

Planning, Transport & Sustainability Division
Planning and Rights of Way Panel 18th February 2014
Planning Application Report of the Planning and Development Manager

Application address: 3 Abbots Way SO17 1QU			
Proposed development: Minor material amendment sought to planning permission reference 11/02039/FUL including alterations to windows and doors, and reduction in width of Dormer Windows.			
Application number	13/01536/MMA	Application type	MMA
Case officer	Stuart Brooks	Public speaking time	5 minutes
Last date for determination:	27.01.2014	Ward	Portswood
Reason for Panel Referral:	Request by Ward Member and five or more letters of objection have been received	Ward Councillors	Cllr Adrian Vinson Cllr Matthew Claisse Cllr Linda Norris

Applicant: Mr S Ahmed	Agent: Concept Design & Planning
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Recommendation Summary	Conditionally approve
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Reason for granting Permission

The development is acceptable taking into account the policies and proposals of the Development Plan as set out below. The scale and nature of the internal and external changes to the approved extension are considered to constitute a minor material amendment, as well as not harm the amenity of the neighbouring occupiers, and the appearance and character of the property and the conservation area. Other material considerations have been considered and are not judged to have sufficient weight to justify a refusal of the application, and where applicable conditions have been applied in order to satisfy these matters. The scheme is therefore judged to be in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004 and thus planning permission should therefore be granted. In reaching this decision the Local Planning Authority offered a pre-application planning service and has sought to work with the applicant in a positive and proactive manner as required by paragraphs 186-187 of the National Planning Policy Framework (2012).

Policies - SDP1, SDP7, SDP9, HE1 of the City of Southampton Local Plan Review (March 2006) and CS13, CS14 of the Local Development Framework Core Strategy Development Plan Document (January 2010) as supported by the guidance set out in the Portswood Residents Garden Conservation Area Management Plan.

Appendix attached			
1	Development Plan Policies	2	Planning History
3	11/02039/FUL - approved plans and appeal decision	4	13/00693/MMA - decision notice and plans
5	Photographs provided with objection letter from 5 Abbots Way	6	Officer's written advice dated 19th August 2012

Recommendation in Full

Conditionally approve

1.0 The site and its context

- 1.1 The application site is located on the north side of Abbots Way within the Portswood Residents Gardens Conservation Area which is recognised for its special architectural and historical character. Abbots Way is characterised by mainly large attractive detached 2 storey dwellings set in generous and leafy plots. The houses are individually designed family homes mainly built between 1908 and 1930 and retain many of their original features.
- 1.2 The application site contains a large detached two storey dwelling recently extended to the side on appeal, with various earlier extensions and alterations approved by the Council..

2.0 Proposal

- 2.1 This is a 'minor material amendment' application made under section 73 of the Town and Country Planning Act, which makes provision for amendments to a planning permission in terms of the overall changes to the scale, nature, and appearance of approved works, as well as the variation of planning conditions.
- 2.2 The current proposals seek to regularise the 'as built' unauthorised works which were undertaken when implementing the extension approved at appeal.

The main issue for consideration is the design and resultant impact of the side facing dormer window which serves a shower room.

The plans approved on appeal show a roof extension in the form of a 'blind dormer' which was set further back and did not contain any windows.

The dormer as constructed now has high level obscure glazing facing 5 Abbots Way.

That window, in its initially built form had a full height window opening and was assessed as unacceptable (13/00693/NMA).

For further details on the recent planning history see section 4 below.

2.3 The overall changes proposed by this application to the approved scheme can be summarised as follows:

East elevation (side)

First floor - re-siting of the previously approved dormer to a more central position. Reduction in the width of the dormer from 2.6 to 2m. Installation of 3 high level obscure glazed windows (outer 2 bottom hinged and central fixed pane with a cill at 1.7m above the internal floor level) to provide headroom and ventilation for a shower room.

