Neutral Citation Number: [2022] EWHC 355 (Admin)

Case No: CO/1903/2021

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
PLANNING COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21 February 2022

Before :

MRS JUSTICE LANG DBE

- -

Between :

THE QUEEN	**Claimants**
on the application of	
(1) CHRISTOPHER TAYLOR-DAVIES **(2) ROSEMARY TAYLOR-DAVIES**	
- and -	
WANDSWORTH **LONDON BOROUGH COUNCIL**	**Defendant**
SIMON COOK	**Interested Party**

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- -

Stephen Whale (instructed via **Public Access**) for the **Claimants**
Wayne Beglan (instructed by **Ashfords LLP**) for the **Defendant**
The **Interested Party** was not represented

Hearing date: 1 February 2022

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Approved Judgment

Mrs Justice Lang:

1. The Claimants seek judicial review of the decision of the Defendant ("the Council"), dated 19 April 2021, not to take enforcement action in respect of an alleged breach of planning control at 244 Dover House Road, Putney, London SW15 5DA ("the Property"), which is owned by the Interested Party, Mr Cook.

2. The Claimants live next door to the Property at 242 Dover House Road ("No. 242").

3. In summary, the issue is whether, under the terms of the planning permission ("the Permission") granted by the Council for a roof extension to the Property, the rooflight (commonly known by the brand name "Velux window") which overlooks the Claimants' top floor bedroom, study and bathroom, was subject to Condition 3, which requires windows in the side elevations to be fitted with obscured glass, and to be non-opening, in order to control overlooking and to safeguard the privacy of neighbours. Mr Cook has only complied with Condition 3 in respect of the dormer window, not the rooflight. The Council contends that Condition 3 only applies to the dormer window, and therefore it has not pursued enforcement proceedings. The Claimants contend that Condition 3 applies to the rooflight as well, and therefore the Council has erred in failing to enforce the breach of planning control at the Property.

4. Following a refusal of permission on the papers, permission was granted at an oral renewal hearing by Tim Smith, sitting as a Deputy Judge of the High Court, on 7 October 2021.

Facts

5. On 16 December 2019, Mr Cook applied to the Council for planning permission for a roof extension to the main roof at the Property, to include the construction of 3 dormer windows and 6 rooflights.

6. The application was accompanied by detailed drawings. A03 Revision P1, dated 6 April 2019, included a Site Plan, and individual plans for the First Floor, Loft Floor, Front Elevation, Rear Elevation, Side Elevation 1, and Side Elevation 2. The drawing of Side Elevation 1 showed a dormer window with a rooflight on either side, and a further rooflight towards the front of the Property. An annotation above the roof stated "All windows to be obscure" with a line pointing to the top of the dormer window, over the centre pane. The drawing of the Rear Elevation had a similar annotation and line.

7. Drawing A04 P1, also dated 6 April 2019, showed sections of the development proposed. It had an annotation stating "All windows to be obscure" with a line pointing towards a dormer window on one of the side elevations.

8. The Property is a detached house, as is No. 242. The north elevation of the Property (identified as Side Elevation 1 in the drawing A03 Revision P1) faces the side of No. 242. The dormer window and the rooflight/s on Side Elevation 1 look directly at the top floor of No. 242 where the Claimants have their bedroom/study and a bathroom. Dover House Road is built on a steep slope, and therefore the Property is on higher ground than No. 242. In consequence, a person looking through the north facing

rooflight and dormer window of the roof extension of the Property can see down into the rooms on the top floor of No. 242. At the hearing, the Council did not dispute this.

9. For these reasons, the Claimants objected to the application on grounds of overlooking and invasion of privacy. Their objection related to both the dormer window and the rooflights. Their objection was summarised in the planning officer's report ("OR") which stated:

> "One objection was received which identified the following issues:
>
> - The proposed north facing dormer and velux windows look directly into our property, straight into our bathroom (and clear sided shower box), the hallway between bathroom and bedroom, and the bedroom and study itself.
>
> - The velux window on the north west corner directly overlooks our bed. The slope of the ground means that 244 is higher than 242 and so looks down into the rooms, where we sleep and my wife studies.
>
> - We would be overlooked day and night and feel very uncomfortable about this. Therefore we feel we have to raise objections to all windows on the north side of the property, being an invasion of privacy to our home where we have lived for 27 years."

