

Retention of a first floor rear window to be openable to no more than 50mm and to not be fully obscure glazed

Report Item No  
A9

7 Appleby Fields Close Appleby Magna Swadlincote DE12 7BF

Application Reference  
16/01285/RET

Applicant:  
A Davies

Date Registered:  
16 November 2016

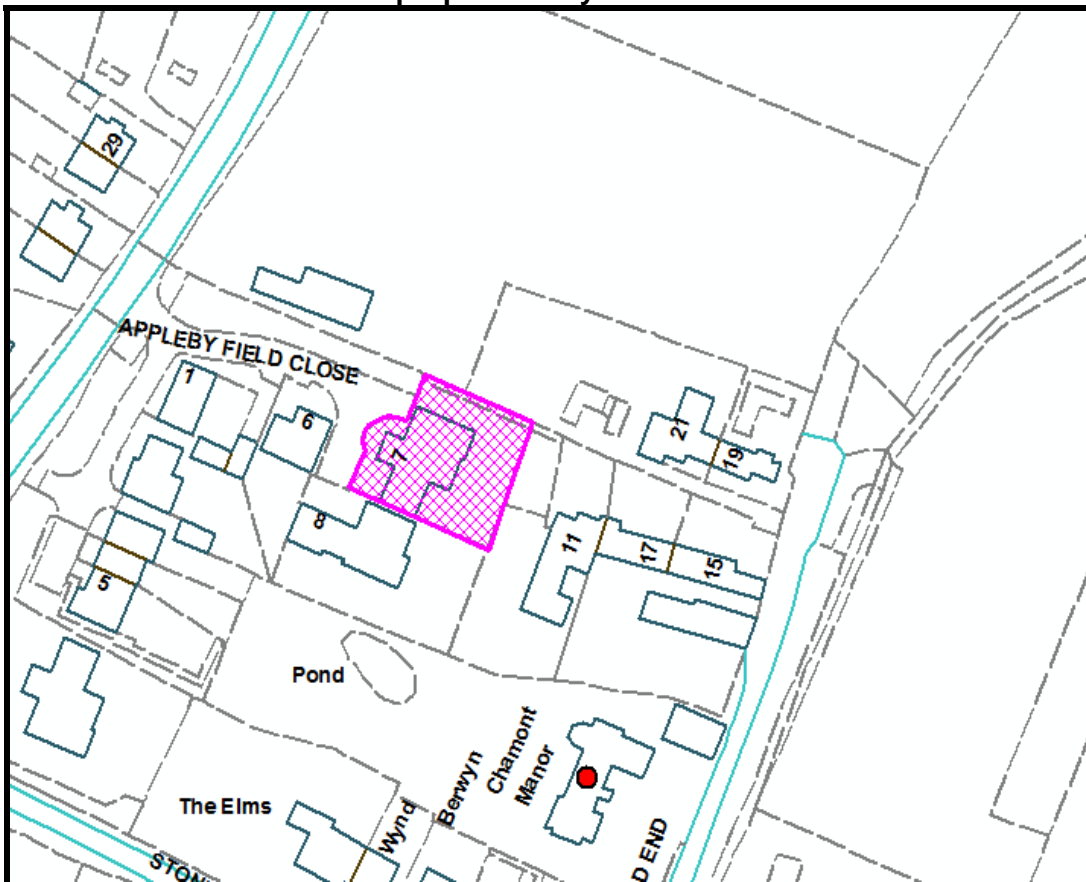
Case Officer:  
Jenny Davies

Consultation Expiry:  
28 December 2016

Recommendation:  
PERMIT

8 Week Date:  
11 January 2017  
Extension of Time:  
None Agreed

Site Location - Plan for indicative purposes only



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## **EXECUTIVE SUMMARY OF PROPOSALS**

### **Call In**

The application is brought before Planning Committee at the request of Councillor Blunt due to concerns regarding impact on residential amenities.