North elevation (rear)

Ground floor - windows replaced with 1 central window/doors

First floor - dormer window reduced in width (2.6 to 2m)

South elevation (front)

Ground floor - 2 windows on the extension replaced with 1 central window.

First floor - dormer window reduced in width (2.6 to 2m)

It should be noted that the proposed alterations to the front and rear elevations are considered to be an improvement to the scheme allowed on appeal. Those dormer windows are smaller and better proportioned than approved and did not form part of the reason for refusal on the application seeking to regularise the works as currently built out (13/00693MMA).

3.0 Relevant Planning Policy

3.1 The Development Plan for Southampton currently comprises the “saved” policies of the City of Southampton Local Plan Review (March 2006) and the City of Southampton Core Strategy (January 2010). The most relevant policies to these proposals are set out at **Appendix 1**.

3.2 The National Planning Policy Framework (NPPF) came into force on 27th March 2012 and replaces the previous set of national planning policy guidance notes and statements. The Council has reviewed the Core Strategy to ensure that it is in compliance with the NPPF and are satisfied that the vast majority of policies accord with the aims of the NPPF and therefore retain their full material weight for decision making purposes, unless otherwise indicated.

3.3 Saved policy SDP1 (Quality of development) of the Local Plan Review allows development, providing that it does not unacceptably affect the health, safety and amenity of the city and its citizens. Policy SDP7 (Context) and SDP9 (Scale, Massing, and Appearance) allows development which will not harm the character and appearance of the local area, and the building design in terms of scale and massing should be high quality which respects the surrounding area. Policy CS13 (Fundamentals of Design) assesses the development against the principles of good design.

3.4 Saved policy HE1 (Conservation Area) of the Local Plan Review and policy of CS14 of the Core Strategy requires development to enhance or preserve the character and setting of the conservation area, and respect its historical and special architectural character. These policies are supported by 'The Portswood Residents Gardens Conservation Area Management Plan' (PRGCAMP), which sets out specific design guidance to manage development within the conservation area.

4.0 Relevant Planning History

- 4.1 As mentioned above, this application is a result of the need to regularise the unauthorised works which have been undertaken whilst constructing the 2 storey side extension.

The extension itself was allowed at appeal (ref no. APP/D1780/A/12/2171564) following the refusal of application 11/02039/FUL (see **Appendix 3** for approved plans and appeal decision). There have been other various extensions and alterations carried out in the last ten years (see **Appendix 2**).

- 4.2 It was brought to the attention of the Planning Enforcement team on 1st May 2013 that an unauthorised dormer frame was being constructed on the east roof slope, not in accordance with the approved plans. The applicant declared it was the intention to provide a full height glazing unit to fill the frame to serve a shower room.

Subsequently, a 'minor material amendment' application (13/00693/MMA) to regularise this change was submitted on 14th May and refused on 12th July (see **Appendix 4** for decision notice and plans). The reason for refusal given related **only** to the side facing dormer window and **only** due to the loss of privacy and outlook to adjacent windows serving the habitable rooms, bathrooms and corridors at 5 Abbots Way. Particular regard was had to the Inspector's condition to control and avoid loss of privacy from further openings.

The dormer window was not objected to on design grounds.

- 4.3 At the same time as applying to retain the works as built, the applicant sought pre-application advice from Officer's on further options to amend the design but ultimately retain the unauthorised dormer frame.

This is a service the planning department offer to all potential customers. The pre-application advice service ran concurrently with the Enforcement investigation to monitor the ongoing works and assess the expediency to take enforcement action.

Officer's then issued advice in August (without prejudice to the final determination of a formal application) identifying that an alternative option which removed any scope for overlooking and loss of privacy would address the recent reason for refusal.

The current application which accords with that advice was first received on 7th October and made invalid as no application fee was paid. Subsequently the application was validated on 2nd December in receipt of the fee. It is reported that the current windows in the east dormer were fitted on 29th December.