10. On or about 23 January 2020, Mrs Cook (Mr Cook's wife) sent the Second Claimant an electronic message stating "Re the planning windows on the sides we will have obscure glass and fixed panes (can't open) for privacy reasons …".

11. In February 2020, Mr Cook submitted a further drawing - A03 Revision P3 – which replaced A03 Revision P1. It is wrongly dated 6 April 2019. The drawing of Side Elevation 1 was amended. The rooflight near the front of the Property was removed. The wording of the annotation was amended to read "Windows to be made obscured glass" and the line ran down to the top of the dormer window, above the right hand pane. In the drawing of the Rear Elevation, the annotation was amended to read "Rear dormer window to be made of clear glass".

12. The Claimants were not afforded an opportunity to comment on the amended plan.

13. In the OR, which was dated 26 February 2020, the planning officer set out the Claimants' objection and commented as follows:

> "It is noted that this objection was subsequently withdrawn following these issues being addressed within the final plans."

14. However, the Claimants denied that they had ever withdrawn their objection, and the Council was unable to provide any evidence to support what the planning officer said,

or to explain the basis for it. Mr Beglan said, on instructions, that there may have been a misunderstanding between the parties.

15. In the OR, the planning officer twice referred to the requirement for obscured glazing in the side-facing dormer windows. There was no mention of the glazing in the rooflights, nor their impact on the privacy of the neighbours.

16. The OR also recorded an objection from the Council's Conservation and Design ("CAD") team, including on grounds that rooflights on neighbouring houses have harmed their character and appearance.

17. On 26 February 2020, planning permission was granted in the following terms:

> "The Council, in pursuance of its planning powers, hereby permits the development referred to in the schedule below in accordance with the plans submitted and subject to the conditions set out therein . . .
>
> SCHEDULE
>
> APPLICATION NUMBER: 2019/5460
>
> LOCATION: 244 Dover House Road SW15 5DA
>
> DESCRIPTION: Erection of roof extension to main roof with side (both sides) and rear dormers.
>
> DRAWING NOS: A03 (Revision P3; dated February 2020)."

18. The material conditions were as follows:

> "2. The development shall be carried out in accordance with the reports, specifications and drawings detailed [A03 (Revision P3; dated February 2020)].
>
> Reason: To ensure a satisfactory standard of development and to allow the local planning authority to review any potential changes to the scheme.
>
> 3. Prior to occupation of the development the windows in the side elevations at loft level shall be obscure-glazed and non-opening (unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed). The window[s] shall so be maintained and retained as such.
>
> Reason: To control overlooking and safeguard the privacy of neighbours in accordance with Council policy DMS1(c) of the Development Management Policies Document (adopted March 2016) coupled with the requirements of the National Planning Policy Framework 2019.

> 4. ... . .
>
> 5. The rooflights hereby approved, shall be of a conservation area specification i.e. in-line and flush within the roof pitch that they would be located.
>
> Reason: In the interests of preserving the character and appearance of the conservation area in accordance with Council policies DMS1 and DMS2 of the Development Management Policies Document (adopted March 2016) and Section 12 of the National Planning Policy Framework 2012."

19. In June 2020, Mr Cook installed a dormer window and only one rooflight on Side Elevation 1, to the left of the dormer window. Curiously, there is no record of an amendment to permit the removal of the rooflight on the right hand side of the dormer window, though nothing turns on that in this claim. The dormer window has obscured glass and could not be opened, in accordance with Condition 3. But the rooflight has clear glass and can be opened, even though it is (in part) less than 1.7 metres above the floor of the room. Mr Cook has added an obscuring film to part of the rooflight, but it is not suggested that this complies with Condition 3, as it can easily be removed, and the rooflight can still be opened. Furthermore, Mr Cook periodically installs a mannequin in the rooflight, which gives the impression that there is a person at the window looking out at No. 242. This suggests to me that he is not taking the Claimants' concerns seriously, and so he is unlikely to maintain obscuring film voluntarily. According to the evidence of the First Claimant, there is nowhere within the top floor of No. 242 where they can undress without being seen from the rooflight at No. 244, except behind one bookcase. The Council does not dispute this evidence.

