



Appeal Decision

Site visit made on 2 February 2022

by Andrew Owen MA BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 March 2022

Appeal Ref: APP/J0405/W/21/3281241

Land north of Good Intent, Edlesborough LU6 2RE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by Hutchings, Attrill and Anstee against Buckinghamshire Council - North Area (Aylesbury).
 - The application Ref 21/00780/APP, is dated 18 February 2021.
 - The development proposed is construction of fourteen dwellings including access, parking and off-site highway works.
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Decision

1. The appeal is allowed and planning permission is granted for construction of fourteen dwellings including access, parking and off-site highway works at Land north of Good Intent, Edlesborough, LU6 2RE in accordance with the terms of the application, Ref 21/00780/APP, dated 18 February 2021, subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs was made by Hutchings, Attrill and Anstee against Buckinghamshire Council. That application is the subject of a separate Decision.

Main Issue

3. Though the Council failed to make a formal decision on the application, they have produced an officer's report. From this, the main issues are:
 - i) the effect of the proposal on highway safety;
 - ii) the effect of the proposal on the character and appearance of the area;
 - iii) whether the development would provide acceptable living conditions for neighbouring residents and future occupiers with regard to their privacy and outlook;
 - iv) whether the development would provide a suitable mix of dwellings; and
 - v) whether it is necessary to provide contributions towards affordable housing, education, biodiversity and open space through a planning obligation and if so whether an appropriate mechanism for securing these has been provided.

Reasons

Highway safety

4. The proposed development would be accessed from Good Intent, which only connects with the wider highway network via its junction with High Street. It is agreed between the parties that visibility to the left (north) from this junction is substandard as although there is sufficient visibility to the southbound carriageway, there is not to the near side northbound carriageway and it is possible that southbound vehicles may move across to this side of the road such as when overtaking. The appellant's proposed solution to this is to construct a kerb build out. This would prevent cars moving into the northbound carriageway when approaching the junction with Good Intent. Consequently, the appropriate visibility splay from the junction can be measured to the centre line of the road, rather than the nearside edge, and this splay is of a sufficient distance to ensure appropriate visibility is achieved, based on the measured traffic speeds on High Street.
5. A build out was suggested as one of four options as part of the previous proposal¹. That was dismissed at appeal² with the Inspector considering that as this option hadn't been subject to a safety audit and would necessitate going through a Traffic Regulation Order process, there was sufficient uncertainty as to its provision. Since that time a Stage 1 Road Safety Audit has been undertaken. Following the results of this, the build out now proposed would not conflict with existing vehicle accesses, would retain a carriageway width of 3.45m which is sufficient for 16.5m long vehicles, and details of signage have been provided. The Highways Authority have confirmed that this is acceptable but it will be subject to a Section 278 agreement and public consultation, though not a Traffic Regulation Order. Although this process, particularly the public consultation stage, does not guarantee approval would be given, it is a well established process and a planning condition can be imposed to ensure the development does not commence until the build out is approved and constructed.
6. The build out will remove space for two or three cars to park outside Nos. 24 and 26, and at my site visit this space was used for parking, most likely by patrons of the nearby shops and businesses. Nonetheless, parking is generally unrestricted along High Street and on nearby roads and so room for displaced parking could readily be found elsewhere. Space would remain for a car to park outside No. 28, but due to the proximity of this to Good Intent and the give-way sign at the build out, it is unlikely that drivers would consider this suitable for parking. Even if a car did park here, it would be possible to see around it, across the pavement and build out, to maintain visibility from Good Intent.
7. Furthermore, it is unlikely that the introduction of the build out would disrupt the flow of traffic along the High Street as on-street parking in this location already does this. Indeed, the removal of parked cars here would assist in removing obstacles to visibility. I have no substantive evidence before me to suggest a greater volume of traffic that may flow along High Street either as a result of the proposal or any other recent development, would not be able to do so safely with the build out in place.

