minor change to the internal layout **only**.

5.11 The Planning Officers committee report confirmed that in their view "*the main issue to consider with this current proposal is the impact of the relocated kitchens on the residential amenities of both future occupants and neighbours (the amended door design having no significant difference in impact)*".

5.12 The Planning Officer confirmed that the revised layout continues to satisfy the LPA's adopted guidance in relation to room size and layout for new builds, and will thereby provide future occupiers of the new dwellings with satisfactory living conditions.

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5.13 During the determination of the planning application, the LPA's Planning Officer contacted the Appellants Architect to request that the proposed first floor kitchen windows were obscure glazed. In order to facilitate an efficient and positive outcome to the planning application, the Architect agreed to this request.

5.14 It is important to point out that when the previous applications were determined, the LPA were not concerned with the need for any obscure glazing of first or second floor windows, which were at that stage proposed to serve bedrooms (which are also deemed to be 'habitable' rooms – see para 5.17 below). In our view, this approach is entirely inconsistent.

5.15 When referring to the original planning permission on this site (**ref: AWDM/0026/12**) the Planning Officer referred to the issue of residential amenity. The report reads as follows:-

"The main properties affected by the proposed development are the flats within White Lion Court to the north; the neighbouring house at No. 14 Ship Street to the south; aand the houses to the rear, Nos. 12, 14, and 16 West Street.

There would be a distance of 1 metre between the northern side of No.14 Ship Street and the southern flank wall of the proposed terrace. The terrace would protrude further rearwards (west) than No. 14. At the point closest to No. 14 this rearward projection would be 2 metres at two-storey height plus a further 1.3m at single storey height (3.3 metres overall).

The development would have an enclosing effect on the rear aspect of No.14 and result in some loss of daylight. However, the orientation of the development combined with the narrow separation distance would be sufficient to avoid an unduly overbearing impact or unacceptable loss of daylight. The development would be sited closer to the side of White Lion Court compared with the earlier scheme. There would be a distance of 4.5 metres between the flank wall of the development and the side of White Lion Court comprising the width of the access leading to the rear parking area serving the flats. There is a window first-

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floor window in the flank of the flat building. Some loss of light to this window as a result of overshadowing would have resulted from the approved scheme. This effect will be enhanced owing to the closer proximity of the proposed building. On the other hand, the set-back position of the northern-most unit (plot 4) at 2-storey height would assist in relieving the impact on the front elevation of White Lion Court (which incorporates windows providing the main aspect to the flats). The houses in West Street to the rear are a minimum distance of 21 metres from the rear of the proposed terraced houses. The Council's Development Control Standard states that there should be a distance of at least 22 metres between rear habitable windows to avoid unacceptable loss of privacy and overlooking. This marginal breach is considered acceptable in this close-knit urban environment where buildings are built close to one another and overlooking onto rear gardens is not untypical.

It is worthy of note that the previous approved scheme included first-floor rear balconies which arguably would have resulted in a more intensive degree of overlooking than would arise in this case.

For these reasons, there would not be an unacceptable impact on the residential amenities of immediate neighbour".

5.16 It is important to note that the scale, form and height of the building remains unchanged from that previously considered. The only alteration being a minor amendment to a door and the revised internal organisation, which resulted in the first floor rear bedrooms being used as a kitchen.

5.17 The Planning Portal Glossary H: defines habitable rooms as *"any room used or intended to be used for sleeping, cooking, living or eating or eating purposes.. Enclosed spaces such as bath or toilet facilities, service rooms, corridors, laundries, hallways. utility rooms or similar spaces are excluded from this definition".*

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5.18 By this definition, bedrooms and kitchens both fall under the classification of 'habitable rooms', with no distinction being made between the two. It is our view that it is therefore unreasonable for the Council to introduce obscure glazing to these first floor kitchen windows, when the imposition of this condition was not considered to meet the 6 tests previously.