20. The Claimants raised their concerns with the Council which carried out an investigation. The Council concluded that there was no breach of planning control because Condition 3 only applies to the dormer window, not the rooflight, on Side Elevation 1. The reasons given, in a series of emails which post-dated the Permission, were that the approved plan shows that the dormer window would be obscure glazed, not the rooflight. The planning officer who wrote the OR, and made the decision to grant the Permission, only intended to impose Condition 3 in respect of the dormer window as it has a side-facing view that would have most impact in terms of overlooking. The planning officer did not intend to impose Condition 3 in respect of the rooflight because it faces the sky, and so has less impact.

Legal principles

21. By section 70(1)(a) of the Town and County Planning Act 1990, a local planning authority "…may grant planning permission, either unconditionally or subject to such conditions as they think fit".

22. Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions. Planning conditions should only be imposed where they are necessary, relevant, enforceable,

precise and reasonable in all other respects (National Planning Policy Framework (February 2019)[1], paragraphs 54 and 55).

23. The proper interpretation of a planning permission is a matter of law for the Court (*Barnett v Secretary of State for Communities and Local Government* [2009] EWCA Civ 476, [2010] 1 P & CR 8, per Keene LJ at [28]).

24. In *Trump International Golf Club Scotland Ltd v Scottish Ministers* [2016] 1 WLR 85, Lord Hodge, giving the leading judgment, set out the approach to be taken, as follows:

> "When the court is concerned with the interpretation of words in a condition in a public document such as a section 36 consent, it asks itself what a reasonable reader would understand the words to mean when reading the condition in the context of the other conditions and of the consent as a whole. This is an objective exercise in which the court will have regard to the natural and ordinary meaning of the relevant words, the overall purpose of the consent, any other conditions which cast light on the purpose of the relevant words, and common sense. Whether the court may also look at other documents that are connected with the application for the consent or are referred to in the consent will depend on the circumstances of the case, in particular the wording of the document that it is interpreting. Other documents may be relevant if they are incorporated into the consent by reference (as in condition 7 set out in para 38 below) or there is an ambiguity in the consent, which can be resolved, for example, by considering the application for consent."

25. Lord Carnwath reviewed the planning cases, and concluded:

> "66. …..Any such document of course must be interpreted in its particular legal and factual context. One aspect of that context is that a planning permission is a public document which may be relied on by parties unrelated to those originally involved. (Similar considerations may apply to other forms of legal document, for example leases which may need to be interpreted many years, or decades, after the original parties have disappeared or ceased to have any interest.) It must also be borne in mind that planning conditions may be used to support criminal proceedings. Those are good reasons for a relatively cautious approach, for example in the well established rules limiting the categories of documents which may be used in interpreting a planning permission (helpfully summarised in the judgment of Keene J in the *Shepway* case [1999] PLCR 12 , 19–20)…."

26. In *Lambeth LBC v Secretary of State for Housing, Communities and Local Government* [2019] PTSR 1388, Lord Carnwath cited the passages from *Trump* which I have set out above and concluded:

[1] The edition in force at the date of the grant of permission.

> "19. In summary, whatever the legal character of the document in question, the starting point – and usually the end point – is to find "the natural and ordinary meaning " of the words there used, viewed in their particular context (statutory or otherwise) and in the light of common sense."

27. In applying those principles to the case before him, Lord Carnwath observed, at [28], that the reasonable reader should be "assumed to start by taking the document at face value, before being driven to the somewhat elaborate process of legal and contextual analysis hypothesised in Lewison LJ's para 52" in the judgment of the Court of Appeal. Adopting that approach, he found that the natural meaning of the words used in the grant was clear and unambiguous, and so it was unnecessary to look beyond its terms (at [29] – [30]).

28. Lewison LJ has since reiterated that, since the context includes the legal framework within which planning permissions are granted, the reasonable reader must be equipped with some knowledge of planning law and practice: *Swindon Borough Council v Secretary of State for Housing, Communities and Local Government* [2021] PTSR 432, per Lewison LJ at [64]. This principle does not appear to be in dispute, though I consider it can be inferred from Lord Carnwath's criticism of Lewison LJ's approach in *Lambeth* that the level of knowledge to be attributed to the reasonable reader is not that of a planning professional or planning lawyer.