¹ Ref 17/02222/APP

² Ref APP/J0405/W/18/3207290

8. Any additional lighting, such as to illuminate additional signage, would be limited in the context of the street lighting already present along High Street.
9. Overall, any possible adverse impact in terms of parking, lighting or disruption to the free flow of traffic along the High Street, would be outweighed by an improvement in visibility at the junction with Good Intent which would benefit the occupiers of the 51 homes already served by this junction as well as the occupiers of the development.
10. Policy EP3 of the Edlesborough Neighbourhood Plan (ENP) allocates the appeal site for 15 units, but advises that vehicular access should be taken from Cow Lane through the new development of Damson Way. Although the layout of the proposed development would facilitate access from Damson Way, that is a private road and is under the control of a private management company. Nonetheless, it is the case that the development would conflict with policy EP3. However, with satisfactory access achieved through Good Intent, I see no reason why access should necessarily be through Damson Way. I therefore give limited weight to the conflict with that policy.
11. Turning to the development itself, many of the proposed dwellings would be served by two spaces in a tandem layout. However, there is no reason to consider that the occupiers of each individual household would not be able to arrange their cars such that both spaces could be used. Indeed, there is tandem parking throughout Damson Way which appears to operate successfully. Even if tandem parking did result in some cars being parked on the highway, it would not necessarily restrict access through the development for other vehicles. The examples of on street parking I saw on Good Intent, which is similar in width to the proposed access road, did not prevent vehicles passing.
12. Policy EP12 of the ENP advises that all new developments should be served by roads measuring 5.5m wide and a pavement of 2m. The proposal would be served by a shared space around 7.8m in width. The highways authority have advised that, in highway safety terms, such an arrangement is suitable given the limited quantum of development number of properties. I have no reason to disagree. The contribution of the road to the design of the scheme is discussed below.
13. In summary, satisfactory visibility from Good Intent can be achieved with a kerb build out which could be achieved by a section 278 agreement secured by a planning condition. The Council have advised that as part of this process a contribution of £10,000 will be required towards the cost of advertising / consulting on the introduction of the traffic calming feature, and this will be added to the legal and technical costs contained within the S278 agreement at the next stage of the implementation process. Also, the arrangement of shared space and parking within the development is acceptable. Therefore overall the development would maintain highway safety.
14. Although the development would conflict with ENP policy EP3 it would accord with policy T5 of the Vale of Aylesbury Local Plan (VALP) which states that necessary mitigation, such as works to the highway, should be provided against any unacceptable transport impacts.

Character and appearance

15. As noted above, the houses would be served by a shared vehicular and pedestrian space. Front gardens and plots would be limited in size and in that respect it would differ from neighbouring houses along Good Intent. However, in light of the fact that the site is allocated in the ENP for 15 units, any development to take advantage of that would necessarily be more dense than that on Good Intent.
16. Furthermore, the variety in the size, design and position of the houses and the use of car ports to separate the dwellings means that the development as a whole would not appear cramped or oppressive. Indeed, it would reflect many aspects of the development of Damson Way in terms of limited front gardens, shared space, and the size and orientation of the units.
17. Consequently, the development would represent good design and would respect the character and appearance of the area. It therefore would accord with VALP policy BE2 which requires development to complement the character of the site and its setting.

Living conditions - privacy

18. The first floor rear windows in the house at plot 12 would look towards the rear garden of 8 Orchard End. However, the gap between the windows and the garden would, the Council advise, be 13m, which is significant. Moreover, the gap would be similar to that between the first floor windows at 17 Good Intent and No. 8, and indeed similar gaps are common between many of the houses nearby. As such the occupiers of 8 Orchard End would retain an acceptable amount of privacy.
19. Similarly, the gap between the first floor windows at the house on plot 8 and the rear garden of plot 9 would be sufficient such that the future occupiers of No. 9 would maintain an acceptable amount of privacy. The Council also cite a potential for overlooking from the first floor windows at the front of the house at plot 1 to the rear garden of plot 13, but as the houses on these two plots directly face each other and are of a similar height no view of the rear garden would be feasible. The potential for overlooking from the windows at 20 Good Intent to the garden of plot 1 would be very minimal given the orientation of the two properties and the position of the windows on No. 20.