### **Proposal**

Planning permission is sought to retain a first floor rear window to be openable to no more than 50mm and to not be fully obscure glazed at No. 7 Appleby Fields Close, Appleby Magna.

### **Consultations**

Two letters of representation have been received which raise concerns regarding the proposal. No comments have been received from Appleby Magna Parish Council by the date of this report.

### **Planning Policy**

The application site lies within the Limits to Development as defined in the adopted North West Leicestershire Local Plan and in the submitted North West Leicestershire Local Plan. The application has also been assessed against the relevant policies in the NPPF and the adopted and submitted Local Plans and other relevant guidance.

### **Conclusion**

On balance it is considered that a reason for refusal on the grounds of significant detriment to the occupiers of No. 17 Old End from direct overlooking of their private garden could not be justified in this case. The proposal would not adversely impact on the historic environment or the River Mease SAC/SSSI. There are no other relevant material planning considerations that indicate planning permission should not be granted. It is therefore recommended that planning permission be granted.

### **RECOMMENDATION - PERMIT subject to conditions**

**Members are advised that the above is a summary of the proposals and key issues contained in the main report below which provides full details of all consultation responses, planning policies, the Officer's assessment and recommendations, and Members are advised that this summary should be read in conjunction with the detailed report.**

## MAIN REPORT

### 1. Proposals and Background

Planning permission is sought to retain a first floor rear window to be openable to no more than 50mm and to not be fully obscure glazed at No. 7 Appleby Fields Close, Appleby Magna.

Full planning permission was granted in April 2015 (14/00830/FUL) for the erection of No. 7. Concerns were raised during the course of that application regarding the potential for direct overlooking of the garden to No. 17 Old End from this rear window. Amended plans were received showing the window to be obscure glazed and fixed shut, which was secured by condition 13, and required to be retained as such unless planning permission is first granted by the Council.

The window serves a bedroom and has three panes. The window faces east towards No. 17's rear garden, and is positioned 9.5 metres from the boundary between No. 7 and No. 17.

This application seeks to retain the application in the form that it has been installed to No. 7; with obscure glazing film stuck to the three panes with a 25mm clear edge to each pane, and all three window panes being openable to no more than 50mm (secured by restrictor mechanism). A request for amended plans to show all three panes to be fully obscured glazed has been made. However the agent has advised that the applicant wishes for the application to be determined as submitted. The submission of a planning application has arisen from an enforcement investigation into the installation of the window.

The boundary of the Appleby Magna Conservation Area runs along the boundary between Nos. 7 Appleby Fields Close and 17 Old End, and in part along the northern boundary to No. 7. Nos. 11, 15, 17 and 19 Old End are identified as unlisted buildings of interest in the Appleby Magna Conservation Area Appraisal. The Church of St Michael is a Grade 2\* listed building. The site also lies in the catchment area for the River Mease Special Area of Conservation. The planning history for the site is set out in the reports for 14/00830/FUL and 13/00829/OUT and relates to residential development of the site.

The application was originally submitted as a variation to condition 13 on 14/00830/FUL. However given the wording of condition 13, which refers to the need for planning permission to first be granted to change the window, it is considered that the proposal can be the subject of a full application to retain the window.

### 2. Publicity

7 neighbours have been notified.

Site Notice displayed 2 December 2016.

Press Notice published Burton Mail 7 December 2016. Press Notice published Burton Mail 7 December 2016.

### 3. Summary of Consultations and Representations Received

#### Statutory Consultees

**NWLDC Environmental Protection team** has no environmental observations.

No comments have been received from Appleby Magna Parish Council by the date of this report. Any comments received will be reported on the Update Sheet.

### **Third Party Representations**

Two letters of representation have been received which raise the following concerns:

- lack of privacy to garden area;
- the restrictions were put in place to protect the privacy of existing properties on Old End;
- the window not being fully obscure glazed and fixed shut was not properly followed up;
- disappointment that the original condition has been ignored and that the Council has failed to enforce the condition despite being informed of the breaches immediately as they occurred; and
- the scenario relating to the window has dragged on for some time and it has been very stressful;

The two letters also go on to make the following suggestion:

- the window could be allowed to open no more than 50mm but should be fully obscure glazed, as per the planning condition; and
- restrictions would need to be put in place to ensure that full obscure glazing is installed before the window could be opened.

