

Section '3' - Applications recommended for PERMISSION, APPROVAL or CONSENT

Application No : 14/03469/PLUD

Ward:
Petts Wood And Knoll

Address : 27 West Way Petts Wood Orpington
BR5 1LN

OS Grid Ref: E: 544700 N: 167659

Applicant : Mr Cristian McDermott

Objections : YES

Description of Development:

Single storey side extension
CERTIFICATE OF LAWFULNESS FOR A PROPOSED DEVELOPMENT

Key designations:

Area of Special Residential Character
Biggin Hill Safeguarding Birds
Biggin Hill Safeguarding Area
London City Airport Safeguarding

Proposal

This application was deferred by the Planning Sub-Committee which convened on 23rd October in order to consider the implications of case law, including (Chisnell) v LB Richmond (Newham J) (2005) EWHC 134 and to clarify the scope of Local Planning Authorities' considerations in determining Certificates of Lawfulness, including in relation to the 2013 amendments to the General Permitted Development Order.

The application was subsequently deferred again from Plans Sub-Committee on 20th November 2014 without prejudice to any future consideration, to await a response from The Right Honourable Eric Pickles MP, Secretary of State for Communities and Local Government. A response has been received and is available on file. This response has been considered and does not provide any clarification that it is considered should alter the recommendation that the proposed extension would fall within permitted development.

An appeal has now been submitted and therefore the Council is unable to determine the application, as this power is now transferred to the Planning Inspectorate. Members are now asked to consider whether they wish to contest the appeal. The previous report is repeated below, with the recommendation altered to reflect the current appeal situation.

A Certificate of Lawfulness is sought in respect of a single storey side extension.

The proposal comprises of a single storey side extension which will be built beyond the eastern flank elevation of the host dwelling. It will extend 2.8m sideward and 7.53m in depth and incorporate a garage and kitchen extension. The design will include a fake pitch at the front which will rise to a height of 3.0m, whilst the eaves will be 2.2m in height. The remainder of the roof will be flat, 2.3m in height.

Location

The site is situated along on the northern side of West Way. It is occupied by a semi-detached two storey dwelling. The area is characterised by similar semi-detached houses set within relatively spacious plots. The area is characterised by generous side space between buildings and the area falls within the Petts Wood Area of Special Residential Character.

Comments from Local Residents

Nearby owners/occupiers were notified of the application and eight representations were received which can be summarised as follows:

- given the Inspectorate's unequivocal verdict of the effect of side extensions on this side of West Way on the ASRC it would seem appropriate for that the Council use an Article 4 Directive to remove permitted side extension rights
- to grant a Lawful Development Certificate would set a dangerous precedent
- application dwelling already has permission to extend at the rear and in the roof
- dimensions on the plans are unclear
- proposed garage would be too narrow to accommodate a car
- a similar proposal for a single storey side extension was refused a Lawful Development Certificate at Hawthorne Road, Bickley under ref. 14/02812
- proposal should be considered consistently as the above refused proposal
- site is not in A1 use class as indicated on the application form
- it is odd that a proposal previously refused by the Council and dismissed at appeal can be considered under another application process, and it is anomalous that this application can even be considered
- proposal will undermine local character and lead to other similar applications
- key concern relating to the impact on the spacing between the dwellings has not been addressed
- there are no other properties along the road with such an extension
- out of character
- character of Petts Wood Area of Special Residential Character will be undermined
- contrary to local planning policies
- in law Residue de Carta applies meaning that once a matter has been decided upon by a Judicial Authority it cannot be decided upon by a different route

In addition to the above, letters of support have been received raising positive comments in regard to the proposed design.

It should be noted that comments relating specifically to the planning merits of the application cannot be considered and this is made clear in the notification letters.

Comments from Consultees

Not applicable.

Planning Considerations

This application is a legal determination and requires the Council to consider whether the proposal falls within the parameters of permitted development under Class A of Schedule 2, Part 1 of the General Permitted Development Order 1995 (as amended).

R(Chisnell) v London Borough of Richmond Upon Thames v Tom Dillon (2005) EWHC 134 Explained in relation to an application for a Certificate of Development for a Proposed Use

A certificate of lawful use is conclusive as to the lawfulness of the matters to which it deals. The certificate may be revoked if material information misleads by withholding or providing false information. The Local Authority may seek further information where relevant. It is important for the Local Authority to act reasonably.

Turning to the matter of R(Chisnell) v London Borough of Richmond Upon Thames v Tom Dillon (2005) EWHC, that decision related to a grant of planning permission by the London Borough of Richmond and did not deal with a certificate of lawful development application, where there are different considerations.

The matter was a judicial review where the Court quashed a planning permission granted by Richmond Council. The Claimant sought the remedy of a judicial review, the 3 grounds may be summed up as follows: The first ground was that the committee were led into error by information provided by the officer. The second ground related to the first in that it prevented Members from considering the impact that the development had on the neighbours. The third ground related to the importance of providing reasons when issuing planning permissions. The importance of consistency being a material considerations is also mentioned.

Whilst Judge Newman states that the Committee were misinformed as to the approach to be adopted in connection with the previous decisions. The Judge was satisfied that the Committee did consider the neighbours amenity objections. He then refers to Ground 3 by specifically pointing out that: "Committees or decision-makers should, as a general rule, give their decision by way of a separate summary of reasons, not by way of global reference to a document nor in itself a summary..." Ground 3 bears the main point of the Chisnell decision.