Living conditions - outlook

20. There is a large ash tree in the east corner of the site. This would overhang a significant amount of the garden of plot 1. However, this would be a large garden and a significant proportion of it would not be under the tree. In addition, as the tree is to north-east side of the house, it would be unlikely to block much sunlight to the north facing rear windows. As such the future occupiers of plot 1 would retain an acceptable outlook from their property, and it is therefore unlikely that they would seek to remove or undertake substantial works to the tree.
21. There are also trees in the south corner of the site, which would be in the garden of plot 14. However these are all shown as being removed on the tree protection plan. These trees contribute little to the streetscape and their removal would ensure a satisfactory outlook for the occupiers of this plot.

22. Though not expressed by the Council, some other neighbours have concerns regarding overlooking or a loss of outlook. There would not be any adverse impact in these regards to the neighbouring residents living on Summerleys as the dwellings there are, in the main, a significant distance from the appeal site. There are a few houses set much further back towards the site, but even these houses would be a substantial distance from the nearest houses in the development. Closer views from the development over the rear gardens would be possible, particularly of Nos. 53 to 59, but the gap between them and the new houses, notably that at plot 4, would still be sufficient such that it is likely that any reduction in privacy would not unacceptably harm the living conditions of these adjoining residents.
23. The houses to the south in Damson Way would be closer to the appeal site, but again the distances between the existing and proposed houses would be significant. The gap between 16 Damson Way and the house at plot 12 would be the shortest, but the outlook from the rear of No. 16 would remain to be generally open and would include an obstructed view down the one of the cul-de-sacs. The dwelling at plot 12 would also be set off the common boundary by the width of its car port hence reducing its visual impact.
24. The Council also raise concerns that the rear garden at plot 5 would be surrounded by parking. Some of this would be their own parking, with that along the rear boundary belonging to plot 6. An arrangement of a neighbours' parking being alongside a boundary is not uncommon and I see no reason why this would be unacceptably disturbing for the occupiers of plot 5.
25. In summary, the development would not result in unacceptable living conditions for neighbouring occupiers and would provide satisfactory living condition for its own future occupiers. The development therefore would accord with VALP policy BE3 which seeks to ensure development does not harm the amenity of existing residents and provides a satisfactory level of amenity for future residents.

Mix of dwellings

26. The proposal would provide two 2-bed houses, three 3-bed houses, eight 4-bed houses and one 5-bed house. The two 2-bed units and two of the 3 bed-units would be affordable.
27. Policy H6a of the VALP says that the mix of housing in developments will have regard to the most recent evidence. This evidence is in the Buckinghamshire Housing and Economic Development Needs Assessment (HEDNA) (2016) and states that the greatest need in market housing is for 3-bed houses followed by 4-bed houses. Only one of the market units would be 3-bed with most being 4-beds.
28. Though the mix of the market housing would not correlate to the need highlighted in the HEDNA, I recognise that the HEDNA is now six years old and may no longer be reflective of the current need. Even if the HEDNA does still accurately reflect the need, there is clearly a considerable need for 4 bed units. I also acknowledge that ENP policy EP3 requires there to be a mix of 2 to 5 beds units, which the proposal directly meets.

29. With respect to affordable housing, the HEDNA identifies that the greatest need is roughly equally for 3-bed houses and 2-bed houses. By providing two of each the affordable housing element would reflect the HEDNA.
30. Overall, although the affordable housing provision would match the identified need, the mix of market housing would not. However, the provision of a majority of 4-bed houses instead of 3-bed houses is not a stark contrast with the most needed form of housing. As such I give the conflict with policy H6a limited weight.