- 4.4 Although these works carried out are unauthorised and in breach of condition 4 (no further openings), the Local Planning Authority was duty bound to consider whether it is expedient to take formal enforcement action. It was not considered expedient to serve an Enforcement Notice or Breach of Condition Notice at the time, as the regularisation works agreed would be carried out to ensure that the amenity of 5 Abbots Way and preservation of the character of the conservation area is safeguarded.

5.0 Consultation Responses and Notification Representations

5.1 Following the receipt of the planning application a publicity exercise in line with department procedures was undertaken which included notifying adjoining and nearby landowners, placing a press advertisement (20.12.13) and erecting a site notice (17.12.2013). At the time of writing the report **24** objections have been received from surrounding residents and local amenity groups, including a referral to Planning Committee by a Local Ward Cllr. The following is a summary of the points raised:

5.1.1 Comment

The works have been carried out without planning permission and should have been enforced against.

Response

The decision to take enforcement action has to be based on expediency following a judgement as to the harm caused. In this case, whilst the works initially carried out were judged to be harmful, the applicant responded to the reason for refusal on 13/00693/MMA by making changes which addressed the privacy and overlooking issue which formed part of the reason for refusal. See section 4 of the report.

5.1.2 Comments

The proposed windows in the side dormer, which are openable, results in invasion of privacy to occupiers of 5 Abbots Way by directly overlooking all adjacent windows on the side elevation, including those serving WCs, corridor linking bathroom, kitchen, and shower cubical (see **Appendix 5** for photographs provided with objection letter). The Council refused the previous application for these reasons as unneighbourly and the Inspector expressly forbade additional windows through condition.

Response

The Inspectors condition removed the ability to install windows without permission to safeguard privacy. This does not mean that a scheme which includes windows but does not affect privacy should not be approved. The officers report and photographs taken from within the shower room demonstrate that the combination of high level and obscure glazing prevents any form of overlooking or loss of privacy.

Comment

The repositioning of the dormer results in detrimental loss of daylight serving adjacent windows of 5 Abbots Way which was previously positioned at the bottom right of the easterly aspect to minimise daylight interference, where 50% of their ambient light comes from the easterly aspect as the property is built end onto the street.

Response

The window sits against the backdrop of a larger roof and is not considered to have any additional impact on light than the scheme already approved.

Comment

The application infers the dormer is permitted development and in fact is not. The alterations and side dormer, including the white side panels, are visually out of keeping and over dominant of the property, and harms the character and

appearance of the conservation area and would breach the article 4 and management plan, and create a precedent for future applications in the conservation area.

Response

It is noted that the dormer window is not permitted development and, therefore, a full assessment has been made under this application. The Heritage Team have no objections to the design of the dormer or its impact on the wider conservation area. It is considered to preserve the character of the area if not enhance it. The previous refusal referred to the proportions of the window when viewed from neighbours' windows. The verticality of the dormer immediately opposite windows in 5 Abbots Way does impact on the outlook from those windows. With full height glazing that relationship was considered to be too dominant. With smaller high level windows and appropriate treatment of the remainder of the vertical wall that impact is lessened and in itself not considered to cause harm.

Comment

There is no further requirement for the dormer as the stairwell has been removed.

Response

The applicant now requires the dormer to provide headroom for the shower room.

Comment

The 4.3m high privacy screen for the balcony has not been provided in accordance with the approved plans and should be enforced against.

Response

It is noted that the screen has not been built in accordance with the approved plans. This element of the approved plans will not be changed under this application. The Enforcement team are dealing with this matter separately.

Comment

The changes are not a minor material amendment, but an application for significant changes to the approved plans. Furthermore, the Officer's written advice states that should be a full application as in breach of condition 4.

Response

There is no definition of what constitutes a 'minor material planning application'. The description of the original development has not changed as both the original and current schemes included a dormer window. Whilst a new full application was advised there are no procedural grounds to prevent a Minor Material Application being submitted. Both procedures require the issuing of a new decision notice and a full consultation process to be followed.