5.19 The Planning Officers report to Committee on the recent retrospective application (**ref: AWDM/0441/15**) stated as follows under the section 'Residential Amenity':

"the change in room function has allowed for a greater propensity for overlooking, and corresponding reduction in privacy, to their gardens, and to a far lesser extent, the rear-facing internal living space.

Typically kitchens are more frequented than bedrooms and in the case of Ship Street, the kitchen sink is located under the window with a breakfast bar alongside it. However in assessing the extent of harm being caused, it is necessary to consider the distance between dwellings is an important factor in ensuring adequate privacy for neighbours.

In recognition of this, the Council's adopted Development Control standard for Space around new dwellings and flats sets a benchmark distance of 22 metres as the minimum required between facing principal windows in order to retain sufficient privacy. The distance between facing windows in the case of Ship Street the first floor kitchen windows and the dwellinghouses along West Street meets this standard.

Whilst the distance increases where there are higher developments proposed backing onto smaller scale dwellings, the suggested use of obscured glazing would prevent a clear line of sight into the gardens and internal living space of the dwellinghouses along West Street – so negating the potential for increased overlooking and unacceptable loss of privacy. In such circumstances, the imposition of an obscure glazing condition would satisfy the requirements of saved Adur Local Plan AH2 (c) and (d) in that it would not have an unneighbourly effect on existing dwellings by reasons of unacceptable loss of privacy, and that it

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incorporates adequate standards of residential amenity for the new dwellings in terms of daylight/sunlight, outlook and privacy.

In this regard, the development equally accords with the core planning principle of the National Planning Policy Framework relating to amenity of occupants.

Noise from the kitchens would be domestic in nature and not intrusive when set against the backdrop of the surrounding urban environment. It is noted the neighbour at 16 West Street has permission for a large garden outbuilding, but it is for the homeowner to decide whether to build this".

5.20 What is clear from the above, is that the LPA accepts that the distance between facing windows (in the case of Ship Street the first floor kitchen windows) and the dwelling houses along West Street meet with the Councils adopted Development Control standards for space around new dwellings and flats.

5.21 It is understood that the imposition of this condition was agreed with the planning agent, however the Appellant does not agree with the imposition of this additional Condition, and we respectfully ask for the Planning Inspector to reconsider this case.

5.22 What must be taken into consideration first and foremost is the Appellant's fallback position. There is a planning permission for this site which does not require these very same windows to be obscure glazed (albeit they would be bedroom windows).

5.23 Although it is acknowledged by the Appellant that to comply with this original permission is no longer practical due to the development being completed and occupied (it would not make any economic sense to revert to the original permission, as this would require notable internal reorganisation of the development), it is our case that given this background and the lack of significant

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deviation from the original approved drawings with respect to the windows in question, it is now wholly unreasonable to impose a new condition that requires these first floor kitchen windows to be obscure glazed.

5.24 The reason for the condition being attached to the permission, as stated on the decision notice, is *"to safeguard the amenities of neighbours in accordance with Saved Adur Local Plan Policy AH2 and allied SPG Development Control Standard Space around new dwellings and flats, and the core Planning Principle of the national Planning Policy Framework relating to the amenity of occupants".*

5.25 Interestingly, the LPA have themselves accepted that the development is in full compliance with the Councils Space Standards, in the absence of obscure glazing due to the required separation distanced between dwellings being achieved.

5.26 We consider that the level of overlooking resulting from this slightly revised application is not materially any different from that would have resulted if the buildings were constructed in complete accordance with the originally approved permission. The only discernible difference is the use of the rooms in question being kitchens, rather than bedrooms. This change does not justify such a significant restriction being applied.