29. The principles applicable to the use of other documents as an aid to interpretation were summarised in *R v Ashford Borough Council, Ex p Shepway District Council* [1999] PLCR 12, per Keene J. at pp 19C-20B (as approved by the Court by Lord Hodge in *Trump* at [33]):

> "(1) The general rule is that in construing a planning permission which is clear, unambiguous and valid on its face, regard may only be had to the planning permission itself, including the conditions (if any) on it and the express reasons for those conditions: see *Slough Borough Council v. Secretary of State for the Environment* (1995) J.P.L. 1128, and *Miller-Mead v. Minister of Housing and Local Government* [1963] 2 Q.B. 196.
>
> (2) This rule excludes reference to the planning application as well as to other extrinsic evidence, unless the planning permission incorporates the application by reference. In that situation the application is treated as having become part of the permission. The reason for normally not having regard to the application is that the public should be able to rely on a document which is plain on its face without having to consider whether there is any discrepancy between the permission and the application: see *Slough Borough Council v. Secretary of State* (ante); *Wilson v. West Sussex County Council* [1963] 2 Q.B. 764; and *Slough Estates Limited v. Slough Borough Council* [1971] A.C. 958.
>
> (3) For incorporation of the application in the permission to be achieved, more is required than a mere reference to the

> application on the face of the permission. While there is no magic formula, some words sufficient to inform a reasonable reader that the application forms part of the permission are needed, such as "… in accordance with the plans and application …" or "… on the terms of the application …," and in either case those words appearing in the operative part of the permission dealing with the development and the terms in which permission is granted. These words need to govern the description of the development permitted: see *Wilson* (ante); *Slough Borough Council v. Secretary of State for the Environment* (ante).
>
> (4) If there is an ambiguity in the wording of the permission, it is permissible to look at extrinsic material, including the application, to resolve that ambiguity: see *Staffordshire Moorlands District Council v. Cartwright* (1992) J.P.L. 138 at 139; *Slough Estates Limited v. Slough Borough Council* (ante); *Creighton Estates Limited v. London County Council*, The Times, March 20, 1958."

30. *Shepway* was distinguished in *Barnett v Secretary of State for Communities and Local Government* [2008] EWHC 1601 (Admin) on the basis that, on a grant of full planning permission (as opposed to a grant of outline permission), the plans and drawings which describe the building works that have been permitted should be used in interpreting the permission since as they are "as much a part of the description of what has been permitted as the permission notice itself" per Sullivan J. at [24], approved by the Court of Appeal (*supra*) per Keene LJ at [20], [21].

31. Further guidance was provided by Lieven J. in *UBB Waste Essex Ltd v Essex CC* [2019] EWHC 1924 (Admin), at [53] – [57]:

> "53. As Lord Carnwath has said the permission needs to be interpreted with common sense. Mr Sharland points out with some justification that reasonable people may differ on what amounts to common sense. In my view references to common sense are really pointing to the planning purpose of the permission or condition. If the interpretation advanced flies in the face of the purpose of the condition, and the policies underlying it, then common sense may well indicate that that interpretation is not correct. So, in *Lambeth* it was plainly contrary to that purpose for the permission not to limit the sale of food items, such an interpretation was contrary to common sense once one understood the planning background.
>
> 54. Secondly, it is legitimate to consider the planning "purpose" or intention of the permission, where this is reflected in the reasons for the conditions and/or the documents incorporated. The reasons for the condition should be the starting point, the policies referred to and then the documents incorporated. This is not the private intentions of the parties, as would be the case in a contractual dispute, but the planning purpose which lies behind the condition.

> 55. Thirdly, where as here, there are documents incorporated into the permission or the conditions by reference, then a holistic view has to be taken, having regard to the relevant parts of those documents. This can be a difficult exercise because where, as here, the permission incorporates the application (including the Planning Statement) and the Environmental Statement and Non-Technical Summary, there can be a very large number of documents to be considered. It may be the case that those documents are not all wholly consistent, and that there may be some ambiguity within at least parts of them. In my view the correct approach is to take an overview of the documents, to try to understand the nature of the development and the planning purpose that was sought to be achieved by the condition in question. The reasonable reader would be trying to understand the nature of the development and any conditions imposed upon it. It is not appropriate to focus on one particular sentence without seeing its context, unless that sentence is so unequivocal as give a clear-cut answer.
>
> 56. Fourthly, where documents are incorporated into the permission, as here, plainly regard can be had to them. Where the documents sought to be relied upon are "extrinsic", then save perhaps for exceptional circumstances, they can only be relied upon if there is ambiguity in the condition. In my view, even where there is ambiguity there is a difference between documents that are in the public domain, and easily accessible such as the officer's report that led to the grant of the permission and private documents passing between the parties or their agents.
>
> 57. The Court should be extremely slow to consider the intention alleged to be behind the condition from documents which are not incorporated and particularly if they are not in the public domain. This is for three reasons. The determination of planning applications is a public process which is required to be transparent. Any reliance on documents passing between the developer and the LPA, even if they ultimately end up on the planning register, is contrary to that principle of transparency. Planning permissions impact on third party rights in a number of different ways. It is therefore essential that those third parties can rely on the face of the permission and the documents expressly referred to. Finally, breach of planning permission and their conditions, can lead to criminal sanctions."

