



Forest Heath
District Council

DEV/FH/17/027

Development Control Committee 5 July 2017

Planning Application DC/16/2731/HH – 5 Whitegates, Newmarket

Date Registered:	15/12/2016	Expiry Date:	09/02/2017
Case Officer:	Matthew Gee	Extension of time:	08/04/2017
Parish:	Newmarket	Recommendation:	Approve with Conditions
Ward:			All Saints
Proposal:	Householder Planning Application - (i) Single storey front extension (ii) Two Storey side and rear extension (iii) Single storey rear extension - revised scheme of -DC/15/2282/HH		
Site:	5 Whitegates, Newmarket		
Applicant:	Mr Mark Gordon		

Synopsis:

Application under the Town and Country Planning Act 1990 and the (Listed Building and Conservation Areas) Act 1990 and Associated matters.

Recommendation:

It is recommended that the Committee determine the attached application and associated matters.

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Committee Report and Risk Assessment DC/16/2731/FUL

Section A – Background and Summary:

A1. This application was deferred from consideration at the Development Control Committee meeting on 7th June 2017. Members resolved that they were 'minded to refuse' planning permission contrary to the officer recommendation of approval subject to conditions. Members were concerned that the proposal would result in; i) Overdevelopment of the site; ii) An adverse impact on amenity caused by overlooking from the proposed balcony; iii) An adverse impact on the street scene; and iv) the boarding to the first floor rear extension being out of character.

A2. The previous Officer report for the 7th June meeting of the Development Control Committee is included as Working Paper 1 to this report. Members are directed to this paper in relation to the site description, details of development, details of consultation responses received etc.

A3. This report sets out updates from the written papers presented to the meeting of the Development Control Committee on 7th June and includes a risk assessment of the potential reasons for refusal.

A4. The Officer recommendation, which is set out at the end of this report remains that planning permission should be granted.

A5. Since the Committee meeting on 7th June, it is advised that an amended floor plan showing the additional first floor front elevation bedroom window had been received as part of previous amendments to the elevational drawings.

Section B – General Information:

Proposal:

B1. Please refer to Working Paper 1, paragraphs 1 to 4 for a description of the application proposals, including amendments made in advance of the June meeting. There have been no further amendments since the May meeting.

Site Details:

B3. Please refer to Working Paper 1, paragraph 5 and 6 for a description of the application site

Planning History:

B4. Please refer to Working Paper 1, paragraph 7 and 8 for details of the sites planning history.

Consultation Responses:

B5. Please refer to Working Paper 1, paragraphs 9 for details of consultation responses received.

Representations:

B6. Please refer to Working Paper 1, paragraphs 10 and 11 for details of representations received.

Policies:

B7. Please refer to Working Paper 1, paragraphs 12 to 14 for details of relevant planning policy and considerations

Officer Comment:

B8: Please refer to Working Paper 1, paragraphs 15 to 29 for the Officer assessment of the application proposals. The officer assessment remains unchanged following the Development Control Committee meeting on 7th June 2017

Section C – Risk Assessment:

C1. The main purpose of this report is to inform members of the risks associated with the 'of mind' resolution to refuse planning permission for these development proposals, given that a refusal of planning permission would be contrary to the Officer recommendation.

C2. As set out in the Background section of this report, Members deferred their consideration of this planning application from the 7th June 2017 meeting of Development Control Committee. Members were 'of mind' to refuse planning permission on grounds of: i) Overdevelopment of the site; ii) An adverse impact on amenity caused by overlooking from the proposed balcony; iii) An adverse impact on the street scene; and iv) the boarding to the first floor rear extension being out of character.

C3. The remainder of this report discusses the potential reasons for refusal cited by Members before discussing the potential implications of a refusal of planning permission on these grounds.

