

Obscure Glazing, Opening Bathroom Windows and the Consequences of the Incorrect Elevation

The treatment of the bathroom windows at Plot 23 raises a further residential amenity concern. However, the fundamental issue is not the window design itself; it is the elevation at which the dwelling and its windows have been constructed.

The Council has established that Plot 23 has been constructed approximately 600mm above its approved level. Consequently, the internal floors, standing eye levels and window openings are all correspondingly higher than they should be in relation to the established dwellings opposite.

The significance of this has become much clearer following the recent installation of the bathroom windows at Plot 34.

Although the upper bathroom windows at Plot 34 have been fitted with obscure/frosted glazing, we have now observed that they are side-hinged and capable of being opened. When opened, the obscure-glazed pane moves away from the aperture and a clear opening is created.

During installation, the upper torso of the window fitter was visible at the window opening. The subsequent operation of the fitted windows has demonstrated that these are substantial, human-scale openings rather than simply small ventilation apertures. A person using such a window can bring their head and upper body towards the opening and, depending upon the extent to which the casement opens, potentially lean towards or through it.

That creates a materially different viewing perspective from somebody simply standing behind a closed, obscure-glazed window. The viewing position can move closer to the external face of the building and a person can look sideways, diagonally and downwards through the opening.

This distinction between obscure glazing and an opening window is recognised in Government planning guidance. The Government's *Permitted development rights for householders: technical guidance* requires relevant upper-floor side windows to be both obscure glazed and non-opening, unless the parts capable of being opened are more than 1.7 metres above the floor of the room.

That particular permitted-development provision is not suggested to be the statutory test for the front-facing windows at Plot 23. It does, however, demonstrate an important privacy principle: obscure glazing and the ability to open a window are separate considerations. A window that prevents a view when closed does not necessarily prevent overlooking when its obscure-glazed casement can be opened and a clear aperture created.

More importantly, however, the opening mechanism should not distract from the underlying problem in this case.

Had the dwellings been constructed at their approved elevations, the same type of window would have a materially different relationship with the established properties opposite. The bathroom floor, the standing eye level of the person using the room and the window opening itself would all be lower. The opportunity for downward views towards neighbouring habitable-room windows would therefore be correspondingly reduced.

It is the incorrect elevation that has created the altered relationship. The opening windows add to that problem and make its consequences more apparent, but they are not its underlying cause.

This is particularly important when considering whether window restrictors could provide a solution. A restrictor might reduce how far a casement opens, but it would not correct the elevation of the dwelling. It would not lower the bathroom floor, the person's standing eye level or the window

opening to the position upon which the approved relationship was based. Furthermore, unless a restriction forms an effective and permanent part of the window design, there remains the possibility of it subsequently being removed or altered.

The appropriate starting point should therefore be the approved elevation of the dwelling, rather than attempting to mitigate the consequences of an incorrectly elevated window afterwards.

The experience at Plot 34 also explains why this particular amenity consequence has only now become fully apparent. Until the windows were installed and operated, we were principally looking at masonry window openings and drawings. Once the actual windows were fitted and tested, it became possible to appreciate the size of the opening, how the casements operate and the viewing position potentially available to somebody using them.

The Plot 34 installation is also relevant to Plot 23 because these dwellings form part of the same Heritage Britannia collection. While it cannot simply be assumed that every window specification will be identical, there is a reasonable prospect that matching or substantially similar window designs and opening mechanisms will be used. The Council should therefore establish the intended specification at Plot 23 rather than assume that the bathroom windows will operate differently.

There is an additional concern at Plot 23 because a side window has already been formed which does not appear on the approved plans, and the internal layout indicates that this is intended to serve a bathroom.

If that side bathroom window is fitted with the same or a similar obscure-glazed, side-hung casement to those now installed at Plot 34, the potential viewing relationship becomes particularly important. When closed, obscure glazing might prevent a direct view through the glass. When opened, however, somebody could potentially bring their head or upper body towards the aperture and look along the side of the dwelling or diagonally towards neighbouring properties from a position that was never part of the approved design.

Again, the increased elevation compounds the issue. An additional opening at the correct approved level would have one relationship with neighbouring properties; the same opening positioned substantially higher can have a materially different one.

The Council is also investigating the elevations of Plots 34 and 35. If those dwellings are confirmed to have been constructed above their approved levels, the same principle applies. The privacy relationship must be assessed using the actual elevation of the windows and the people using them, rather than assuming that an assessment undertaken on the basis of the approved levels remains valid.

The concern is therefore not that opening bathroom windows are inherently unacceptable. Nor is it simply that obscure glazing may cease to provide privacy when a window is opened. The more fundamental concern is that windows and their users are being positioned higher than the approved relationship anticipated, with the opening mechanism then increasing the range of views potentially available from that already elevated position.

For Plot 23, where the excessive elevation has already been established, the Council should therefore assess the bathroom windows at their actual/proposed height and in their realistic opening configuration. This should include the approved bathroom windows and the additional side-facing bathroom window.

The installation at Plot 34 has provided a practical demonstration of why this matters. The incorrect elevation creates the amenity problem; the opening windows expose and potentially exacerbate its consequences. At the correct approved elevation, their ability to open would present a materially less concerning relationship with the habitable rooms of the established dwellings opposite.