Consultation Responses

5.2 **SCC Heritage Conservation** - No objection.

6.0 Planning Consideration Key Issues

6.1 The key issues for consideration in the determination of this planning application are:

- Principle of development;
- Design and scale with the particular regard to enhancing and preserving the character and appearance of the Conservation Area;
- Residential amenity of neighbouring occupiers

6.2 Principle of Development

- 6.2.1 There is no statutory definition of a 'minor material amendment', however, the Government states that it agrees with the following definition set out in its guidance document - *“A minor material amendment is one whose scale and nature results in a development which is not substantially different from the one which has been approved.”* (Greater flexibility for planning permissions, CLG October 2010). The matter of whether the changes constitute a minor material amendment is further considered below in relation to the other material considerations.
- 6.2.2 It should be noted that the Officer's previous written advice dated 19th August 2012 (see **Appendix 6**) is not binding as it does not represent a formal decision made by the Council or a predetermination of the application.

6.3 Design and scale

- 6.3.1 The changes to the visual appearance of the approved extension are outlined in detail in section 2.3 of the report. The alterations to the ground floor fenestration on rear elevation will not be visible from the public realm. On both elevations, the 2 window units have been merged into 1 unit which is proportionally sized and aligned in relation to host dwelling. The resizing of the dormers on the front and rear roof slopes reduces the width from 2.6 to 2m and appear proportionally less dominant of the property. Therefore, these changes are not considered to harm the character and appearance of the property, and their scale and nature do not substantially change of the appearance and form of the approved extension.
- 6.3.2 The Inspector concluded that the approved extension is subservient in scale and character to the host dwelling (paragraph 9 refers). Furthermore, it maintains a reasonable separation between the boundary of 5 Abbots Way, not unlike other properties in the local area, to ensure it preserves the special character of the area in an adequate way (paragraph 11 refers), and the coverage to plot ratio is not excessive, even with the approved and previous extensions, given its large plot (paragraph 10 refers).
- 6.3.3 The side dormer in its approved position was not rejected by the Planning Inspector. The changes involve centrally positioning it on the same horizontal plane and slightly increasing roof material thickness by 2cm, reducing its width from 2.6 to 2m. The blind dormer has added 3 small obscured glazed windows, using leaded lights which is a typical window style, framed by an attractive slim profiled casement and defined cill. The dormers are clad in a lightweight leading material to the sides which is sympathetic to the character of the host dwelling. The front treatment of the dormer (including the rear and front dormers) was unfinished at the time of writing this report, however, further details can be agreed by condition to ensure that the dormer is finished in a high quality material. These changes are considered to be in keeping with the character and appearance of the host dwelling, in particular given that the side dormer will look more balanced to overall appearance of the extension being in the centre. It is considered that the scale and nature of changes do not substantially change the form and appearance of the approved extension.

6.3.4 The Conservation Officer has raised no objection to the impact on the character and appearance of the conservation area. Design specific guidance referring to dormers in the PRGCAMP states on page 20 that "proposals for roof dormers on front elevations should be in keeping with the original house". Policy PRG 5(c) (Materials) states that "when altering or repairing roofs, it is important to respect the original roof line and the detail of the original roof construction, and to avoid materials which are unsympathetic to the existing building or its neighbours". Well designed and proportioned dormer windows are a common feature on roofs in the conservation area, and the lead cladding material is sympathetic as well.

6.4 Living conditions of neighbouring occupiers

6.4.1 The alterations of the front and rear elevations do not adversely affect the amenity of the neighbouring occupiers, given that the dormers and windows do not directly face 5 Abbotts Way. The approved extension and side dormer is orientated to the north-east. The Inspector did not consider that the approved blind dormer and extension adversely affects the light and outlook of the adjacent windows, given the separation distance between the flank wall of 5 Abbotts Way (paragraph 14 and 15 refers). As mentioned above, the side dormer only moves centrally in the same plane, being reduced in width and slightly increases in height, therefore, these changes would not have a significantly different impact on the loss of daylight to the adjacent windows at 5 Abbotts Way.