Planning obligation

31. The Council have advised that the development will trigger a need for financial contributions to be made to local infrastructure, as required by VALP policy I3. A unilateral undertaking has been provided to secure these.
32. A contribution of £118,276 has been proposed towards the expansion of the nearby Cottesloe secondary school to mitigate for increased pupil numbers likely to be generated by the proposal. Also a contribution of £58,158 has been suggested to go towards the improvements to the village green, recreation ground or pavilion in line with policy I2 which seeks to promote health and wellbeing for the future occupants of development. I am satisfied that these contributions are necessary, directly related to the development, and are reasonably related in kind and scale to the development, as is required by Regulation 122 of the Community Infrastructure Levy Regulations.
33. The undertaking also secures the provision of four affordable housing units on the site comprising three affordable rented units and one shared ownership. This would accord with VALP policy H1. This onsite contribution would also meet the requirements set out in Regulation 122.
34. With regard to biodiversity, the parties agree there will be a loss of natural habitat as the appeal site is currently undeveloped land with some trees, grass and ruderal vegetation. Policy NE1 of the VALP requires a net gain in biodiversity, but it doesn't identify the amount of net gain and I have not been provided with any supplementary planning document (SPD), such as that referred to in the policy, to provide further guidance. However, both parties have suggested a net gain of 10% and this seems reasonable.
35. The explanatory text to policy NE1 says that until a formally agreed methodology to calculate the quantitative ecological impact of development has been set out in a SPD, another best practice methodology should be used. Although the Council suggest they do now have a methodology in a biodiversity offsetting calculator, I have not been provided with details of it or how this has generated their requested contribution of £72,944. I also fail to see how this figure relates to the brief details given in the CIL compliance schedule table. For example, it is not clear if this accounts for the retained biodiversity provision on site.
36. In contrast, the appellant's corresponding figure of £33,840 uses the DEFRA 2.0 metric and the figures given in their Biodiversity Impact Assessment are clearly explained and justified. Although this methodology dates from 2018 it was a methodology previously advocated by the Council in their consultation response from March 2021. From the evidence before me, this figure is more robust than that suggested by the Council. The unilateral undertaking includes

a number of possible contributions and on the basis of the above I consider the obligation of £33,840 is fairly and reasonably related in scale to the development and meets the other tests in Regulation 122.

37. In summary, the obligations are necessary to make the development acceptable, are directly related to the development and are reasonably related in scale and kind to the development. For these reasons the development would meet VALP policy I3 as set out above.

Other Matters

38. There have been a substantial number of concerns raised by local residents and the parish council. Many of which are address above, such as concerns about highway safety or a loss of privacy or outlook from their properties; or can be addressed by the conditions below, such as those relating to site drainage and ecological enhancement.
39. Aside from those concerns, I note the comments regarding the principle of developing this land and that the development provides too many units, but I have regard to the fact that the site is allocated in the ENP is for 15 units.
40. There is also some concern regarding the ability of supporting infrastructure to accommodate the development. In respect of sewerage capacity, this is dealt with under separate legislation. In terms of other infrastructure, the Council have requested contributions towards education and open space provision only, and these are included within the planning obligation.
41. The comments from Thames Valley Police regarding the safety of the development itself are noted. However, tandem parking, as recognised above, is not uncommon and I see no reason why such an arrangement would necessarily be unsafe or unsecure. All parking would be immediately adjacent to the host dwellings and any parking that projects past the rear of the houses would be overlooked by the rear windows of the host dwelling. It is also reasonable to expect residents to close their own gates to provide their own security.

Conditions

42. I have considered the Council's suggested conditions. Where necessary, and in the interests of clarity and precision, I have slightly altered the conditions to more closely reflect the advice in the National Planning Policy Framework and the Planning Practice Guidance (PPG).
43. I have attached the standard conditions relating to the commencement of the development and the approved plans in the interests of certainty.
44. To maintain the character and appearance of the area, I have imposed a condition requiring the submission of details of the finishing materials of the dwellings, hard and soft landscaping, tree protection, refuse and cycle storage and site levels. Two conditions are included to ensure the satisfactory drainage of the site, and another is included to provide ecological mitigation.
45. Conditions relating to the service road, provision of parking, and the provision of the off-site highway works are necessary to ensure highway safety is maintained. The condition relating to the adjacent footpath is required to promote sustainable modes of travel. Conditions relating to an energy

efficiency statement and to electric car charging points are necessary to reduce carbon emissions.