All responses from statutory consultees and third parties are available for Members to view on the planning file.

### **4. Relevant Planning Policy**

#### **National Planning Policy Framework (NPPF) - March 2012**

The NPPF (Paragraph 215) indicates that due weight should be given to relevant policies in existing development plans adopted before 2004 according to their degree of consistency with the Framework. The closer the policies in the development plan to the policies in the Framework, the greater weight they may be given.

The following sections of the NPPF are considered relevant to the determination of this application:

Paragraph 10 (Achieving sustainable development)

Paragraph 14 (Presumption in favour of sustainable development)

Paragraph 17 (Core planning principles)

Paragraphs 58 and 61 (Requiring good design)

Paragraphs 129, 131, 132, 133, 134, 135, 137 and 138 (Conserving and enhancing the historic environment)

Paragraphs 203 and 206 (Planning conditions and obligations)

#### **Adopted North West Leicestershire Local Plan (2002):**

The North West Leicestershire Local Plan forms the development plan and the following policies of the Local Plan are consistent with the policies in the NPPF and, save where indicated otherwise within the assessment below, should be afforded weight in the determination of this application:

Policy S1 - Overall Strategy

Policy E3 - Residential Amenities

Policy E4 - Design

#### **Submitted North West Leicestershire Local Plan**

The publication version of the Local Plan was agreed by Council on 28 June 2016 and submitted for examination on 4 October 2016. The weight to be attached by the decision maker to the submitted Local Plan should be commensurate to the stage reached towards adoption.

Policy D1 - Design of New Development

Policy D2 - Amenity

Policy HE1 - Conservation and Enhancement of North West Leicestershire's Historic Environment

### **Other Guidance**

Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990

National Planning Practice Guidance 2014

6Cs Design Guide - Leicestershire County Council

Appleby Magna Conservation Area Appraisal and Study (2001)

### **5. Assessment**

The main issue for consideration in the determination of this application relate to the impact of the window on the residential amenities of nearby dwellings.

#### **Residential Amenities**

The window is situated 9.5 metres from the boundary with No. 17 Old End's rear garden. No. 17's garden is approximately 28.5 metres in length and a patio area is located approximately 10 metres from the boundary with No. 7 Appleby Fields Close. No. 17's garden slopes down gradually from west to east, with No. 7 being sited at a slightly higher land level. The boundary between the two dwellings is formed by a horizontal close boarded fence which is around 1.8 metres high, with mature trees and young conifer trees located on No. 17's side of the boundary.

The obscure glazing largely screens No. 17's garden from view from No. 7's window. However No. 17's garden is visible through the clear gaps around the edge of each window pane. When standing away from the window it is considered that there is not a clear view of the garden, due to the size of the clear gaps and the distance from the window. Clearer views of No. 17's garden are however available when standing immediately adjacent to the window sill or immediately adjacent to the window itself.

However views of the garden are screened in part by the boundary fence and mature silver birch tree, and mostly by the conifer trees when grown above the top of the fence. It is acknowledged that the screening provided by the silver birch tree is much less during the winter months. However most of the screening is provided by the conifer trees, which remain evergreen during the winter months. In August 2016, the conifer trees had grown up to a metre above the fence, which provided a screen to No. 17's garden so that whilst the garden was visible, a direct open view was not available. In December 2016 and February 2017, the conifer trees were at a lower height, approximately in line with the top of the fence, thereby providing less screening and a more open view of the garden. The conifer trees are within No. 17's garden and it is acknowledged that these trees could be removed or kept at a lower height. However even if this was the case and a clear view of No. 17's garden is available, this would occur only if standing immediately adjacent to the window itself or the window sill, as further back into the room the clear view recedes. Furthermore a narrow view of the garden is only available at six points in the window, given the size of the clear gaps. In addition No. 17's garden is long in length, and the patio area (which is most likely to be used in the warmer months) has some screening from other vegetation.