32. As Mr Whale pointed out, Lieven J.'s reference to "intention" in *UBB Waste* at [57] (*supra)* must surely be understood to refer to the objective intention of the condition, as identified by the Court through the eyes of the reasonable reader, not the subjective intention of the planning officer or committee that imposed the condition.

Submissions

Claimants

33. On behalf of the Claimants, Mr Whale submitted that, on the authorities, the Court should interpret the planning permission objectively, through the eyes of the reasonable reader, not by reference to the subjective intentions of the planning officer who wrote the OR and drafted the Permission.

34. The Permission approves the submitted plans i.e. the drawings A03 Revision P3 and A04 Revision P1. Condition 2 also expressly incorporates drawing A03 Revision P3. Therefore these drawings are to be treated as part of the Permission.

35. Applying the guidance of Lord Carnwath in *Lambeth*, the reasonable reader should take the Permission at face value and identify "the natural and ordinary meaning" of the words used. Condition 3 and the drawing A03 Revision P3 require that the "windows" (plural) in the side elevations at loft level are to be "obscure-glazed and non-opening". The reasonable reader would understand that requirement to apply to all the windows at loft level in Side Elevation 1, as the natural and ordinary meaning of the word "window" includes both a dormer window and a rooflight. This meaning accords with the definition of the word "window" in the Shorter Oxford Dictionary (page 3641):

> "An opening in a wall or roof of a building, vehicle etc. now [usually] fitted with glass in a fixed, hinged or sliding frame, to admit light or air and provide a view of what is outside or inside; the glass filling this opening; this glass with its frame." (*emphasis added)*

36. Condition 3 does not distinguish between the different types of window and so it ought to be read as referring to all windows in the side elevations which are at loft level. The height restriction (windows more than 1.7 metres above the floor are excluded) is only likely to be relevant to a rooflight, not a dormer window. Condition 3 could have been expressly limited to dormer windows, just as Condition 5 is expressly limited to rooflights, but it was not. The progression from Condition 3, applying to all windows, to Condition 5, applying only to a specific type of window, is a progression from the general to the particular.

37. If the Permission was limited to the dormer window on Side Elevation 1, the drawing would have used the word "window" in the singular, not the plural. This is illustrated by the drawing of the Rear Elevation (A03 Revision P3) which specifically refers in the singular to the "Rear dormer window to be made of clear glass".

38. The reasonable reader would conclude that this interpretation of the Permission accords with common sense, and gives effect to the purpose of Condition 3, namely to "control overlooking and safeguard the privacy of neighbours", since both the rooflight and the dormer window overlook the neighbours in No. 242.

39. Mr Whale submitted that, as the meaning of the Permission is clear and unambiguous, it was impermissible to have regard to extrinsic evidence, such as the OR and the emails from the Council and the message from Mrs Cook, for the purposes of interpretation.

40. In the event that the Court found that the meaning of the Permission was ambiguous, it was permissible to have regard to the OR, but not the Council's emails which post-dated the Permission, as these were not in the public domain, and could not be accessed by successors in title. Mrs Cook's message showed that Mr Cook had agreed that both windows on Side Elevation 1 would have obscured glazing and be non-opening.

41. Little reliance could be placed upon the OR. It was plainly flawed as it was based on the mistaken assumption that the Claimants' objection, made expressly on the basis that they were overlooked in their bedroom and bathroom from the Velux window, had been withdrawn because this issue had been addressed within the final plans. However, on the Council's interpretation of the final plans (as revised), it was plain that the Claimants' issue regarding the Velux window (i.e. the rooflight) had not been addressed. In the OR, the planning officer referred to the requirement to use obscure glazing in respect of the dormer windows, in the section headed "Amendments", and the section headed "Amenity Impact", concluding that there would not be an adverse impact on the privacy of neighbouring sites. However, he made no reference to the loss of privacy as a result of the rooflights, and how that had been addressed in the final plans.