46. A condition relating to the submission of a Construction Method Statement is necessary to ensure the living conditions of neighbouring residents are protected. A condition is also imposed requiring some of the windows within the development to be obscurely glazed to ensure privacy is provided for the future occupiers.
47. Some of these conditions require action before development commences. This is to ensure the effects of the proposal are properly mitigated.
48. I have not included the suggested condition withdrawing permitted development rights. The PPG advises that such conditions may not pass the tests of reasonableness or necessity. In this case I see no reason why the suggested condition would be necessary.

Conclusion

49. Though there is some conflict with VALP policy 6a and ENP policy EP3, the development accords with the development plan taken as a whole and there are no other material considerations to suggest the decision should be made other than in accordance with the development plan. Therefore, for the reasons given above and having had regard to all other matters raised, the appeal is allowed and planning permission is granted.

Andrew Owen

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 1618/P/110.01, 1618/P/110.02, 1618/P/120.01, 1618/P/120.02, 1618/P/120.11, 1618/P/120.12, 1618/P/120.21, 1618/P/120.22, 1618/P/120.31, 1618/P/120.32, 1618/P/120.41, 1618/P/120.42, 1618/P/120.51, 1618/P/120.52, 1618/P/120.61, 1618/P/120.62, 1618/P/120.71, 1618/P/120.72, 1618/P/120.81, 1618/P/120.82, 1618/P/140.01, 1618/P/150.01, 1618/P/150.02, 1618/P/150.03, 1618/P/150.04, 1618/P/150.05, 1618/P/150.06, E17-012-101 P4, E17-012-120 P2, PR123158-10, PR123158-11 and EDLES/20/7/1.
- 3) No development shall commence until details of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) No development shall commence until the off-site highway works shown on drawing EDLES/20/7/1, which includes the new build out on High Street, have been laid out and constructed in accordance with the approved details in consultation with the Highway Authority. For the avoidance of doubt the works will need to be undertaken as part of a S278 Agreement with the Highway Authority.
- 5) No development shall commence until a minimum vehicular visibility splay of 43 metres from 2.4 metres back from the edge of the carriageway from the southern side of the Good Intent/High Street junction and minimum vehicular visibility splay of 39 metres from 2.4 metres back from the edge of the carriageway from the northern side of the Good Intent/High Street junction shall be provided in accordance with the approved plans and the visibility splays shall be kept clear from any obstruction which exceeds 0.6m above ground level.
- 6) No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) shall have been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees shall be carried out as approved.
- 7) No development shall commence until details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include:
 - i) earthworks showing existing and proposed finished levels or contours;
 - ii) means of enclosure;
 - iii) vehicle parking layouts;

- iv) other vehicle and pedestrian access and circulation areas;
 - v) hard surfacing materials;
 - vi) lighting;
 - vii) new trees and hedges showing their species, spread and maturity;
 - viii) planting plans;
 - ix) written specifications (including cultivation and other operations associated with plant and grass establishment);
 - x) schedules of plants noting species, plant supply sizes and proposed numbers/densities where appropriate.
- 8) The hard landscaping works shall be carried out in accordance with the approved details before any part of the development is first occupied. The completed scheme shall be maintained as such thereafter.
- 9) All soft landscaping works shall be carried out in the first planting and seeding seasons following the occupation of the dwellings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 10) No development shall commence until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro-geological context of the development, has been submitted to and approved in writing by the local planning authority. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed and retained as such thereafter. The scheme shall also include:
- i) finished Floor Levels of Plots 3 and 4 to be set at a minimum of 500mm above existing ground level and the Finished Floor Levels of all remaining plots set a minimum of 300mm above existing ground levels;
 - ii) discharge rates will be limited to 2l/s or less;
 - iii) demonstrate that an alternative means of surface water disposal is practicable subject to the drainage hierarchy as outlined in paragraph 080 of the Planning Practice Guidance and the necessary approvals are in place from relevant asset owner;
 - iv) full construction details of all SuDS and drainage components;
 - v) detailed drainage layout with pipe numbers, gradients and pipe sizes complete, together with storage volumes of all SuDS components;
 - vi) calculations to demonstrate that the proposed drainage system can contain up to the 1 in 30 storm event without flooding. Any onsite flooding between the 1 in 30 and the 1 in 100 plus climate change storm event should be safely contained on site;
 - vii) method of storm water disposal;
 - viii) details of proposed overland flood flow routes in the event of system exceedance or failure, with demonstration that such flows can be appropriately managed on site without increasing flood risk to occupants, or to adjacent or downstream sites.