No. 17's garden is not visible through the gap made when the panes are opened to 50mm, due to the narrowness of the open gaps and the direction of the view through these gaps. It is acknowledged that the window restrictors that prevent the panes from being opened fully could

be over-ridden. However it is considered that a precise, enforceable and reasonable condition could be imposed requiring the panes to be open no more than 50mm, which is measurable and discernible from No. 17's garden. In addition a separate emergency escape window to the room has been approved under the Building Regulations, and its other two side windows and rooflights are not obscure glazed and are openable, and so provide light and ventilation.

Views are available towards Nos. 11 and 21 Old End from the window, including when the panes are opened to 50mm. However there is screening from vegetation on the boundary, the window is approximately 11 metres from the boundaries and at least 18 metres from Nos. 11's and 21's nearest windows, and both dwellings have a large private garden, with No. 21's mostly located to the north of No. 21.

It is also acknowledged that there is likely to be a perception of being overlooked by the window from No. 17's garden, although the extent of the obscure glazing is apparent from No. 17's garden. However it is not unusual for rear windows to face towards, and overlook, adjoining private gardens and this occurs in various locations throughout the village.

On this basis, on balance it is considered that a reason for refusal on the grounds of significant detriment to the occupiers of No. 17 from direct overlooking of their private garden could not be justified in this case.

#### **Other Matters**

Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires the local planning authority, when considering whether or not to grant planning permission for development which affects a listed building or its setting or a conservation area, to have special regard to the desirability of preserving the building, or its setting or any features of special architectural or historic interest that the building may possess, and to the desirability of preserving or enhancing the character or appearance of a such an area. Paragraph 131 of the NPPF requires, amongst other things, new development to make a positive contribution to local character and distinctiveness. Paragraph 132 of the NPPF stipulates that, when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.

The boundary of the Appleby Magna Conservation Area runs along the boundary between Nos. 7 Appleby Fields Close and 17 Old End, and in part along the northern boundary to No. 7. Nos. 11, 15, 17 and 19 Old End are identified as unlisted buildings of interest in the Appleby Magna Conservation Area Appraisal. The Church of St Michael is a Grade 2\* listed building and is visible in views along Measham Road, although is not visible in views of the window from the Conservation Area. Therefore the impact of the development on the setting of the listed building and Conservation Area should be given special regard as required by the 1990 Act.

*The Conservation Area Appraisal states that 'The buildings in the Black Horse Hill/Old End area superficially largely appear to be of a late eighteenth/early nineteenth century date and many are in the local vernacular building tradition. The location of many properties on Old End at right angles to the road suggests that they may be of even earlier origin. Buildings are largely constructed of local red brickwork with blue clay plain tile roofs.*

Significant weight is given to preserving the setting of the Grade 2 listed buildings and Conservation Area. The window is not seen in the setting of the listed church and the alterations to the window do not significantly change the design of No. 7 from the approved scheme. As such it is considered that the proposal would not adversely impact on the heritage assets.

Whilst the site lies within the catchment area of the River Mease Special Area of Conservation (SAC)/SSSI, the changes to the window would not result in additional foul or surface water discharge from the site.

**Conclusion**

In conclusion, on balance it is considered that a reason for refusal on the grounds of significant detriment to the occupiers of No. 17 from direct overlooking of their private garden could not be justified in this case. The proposal would not adversely impact on the historic environment or the River Mease SAC/SSSI. There are no other relevant material planning considerations that indicate planning permission should not be granted. It is therefore recommended that planning permission be granted.

**RECOMMENDATION, PERMIT subject to the following conditions:**

- 1. Plans condition**
- 2. Obscure glass**
- 3. Window restrictor**