Defendant

42. On behalf of the Council, Mr Beglan agreed with Mr Whale's submission that, on the authorities, the Court should interpret the planning permission objectively, through the eyes of the reasonable reader, not by reference to the subjective intentions of the planning officer who wrote the OR and drafted the Permission.

43. Mr Beglan submitted that the clear and unambiguous meaning of the Permission is that Condition 3 only applies to the dormer window, not the rooflight. Therefore it was impermissible to have regard to extrinsic evidence, such as the OR, the emails from the Council and the message from Mrs Cook, for the purposes of interpretation. However, he submitted that the Court should have regard to the OR, the emails of 17 June 2020 and 19 April 2021, and the Council's pre-action letter dated 24 May 2021, in so far as they set out the planning implications of the application and their assessment by the Council, because they were part of the context in which the Permission was granted.

44. Mr Beglan also agreed with Mr Whale that the drawings A03 Revision P3 and A04 Revision P1 are to be treated as part of the Permission, though he submitted that A03 Revision P3 has primacy as it is expressly referenced in Condition 2.

45. Mr Beglan accepted that the dictionary definition of the word "window", relied upon by Mr Whale is correct, and that it includes rooflights. It is the natural and ordinary meaning of the word "window".

46. However, Mr Beglan submitted that the notional reasonable reader, who is equipped with some knowledge of planning law and practice, would be aware that dormer windows and rooflights were typically situated at different planes, and that the view from the upper part of a rooflight (at least when closed) was a view of the sky, unlike a dormer window which looked directly at neighbouring buildings.

47. Mr Beglan submitted that Mr Whale placed too much weight on the use of the plural when referring to the windows. The reason that Condition 3 referred to "windows" in the plural is that it refers to the three panes of glass in the dormer window. Alternatively, it refers to all the proposed dormer windows in the Property, not just the single dormer window in Side Elevation 1.

48. Furthermore, when drawing A03 was amended, the text of the annotation was altered from "All windows to be obscure" to "Windows to be made obscured glass", which has a more restrictive meaning because of the removal of the word "All".

49. The reason given for Condition 3 is to "control overlooking and safeguard the privacy of neighbours". This does not necessarily mean that it eliminates overlooking altogether. A judgment could be made that it was necessary to block the view from the dormer window but not the rooflight, in order to comply with policy.

50. The wording of the conditions draws a clear distinction between windows and rooflights, which are dealt with by different conditions. Condition 3 only applies to dormer windows and Condition 5 is only concerned with the rooflights.

51. On the drawing of Side Elevation 1 on A03 Revision P3, there is a line pointing towards the dormer window from the annotation stating "Windows to be made obscured glass", which clearly indicates that the requirement only applied to the dormer window, not the rooflights. There is no line to the rooflights. There is a similar line to the dormer window on the drawing of the Rear Elevation.

52. In the alternative, if extrinsic evidence could be relied upon because the Court found that the Permission was ambiguous, Mr Beglan relied upon the OR which explicitly states, on two occasions, that the glass in the dormer windows should be obscured, but makes no such statement in respect of the rooflights. He also relied upon two emails from the Council. First, the email from Mr Appah, the Council's Senior Planning Enforcement Officer, dated 19 April 2021, in which he states that, according to the Area Team Leader (Planning), the condition was imposed in relation to the side-facing dormer windows only because they would have most impact in terms of potential overlooking. Second, the email from Mr Cook, dated 17 June 2020, setting out the view of the planning officer who wrote the OR, to the effect that Condition 3 did not require the rooflight to be obscure glazed because rooflights tend to face the sky, dormer windows have a side facing view. Mr Beglan was unable to produce any evidence to explain the statement in the OR that the Claimants had withdrawn their objection because the issues had been addressed in the final plans.

Conclusions

53. The legal principles set out above were agreed by the parties. The dispute arose on the application of those principles in this case.

54. The Permission comprises the permission notice, including the Schedule and the Conditions. The Permission approves the submitted plans i.e. the drawings A03 Revision P3 (which superseded Revision P1) and A04 Revision P1. Condition 2 also expressly incorporates drawing A03 Revision P3. Therefore these drawings are to be treated as part of the Permission.