- 11) Prior to the occupation of the development a whole-life maintenance plan for the drainage infrastructure within the site must be submitted to and approved in writing by the Local Planning Authority. The plan shall set out how and when to maintain the full drainage system (e.g. a maintenance schedule for each drainage/SuDS component), with details of who is to be responsible for carrying out the maintenance. The plan shall also include as as-built drawings and/or photographic evidence of the drainage scheme carried out by a suitably qualified person. The plan shall subsequently be implemented in accordance with the approved details.
- 12) No development shall commence, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - i) the routing of construction vehicles;
 - ii) construction access details, temporary or otherwise;
 - iii) the parking of vehicles of site operatives and visitors;
 - iv) loading and unloading of plant and materials;
 - v) storage of plant and materials used in constructing the development;
 - vi) construction working hours;
 - vii) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - viii) wheel washing facilities;
 - ix) before and after construction condition surveys of the highway and a commitment to fund the repair of any damage caused.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 13) No development shall commence until full details of the finished levels, above ordnance datum, of the ground floors of the proposed buildings, in relation to existing ground levels have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved levels.
- 14) Prior to above ground works, a sustainable construction / energy efficiency statement shall be submitted to and approved in writing by the local planning authority. The statement shall include and assess the feasibility of the following:
 - i) measures to reduce energy use in particular by the use of sustainable design and construction;
 - ii) making use of renewable energy;
 - iii) use of rainwater harvesting measures.

The development shall be implemented in accordance with the details as approved and retained in perpetuity for the lifetime of the development.

- 15) Prior to development above slab level, details of electric vehicle charging points to serve the dwellings hereby permitted shall be submitted to and approved in writing by the local planning authority. The electric vehicle charging points shall be carried out in accordance with the approved

details and shall be implemented and made available for use before the dwelling to which the scheme relates is occupied.

- 16) No dwelling shall be occupied until that part of the service road which provides access to it shall have been constructed in accordance with the approved plans. The service road as constructed shall be retained thereafter.
- 17) No dwelling shall be occupied until space has been laid out within the site in accordance with drawing no. 1618/P/110.02 for cars to be parked and for vehicles to turn and those spaces shall thereafter be kept available at all times for those purposes.
- 18) No dwelling shall be occupied until details for the storage of refuse and bicycles have been submitted to and approved in writing by the local planning authority. The refuse and cycle storage shall be provided in accordance with the approved details prior to the first occupation of the dwelling to which it relates, and shall thereafter be made permanently available for the occupants of the dwellings and retained as such thereafter.
- 19) No dwelling shall be occupied until the ecological recommendations set out in the Ecological Appraisal dated February 2021 have been implemented on site. Thereafter the measures shall be retained in perpetuity for the lifetime of the development.
- 20) No dwelling shall be occupied until the pedestrian access to the footpath indicated to the west of plot 5 connecting the site to Public Right of Way EDL/19/1 has been provided and made available for use. It shall thereafter be retained in perpetuity for the lifetime of the development.
- 21) Any first floor side facing windows on the buildings hereby permitted on plots 1, 2, 4, 5, 6, 8, 9, 12, 13, and 14 shall be fitted with obscure glazing, and no part of those windows that is less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened. Once installed the obscured glazing shall be retained thereafter.