Section D – Permitted Development fall-back position

D1. It is important to note what the potential fall back position would be in relation to what development could have been done under permitted development. A plan (see working paper 2) has been drawn up that shows the sections of the proposal that are;

- The dwelling prior to recent development (coloured red),

- The extensions that could be constructed under permitted development (coloured blue); and
- The sections that could not be constructed under permitted development (coloured yellow).

D2. The application seeks to increase the combined floor area of the 139sqm dwelling (including garage), by 56sqm including the 3.75sqm balcony. Approximately 50% or 28sqm of the additional floor area could be constructed without planning permission. The majority of the sections that could be constructed under permitted development are the areas that result in the majority of 'bulk' and impact on the street scene; i.e. the ground floor side extension that abuts the boundary.

D3. The sections that do not fall within the permitted development (marked yellow on the Permitted Development plans) were considered relatively minimal and acceptable in terms of the additional impact that they would pose on the character and scale of the dwelling.

Section E - Potential Reasons for Refusal- Overdevelopment of site, detrimental impact to the Whitegates street scene, and proposed boarding being out of character.

E1. Matters of design and impact upon character are, to a degree, subjective and are to be considered in relation to the specific circumstances of the site and its wider context.

E2. Officers remain of the view that the form, scale, bulk and detailed design of the proposal would be acceptable and in accordance with relevant policies for the reasons set out in paragraphs 16 to 21 of the Officers report attached as Working Paper 1.

E3. Members are not duty bound to accept Officer advice particularly with respect to matters of design and impact upon character which are, to an extent, subjective. It should be noted though that the majority of the proposal that is visible from the public realm is identical to the proposal that was approved under application DC/15/2282/HH, except the elements listed in paragraph 3 of working paper 1. Paragraph 20 of the working paper does note the impact that the recessed guttering has on the street scene. However this element in itself is not considered to significantly impact the wider street scene to warrant refusal on this basis.

E4. Members also raised concerns with regards to potential terracing of dwellings as a result of this application. It is advised that all applications will be assessed on their own merits at the time they come in. However, single storey side extensions could be built, to the majority of surrounding properties, without the requirement for planning permission. This in itself could result in terracing without the planning authority being able to intervene.

E5. In addition, members raised concerns with regards to the use of weatherboarding to the rear first floor element. It is advised that this was approved under the previous application DC/15/2282/HH, and at the time was considered to be sympathetic to the existing dwelling and surrounding area. The majority of the boarding cannot be widely seen from the public realm and as such is not considered to adversely impact on the character.

E6. The current proposal has a marginally smaller footprint to the permission approved under application DC/15/2282/HH. Whilst matters of overdevelopment can be subjective, it was considered that the proposals under the previous permission did not constitute overdevelopment of the site, as can be seen in paragraph 23 of working paper 1. The amount of development on site that could be erected without the requirement for planning permission, as can be seen in the attached PD plans at working paper 2 should also be noted and considered. It is also considered that the dwelling still retains a sufficient sized garden space.

E7. In addition, the site covers an area of 272sqm. The previous curtilage of the dwelling (site area minus original dwelling and garage) is 207.6sqm. The previous and new extensions to the dwelling total 57.4sqm, which is equal to approximately 27.7% of the original curtilage. The General Permitted Development Order 2015 allows up to 50% of the total area of the curtilage (excluding the ground area of the original dwelling). All applications are assessed on their own merits, considering the site context. However, development covering more than 50% of the curtilage, which this proposal falls well below, could be the point at which it is considered to become overdevelopment.

E8. Officers consider that given the similar previous permission on the site, that a refusal of planning permission on the grounds of impact on street scene, the boarding being out character, and overdevelopment of the site could not be sustained at appeal.