55. The approach which the Court should take was set out in *Trump International Golf Club Scotland Ltd v Scottish Ministers* [2016] 1 WLR 85, per Lord Hodge:

> "When the court is concerned with the interpretation of words in a condition in a public document such as a section 36 consent, it asks itself what a reasonable reader would understand the words to mean when reading the condition in the context of the other conditions and of the consent as a whole. This is an objective exercise in which the court will have regard to the natural and ordinary meaning of the relevant words, the overall purpose of the consent, any other conditions which cast light on the purpose of the relevant words, and common sense. Whether the court may also look at other documents that are connected with the application for the consent or are referred to in the consent will depend on the circumstances of the case, in particular the wording of the document that it is interpreting. Other documents may be relevant if they are incorporated into the consent by reference ….. or there is an ambiguity in the consent, which can be resolved, for example, by considering the application for consent."

56. In interpreting Condition 3 in this Permission, the reasonable reader would have regard to its stated purpose, namely:

> "To control overlooking and safeguard the privacy of neighbours in accordance with Council policy DMS1(c) of the Development Management Policies Document (adopted March 2016) coupled with the requirements of the National Planning Policy Framework 2019."

57. The parties agree that the natural and ordinary meaning of the word "window" includes both a dormer window and a rooflight. This meaning accords with the definition of the word "window" in the Shorter Oxford Dictionary (page 3641):

> "An opening in a wall <u>or roof</u> of a building, vehicle etc. now [usually] fitted with glass in a fixed, hinged or sliding frame, to admit light or air and provide a view of what is outside or inside; the glass filling this opening; this glass with its frame." (*emphasis added)*

58. I consider that the reasonable reader, with some knowledge of planning practice, would be aware of the different appearance, function, plane and outlook of a dormer window on the one hand, and a rooflight on the other, and take those matters into account in interpreting the Permission. However, for the reasons I address in more detail below, I do not consider that it is permissible to rely on post-permission emails from the Council, which are not in the public domain, as evidence of the planning implications of these different types of windows, as part of the context. In principle, the type of document that might be admissible for this purpose would be national or local planning policy or guidance documents, especially if referenced in the Permission. None existed in this case.

59. I accept Mr Whale's submission that, as Condition 3 does not distinguish between the different types of window, and refers to "windows" in the plural, the reasonable reader could interpret it, on its face, as referring to all windows in the side elevations which are at loft level i.e. both dormer windows and rooflights. Condition 3 could have been expressly limited to dormer windows, just as Condition 5 is expressly limited to rooflights (for the different purpose of preserving the character and appearance of the conservation area), but it was not. The progression from Condition 3, applying to all windows, to Condition 5, applying only to a specific type of window, can be seen as a progression from the general to the particular.

60. In further support of Mr Whale's submission, the height restriction in Condition 3, which excludes windows that are more than 1.7 metres above the floor, is only likely to be relevant to a rooflight, not a dormer window, as a rooflight may well be installed high above eye level, to provide light, whereas a dormer window typically provides an outlook at eye level. The reasonable reader would be aware that the lower part of the rooflight in issue here is at eye level, less than 1.7 metres above the floor, and so therefore Condition 3 potentially applies.

61. Turning to the drawings, I accept Mr Beglan's submission that the reasonable reader would read the annotation "Windows to be made obscure glass", on A03 Revision P3 Side Elevation 1, as only applying to the dormer window, because of the L-shaped line which points directly and exclusively to the dormer window below. I do not think that it is possible to read this line as also including the rooflights. In my view, the annotation drawing could only have been read so as to include the rooflights if there was no line at all, or if there were additional lines which pointed directly to the rooflights as well.

62. In the light of this, it seems anomalous that the annotation refers to "windows" in the plural. Mr Whale makes the valid point that, if the Permission was limited to the dormer window on Side Elevation 1, the drawing would have used the word "window" in the singular, not the plural. This is illustrated by the drawing of the Rear Elevation (A02 Revision P3) which specifically refers in the singular to the "Rear dormer window to be made of clear glass". However, Mr Beglan submits that the plural was appropriate because the dormer window is designed with three separate sections, each with its own pane of glass which has to be obscured.

63. In my judgment, the Permission is ambiguous because the reasonable reader's interpretation of Condition 3 lends support to the Claimants' interpretation, but the reasonable reader's interpretation of the drawings points in favour of the Council's interpretation. In those circumstances, the Court is permitted to have regard to extrinsic evidence.

