DELEGATED REPORT

Recommendation Made: 14 November 2011

Reference:- 11/00751/CONDIT **Parish:- Higham On The Hill Parish Council**

Applicant:- Mr Richard Barton
23 Cherry Orchard Estate
Higham on the Hill
Nr Nuneaton
Leicestershire
CV13 6AF

Location:- 23 Cherry Orchard Higham On The Hill Nuneaton Leicestershire CV13 6AF

Proposal:- VARIATION OF CONDITION 4 OF APPEAL DECISION FOR PLANNING APPLICATION NO 09/00703/FUL TO ALLOW AN OPEN ABLE WINDOW WITHIN THE SOUTH ELEVATION TO SERVE BEDROOM NO.2

Introduction:-

This is an application for variation of condition 4 attached to planning permission reference 09/00703/FUL which was granted on appeal. The permission relates to the erection of a three bedroom detached house with integral garage. Notwithstanding permitted development rights, the planning inspector, in Condition 4 of the permission, restricted the insertion of any additional windows on the eastern elevation of the building and required the window to the south facing bedroom to be glazed with obscure glass (to a minimum of level 3 obscurity) and non-opening below 1800mm above floor level and to be retained as such permanently in that form. The condition was added to protect the privacy and amenity of the rear garden of the adjacent dwelling, 22 Cherry Orchard from potential overlooking. This application proposes to allow an openable window below the height of 1800mm above floor level to the south facing bedroom in order to comply with Building Regulations in respect of means of escape. The submitted plans indicate that instead of top opening lights above 1800mm above floor level, full length side opening lights would be installed.

The site is located within a residential estate within the settlement of Higham on the Hill and has residential properties to all sides.

Relevant Planning History:-

09/00703/FUL	Erection of One Dwelling with Integrated Garage	Refused Appeal Allowed	28.10.09 12.07.10
09/00354/FUL	Erection of One Dwelling	Refused	17.07.09

Consultations:-

Neighbours notified, one letter received raising objections on the grounds that a low level openable window on the south elevation will be detrimental to the privacy and amenity of the neighbouring property from overlooking and would not be in accordance with policy BE1 of the adopted Hinckley and Bosworth Local Plan.

No response has been received at the time of writing this report from:-

Higham on the Hill Parish Council

Development Plan Policies:-

Adopted Hinckley & Bosworth Local Plan (2001)

The site is within the settlement boundary of Higham on the Hill as defined in the adopted Hinckley and Bosworth Local Plan Proposals Map.

Policy BE1: Design and Siting of Development
Policy RES5: Residential Proposals on Unallocated Sites

Supplementary Planning Guidance

Supplementary Planning Guidance on New Residential Development

Appraisal:-

The main consideration in respect of this application is the impact of the variation of Condition 4 of planning permission 09/00703/FUL, to allow openable windows at low level, on the privacy and amenities of the occupiers of neighbouring properties.

Residential Amenity

The planning inspector made it clear in paragraph 8 of his decision to allow the appeal and grant planning permission for the application dwelling that he had concerns in respect of potential overlooking to the rear garden of 22 Cherry Orchard from the bedroom window on the south facing elevation. The fact that the submitted plans indicated that the bedroom window on this elevation would not open at low level and would have obscure glazing and would be implemented and retained permanently as such at all times thereafter was a material consideration in assessing the impact of the development on the privacy and amenity of neighbouring properties and in the decision to allow the appeal and to grant planning permission.

The first floor bedroom window on the south elevation faces directly towards the rear garden area of 22 Cherry Orchard at a separation distance of only approximately 3 metres from the boundary. If Condition 4 of the planning permission was to be varied to allow a low level openable window to the first floor south facing bedroom this will create severe overlooking to the rear garden area of the neighbouring property and have a significant adverse impact on the privacy and amenity of the occupiers of neighbouring property and would therefore be contrary to policies RES5 and BE1 of the adopted Hinckley and Bosworth Local Plan and the Council's Supplementary Planning Guidance on New Residential Development. It is therefore considered that the condition should be retained as originally worded and that this application should be refused.

Conclusion

As a result of the potential for severe overlooking and adverse impact on the privacy and amenity of the occupiers of the neighbouring dwelling, 22 Cherry Orchard, the variation of Condition 4 of planning permission 09/00703/FUL to allow low level opening window is considered to be unacceptable and the application is therefore recommended to be refused.

RECOMMENDATION:- REFUSE, for the following reasons:-

Reasons :-

1 In the opinion of the Local Planning Authority, the proposed variation of Condition 4 of planning permission 09/00703/FUL is considered to result in a development that would have a significant adverse impact on the privacy and amenities of the occupiers of the neighbouring property 22 Cherry Orchard in terms of overlooking. It is therefore considered to be contrary to Saved Policies BE1 and RES5 of the adopted Hinckley and Bosworth Local Plan and adopted Supplementary Planning Guidance on New Residential Development.

Notes to Applicant:-

1 The applicant is advised that this application sought to allow a variation Condition 4 of planning application reference 09/00703/FUL that relates to the south facing bedroom window only. Therefore the amendment indicated to the bathroom window on submitted Elevations Drawing by James Beeston has not been assessed as part of this application. The development must therefore be implemented in accordance with the details of the bathroom window on the previously approved plan Drawing No. BAR02 Revision F.

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