The Chisnell case has been superseded by the changes in planning law. The Town and Country Planning (General Permitted Development) (Amendment and

consequential Provisions) (England) Order 2014 (SI 2014/564), art.8 with effect April 6, 2014 Paragraph 3B - 2230 31(1) ((a) reads " Where planning permission is granted subject to conditions, the notice shall state clearly and precisely their full reasons for each condition imposed;)

Therefore, the above Order no longer states that there is a need to provide reasons when a planning permission is granted, unless planning permission is granted with conditions. Only when conditions are imposed does the need to provide reasons arise.

On the point of consistency Judge Newman states (paragraph 19 line 5-7): " the requirement for consistency does not mean that they (the Committee) must be slaves to the previous decision and are in any sense bound by it, or must therefore come to the same conclusion. Their judgment and discretion is informed but not fettered by the history". Hence the committee is free to make a decision according to the facts and merits of the application before them, rather than dogmatically following a previous history or decision.

Members should also note that the applicant has a right of appeal to the Secretary of State on a point of law. Parties are normally expected to meet their own expenses. Costs would be awarded on an application against a party who behaved unreasonably in an appeal process.

Planning History

Planning permission was refused under ref. 11/03348 for a part one/two storey side and rear extension. The refusal grounds related to inadequate side space provision and its adverse impact on the Petts Wood Area of Special Residential Character, contrary to Policies BE1 and H10 of the Unitary Development Plan. The proposal was subsequently dismissed on appeal.

Planning permission was refused under ref. 12/02038 for a part one/two storey front/side and rear extension. The refusal grounds stated that the proposal would erode the space between the buildings and would result in a detrimental impact on the character, rhythm and spatial standards of the streetscene and this part of the Petts Wood Area of Special Residential Character. This application was also subsequently dismissed on appeal, with the Inspector raising similar concerns.

Planning permission was refused under ref. 13/02272 for a single storey front/side and rear and first floor rear extension, roof alterations to incorporate rear dormer extension. This was refused on similar grounds as the 2012 application. However, the application was subsequently part allowed and part dismissed at appeal. The Inspector rejected the ground floor side section of the proposal. The proposal was allowed so far as it related to the single storey rear and first floor rear extension and roof alterations to incorporate rear dormer extension.

Most recently, under ref. 14/00698, a proposed single storey side extension was refused by the Council on the basis that the proposal, by reason of its design and siting, would erode the space between the buildings and would result in a detrimental impact on the character, rhythm and spatial standards of the

streetscene and this part of the Petts Wood Area of Special Residential Character. The proposal was subsequently dismissed at appeal.

Conclusions

Following the previous 2014 planning application, the depth of the side extension has been revised so that it no longer projects beyond the rear building line. Other aspects of the proposal remain unaltered. This change is aimed at making the proposal PD-compliant.

Class A permits the enlargement, improvement or other alteration of a dwellinghouse. In this instance, the proposed single storey side extension would fall within the scope of Class A and is considered to be permitted development for the following reasons:

- The extension will not exceed 50% of the total curtilage of the original house
- The height of extension will not exceed the height of the highest part of the dwellinghouse and the height of the eaves would not exceed those of the original house
- The proposal would not extend beyond a wall that fronts a highway AND forms the principal or side elevation of the original house
- The extension is within 2m of a boundary and the eaves height will not exceed 3.0m
- The extension would not exceed 4m in height, would not have more than one storey, and will not have a width greater than half the width of the original dwellinghouse
- The proposal does not consist of or include a veranda, balcony or raised platform
- The proposal does not consist of or include the installation, alteration or replacement of a microwave antenna
- The proposal does not consist of or include an alteration to any part of the roof of the dwellinghouse.
- The materials proposed for the exterior will be similar in appearance to those used in the construction of the original house.
- The proposal does not consist of or include the installation, alteration or replacement of a chimney, flue or soil and vent pipe

Whilst the planning merits of the proposal have previously been considered and deemed to have been unacceptable, given that the applicant has submitted this proposal as a Lawful Development Certificate, the Council is obliged to consider this scheme solely on the basis of its legal merits, in terms of its compliance with the terms of the GPDO. On this basis, the proposal is considered to constitute permitted development. In addition, the Chisnell case (explained in detail above) concerns a planning application, rather than a Lawful Development Certificate which concerns a point of law. This application before the Council has not been considered and determined by a higher authority, so there is no reason why the Council should not determine this application in accordance with the General Permitted Development Order. Based on the above assessment, Members are advised to grant planning permission.

In addition to the above points, Members should note that this application is now the subject of a "non-determination" appeal. Should Members agree to grant a Lawful Development Certification, the appeal will become effectively void. However, should Members choose not to grant a Certificate, it will be necessary to decide whether to contest the appeal.

Background papers referred to during production of this report comprise all correspondence on the files refs. 11/03348, 12/02038, 13/02272, 14/00698 and 14/03469 set out in the Planning History section above, excluding exempt information.

RECOMMENDATION: RESOLVE NOT TO CONTEST APPEAL

- 1 The proposed development is permitted by virtue of Class A, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended).

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"This plan is provided to identify the location of the site and should not be used to identify the extent of the application site"

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