E9. Notwithstanding the above, if Members are minded to refuse the application on grounds of overdevelopment and character and appearance of the street scene it is recommended that the following wording could be used:

"The development is considered to represent overdevelopment of the application site; the extensions do not respect the character, scale and massing of other dwellings in the locality, detrimental to the visual amenities of the wider street scene. This, together with the use of boarding which is not representative of materials used in the locality, results in a development which has an adverse impact on the character and appearance of the area. The proposals therefore fail to comply with policies DM2 and DM24 of the Joint Development Management Policies Document 2015 and policy CS5 of the Forest Heath Core Strategy 2010".

Section F - Potential Reasons for Refusal- Impact on residential amenity

F1. At the Development Control Committee of 7th June Members were concerned that the development would have an adverse impact on the amenity of adjacent residents. Officers remain of the view however that the development would not have a significant adverse impact on residential amenity sufficient to warrant refusal.

F2. The proposal includes the placement of a 3.75 sq m balcony with 1.8m high obscure glazed screens to either side of the balcony. Officers remain of the view that the proposed balcony would not result in an adverse impact from overlooking, due to the location of the 2no. obscure glazed screens on the side flanks of the balcony. This is considered to reduce the overlooking of neighbours to an acceptable level. This relationship is also no different to a rear facing first floor window.

F3. Members are not duty bound to accept Officer advice particularly with respect to matters of residential amenity which are, to an extent, subjective. Furthermore, it is unlikely that a decision to refuse planning permission on residential amenity grounds would be vulnerable to an award of costs if that concern is genuine and the harm arising from that impact is properly demonstrated at any subsequent appeal.

F4. Notwithstanding the above, if Members are minded to refuse the application on grounds of residential amenity it is recommended that the following wording could be used:

"The proposed development would be detrimental to the amenity of adjacent residents by virtue of resulting overlooking and loss of privacy to neighbouring residents caused by the proposed rear balcony. The proposal would therefore conflict with policy DM2 and DM24 of the Joint Development Management Policies Document 2015".

Section H – Implications of a refusal of planning permission:

H1. It is likely that should Members subsequently resolve to refuse planning permission the applicants will appeal that decision.

H2. Officers consider that it would be difficult to defend a refusal of planning permission on the grounds of overdevelopment, impact on street scene, and the boarding being out of character, due to the previous approval on the site.

H3. A case could be made at appeal to defend the potential reason for refusal on development which would have an adverse impact on residential amenity but officers consider the case to defend would be weak and probably result in a lost appeal.

H4. A refusal of planning permission for any development on indefensible and/or unsubstantiated grounds is likely to lead to planning permission being granted at appeal. This outcome could have administrative and financial implications for the Council.

H5. Firstly, the Council's reputation would be adversely affected by its inability to properly defend all its reasons for refusal at appeal.

H7. Secondly, the applicants would have the right to recover their appeal costs (in full or in part, depending upon the circumstances) from the Council should the Inspector appointed to consider the appeal conclude the Local Planning Authority has acted unreasonably. Advice about what can constitute unreasonable behaviour by a Local Authority at appeal is set out in the National Planning Practice Guidance. Three of the numerous examples cited in the advice are as follows:

What type of behaviour may give rise to a substantive award against a local planning authority? Local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals. Examples of this include:

- *preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.*
- *failure to produce evidence to substantiate each reason for refusal on appeal.*
- *vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.*

H8. In the absence of evidence to substantiate its reasons for refusal Officers consider it would be difficult to defend a potential claim for the partial award of costs at appeal. An award of costs (including partial costs) against the Council would have financial implications for the Council.

Section I - Recommendations

I1. It is recommended that planning permission be **APPROVED** subject to the following conditions:

1. Time Limit
2. Compliance with plans
3. Improved access to be retained
4. Access layout
5. Parking provision
6. Obscure glazed window
7. Obscure glazing screens to balcony.

Documents:

All background documents including application forms, drawings and other supporting documentation relating to this application can be viewed online:

<https://planning.westsuffolk.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=OI2KUXPDF400>

- Working Paper 1 – Committee Report 7 June 2017
- Working Paper 2 – Permitted Development Fall-back Position Plans