5.27 The LPA refers to **Policy AH2** of the Local Plan. This policy states:
"*any proposal will be expected to be designed so that:*

a) Its appearance, character and scale create a pleasant place in which to live and is in keeping with and enhances the existing local environment with particular attention being paid to the architectural form, height, materials, density and layout of both buildings and associated structures and hard surfaced areas;

b) It respects the existing natural features of the site, including land form and trees;

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c) *It does not have an unneighbourly effect on existing dwellings by reason of unacceptable loss of privacy, daylight/ sunlight, outlook or open amenity space;*

d) *It incorporates adequate standards of residential amenity for the new dwelling(s) in terms of open amenity space, daylight/ sunlight, outlook and privacy;*

e) *access arrangements to the public highway and on-site parking arrangements are acceptable under Policy AT12, and*

f) *it accords with the standards adopted by the District Planning Authority".*

5.28 It is also considered important to note that the LPA have adopted a guidance note entitled 'Development Control Standard No.2: Space Around New Dwellings and Flats', which provides the following guidance:

"The space required between buildings is affected by the location of principal windows and the need to maintain privacy between facing windows and allow light to enter such windows. A distance of 22m is the minimum required between facing principal windows in order to retain sufficient privacy. For developments over 2-storeys in height this distance will need to be increased... Where a principal window faces a solid obstruction a distance of 11m is required between the window and a single-storey structure or 14m between a principal window and a two storey structure, in order to allow adequate light to enter the windows" (paragraphs 2.4 and 2.5).

5.29 In an urban context, a back-to-back distance of circa 22m are common place. We can confirm that the minimum distance separating the development and the rear of properties on West Street to the west meets with this accepted standard. Indeed, the LPA's own case officer confirmed that these separation distances were acceptable in this location.

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5.30 It is clear that the proposal is entirely in compliance with the Councils own guidance note in respect of back-to-back distances and its relationship with neighbouring properties to the west, and consequently it is also clear that the development is also compliant with the very policy that the Council refer to in their reason for imposing Condition 1 – specifically Policy AH2.

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6 CONCLUSIONS

6.1 The Appellants case is that the Council have acted unreasonably, and the imposition of Condition 1 does not accord with the tests for conditions, as laid out at paragraph 206 of the NPPF.

6.2 The development retrospectively granted planning permission was not materially any different from the originally approved scheme at this site, with the only difference being a change to the internal layout; namely the replacement of bedrooms with kitchens.

6.3 We therefore feel strongly that the LPA's decision to impose Condition 1 of planning permission AWDM/0441/15 is flawed. We have demonstrated above and within the original application submission that regard has been given to the developments relationship with its neighbours. Specifically, if these first floor kitchen windows were not obscured, the resultant level of overlooking to properties to the rear would be no different than if the scheme had been constructed in accordance with the original planning permission at this site (AWDM/0026/12).

6.4 This level of overlooking was not originally considered to be harmful by the LPA when they first considered the redevelopment of this site, and this was a view reinforced by the Planning Officer in recommending approval without this condition on the recent retrospective application. We consider that the rear first floor kitchen windows to the 4 houses would not provide demonstrable overlooking or loss of privacy that will be to the detriment of occupiers of West Street properties, which would justify the imposition of Condition 1.

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6.5 Indeed, the only difference is the change from one habitable room to another, namely from a bedroom to a kitchen. It is noteworthy that this is an altertaion that would not usually require the benefit of planning permission.

6.6 In addition regard must be had to the living conditions of future occupiers. Condition 1 would restrict the only windows serving 4 different kitchens. By obscuring any outlook, there will be a significant loss of amenity to the occupants of these rooms. Given the suburban context of the Appeal Site, such a loss of amenity would not be expected, and would be entirely out of place and unreasonable.

6.7 We therefore fully consider that the application should have been approved without the addition of Condition 1. The development would remain in full compliance with the advice contained within the National Planning Policy Framework, saved Policy AH2 of the Adur District Local Plan, and local level guidance contained within the LPA's 'Development Control Standard No.2: Space Around New Dwellings and Flats'.

6.8 Therefore we respectfully request that this appeal be allowed and that Condition No. 1 is removed from planning permission ref: **AWDM/0441/15**

October 2015

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