6.4.2 Following a site visit it was observed that the cill level of the windows installed in the dormer are 1.7m above the internal floor level of the shower room as well as being obscure glazed. This would naturally be high level at the eyeline of an average height person and, therefore, mitigate direct overlooking across and down to the neighbour's adjacent windows. The central light is fixed and the outer 2 are currently opening from a top hinge. The applicant has indicated that the windows can be easily re-hung as required by the Council, where a condition will require the windows to be bottom hinged with restricted opening of 5cm. This ensures suitable ventilation and only skyward views looking towards 5 Abbotts Way. It is noted that the Inspector removed permitted development rights for no further openings in the interests of protecting the neighbour's privacy, however, the purpose of this condition is to give the LPA control to require a planning application for further windows, rather than prohibit further windows being installed.

6.4.3 As such, the physical changes are not considered to adversely affect the amenity of the neighbouring occupiers, whilst conditions can be used to safeguard the privacy of the neighbouring occupiers. Furthermore, the impact on the neighbouring occupiers does not substantially change in relation to the scale and nature of the approved extension.

7.0 Summary

7.1 In summary, the scale and nature of the internal and external changes to the approved extension are considered to constitute a minor material amendment, as well as not harm the amenity of the neighbouring occupiers, and the appearance and character of the property and the conservation area.

8.0 Conclusion

- 8.1 Having considered the aforementioned issues, the application is deemed to be acceptable and is therefore recommended for approval subject to conditions.

Local Government (Access to Information) Act 1985 **Documents used in the preparation of this report Background Papers**

1(a), 1(b), 1(c), 1(d), 2(b), 2(d), 4(vv), 6(c), 7(a), 9(a), 9(b).

SB for 18/02/14 PROW Panel

PLANNING CONDITIONS

1. APPROVAL CONDITION - Regularisation Materials

Within one month from the date of this Decision Notice, details shall be submitted and agreed in writing by the Local Planning Authority of the external materials to clad the dormers hereby approved (including samples if the LPA require so), and thereafter the dormers shall be completed with the agreed materials within one month.

Reason:

As the approved works will regularise a breach in planning control within a conservation area, and to ensure that the existing dormers finished in a high quality cladding material within a maximum period of 2 months from the date of this permission.

2. APPROVAL CONDITION - Regularisation windows

Within one month from the date of this Decision Notice, the opening lights in the east facing dormer hereby approved shall be installed as bottom hinged opening only whilst being obscured glazed and restricted opening to no more than 5cm and, thereafter, the lights shall be retained in this manner at all times and the central light shall remain fixed shut at all times.

Reason:

As the approved works will regularise a breach in planning control to remedy the loss of privacy of adjacent windows being overlooked at 5 Abbots Way, and to ensure that the alterations to the lights is completed within a maximum period of 1 month from the date of this permission.

3. APPROVAL CONDITION – No further openings

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) (or any Order revoking or re-enacting that Order with or without modification), no additional windows, dormer windows or other openings shall be formed in the extension hereby permitted.

Reason:

To protect the amenities of the adjoining residential properties from loss of privacy.

4. APPROVAL CONDITION – Working hours

No building operations, site clearance or demolition of the existing building shall take place on the site otherwise than between 0800 hours and 1800 hours on Mondays to Fridays, 0800 hours and 1300 hours on Saturdays and at no time on Sundays or Bank and Public holidays.

Reason:

To protect the amenities of the occupiers of existing nearby residential properties.

5. APPROVAL CONDITION - Approved Plans

The development hereby permitted shall be carried out in accordance with the approved plans listed in the schedule attached below, unless otherwise agreed in writing with the Local Planning Authority.

Reason:

For the avoidance of doubt and in the interests of proper planning.