64. I consider that the only extrinsic evidence that can properly be considered is the OR, not the emails and message between the parties. My reasons are as follows. A planning permission is a formal public document. The permission runs with the land, and so may need to be relied upon by parties unrelated to those originally involved, many years after the original grant. It must also be borne in mind that planning conditions may be used to support criminal proceedings. For these reasons, as Lord Carnwath said in *Trump*, at [66], there are good reasons for a cautious approach limiting the categories of documents which may be used in interpreting a planning permission. I particularly endorse paragraphs 56 and 57 of Lieven J.'s judgment in *UBB Waste Essex* where she distinguishes between an officer's report which is in the public domain and is easily

accessible, and private documents passing between the parties or their agents, which are not in the public domain and are generally inaccessible. The Council's emails and Mrs Cook's message clearly fall into the latter category.

65. Additionally, in this case the Council emails were sent after the date on which the Permission was granted, in response to the Claimants' complaints, including from their legal representative. Inevitably, they are defensive in nature and rely on *ex post facto* rationalisations which are not found in the contemporaneous documents, such as the Permission and the OR. They are of limited evidential value in the task of interpreting the planning permission objectively, through the eyes of the reasonable reader.

66. I turn now to consider the reasonable reader's interpretation of the Permission, in the light of the OR. In my view, the following two passages in the OR make it abundantly clear that Condition 3 was only intended to apply to the dormer windows on the side elevations, as they make no mention of using obscured glass on the rooflights.

> "Amendments
>
> Following discussions with the applicant, the plans were amended to reduce the total number of rooflights. The windows within the side facing dormers were confirmed as using obscured glazing whilst the window within the rear facing dormer will incorporate clear glazing."

> "**Amenity impact**
>
> The Housing SPD identifies that rear extensions 'may cause your neighbour a loss of outlook, daylight or it may have an overbearing effect on their property'. Furthermore, Policy DMS1 requires that new developments do not harm the amenity of occupiers/users and nearby properties through unacceptable noise, traffic congestion, overshadowing, overbearing, unsatisfactory outlook, privacy or sunlight/daylight.
>
> The dormers are modest in size and contained well within their respective roofscapes. They will not result in a loss of daylight/sunlight to surrounding sites. Furthermore, the windows within the dormers will be obscure glazed and not impact the privacy of neighbouring sites *(emphasis added)*.
>
> Overall, the proposal is not considered to contribute to a significant detrimental loss of daylight, sunlight, privacy, noise or outlook to the neighbouring properties. As such the proposal would meet the provisions of the SPD."

67. The sentence "the windows within the dormers will be obscure glazed" (underlined above) is consistent with Mr Beglan's submission that the use of the plural "windows" in the annotation in the drawings refers to the three separate sections of the dormer window, each with its own pane of glass which has to be obscured. The same interpretation may be applied to the plural use of "windows" in Condition 3.

68. The planning officer concluded that the "amenity impacts have been considered and deemed acceptable" on the basis that the dormer windows on the side elevations would be obscured, and by inference, that the rooflights would not be obscured. That was a planning judgment upon which the planning officer proceeded to grant permission, subject to conditions. As Mr Beglan points out, the stated purpose behind Condition 3 is to control the overlooking, not to eliminate it. In interpreting the meaning of the Permission, the Court cannot investigate whether or not the planning officer's assessment of amenity was flawed, perhaps because he mistakenly thought that the Claimants' objection had been satisfactorily addressed. That is a different issue to the issue of the correct interpretation of the Permission.

69. I bear well in mind that the Court should interpret the planning permission objectively, through the eyes of the reasonable reader, and not by reference to the subjective intentions of the planning officer. It is quite possible that a planning permission, as granted, does not give effect to the intentions of the local planning authority, perhaps because of poor drafting or some other error.

70. However, in this case, the drawings which are part of the Permission unequivocally demonstrate that the obscure glazing requirement only applies to the dormer window. The OR clearly supports this interpretation. The ambiguity arises from the wording of Condition 3 which can be read as meaning that the obscure glazing requirement applies to the rooflight as well. However, upon considering all the documents and drawings, individually and as a whole, I am satisfied that the correct interpretation of the Permission is that Condition 3 only applies to the dormer window on Side Elevation 1, not to the rooflight.

71. For the reasons set out above, the claim for judicial review is dismissed.