

PLANNING OFFICER REPORT

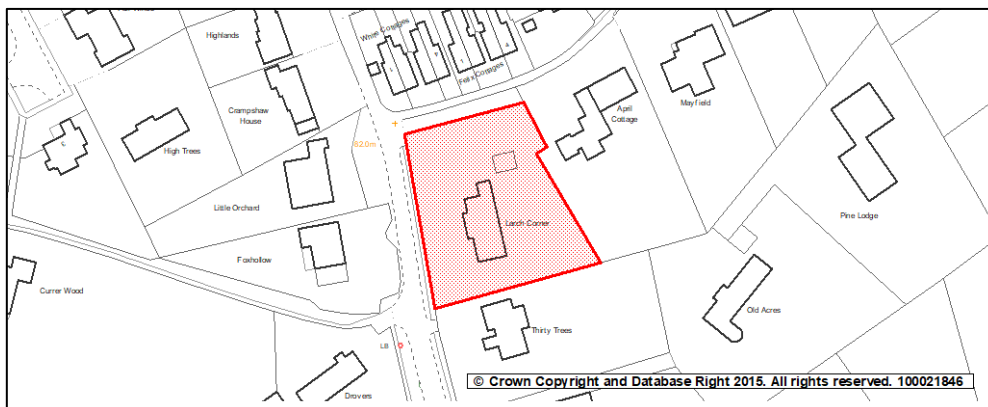
Application No. MO/2022/1618 Variance of Conditions
Valid Date: 03-Oct-2022
Applicant: Mr Gary Stansfield
Case Officer: Caroline Hall
Ward(s): Ashtead Park
Proposal: Removal of condition 3 of approved planning permission MO/2022/0085 for the erection of part single storey, first floor extension, erection of a first floor side extension, 2 No. front dormers and rooflights to rear roof elevation, to allow the use of clear glazing to first floor window in southern elevation.

Amendments /amplifications:
Site Location: Larch Corner, Crampshaw Lane, Ashtead, Surrey, KT21 2UD

Committee: The applicant is District Councillor Gary Stansfield.

RECOMMENDATION: Refuse

The Site



1. Description of Site:

1.1 The application site comprises a detached bungalow with accommodation within the roof served by rooflights in the rear and flank roof profiles. The site is located on the eastern side of Crampshaw Lane in the built-up area of Ashtead.

2. Description of Proposal:

2.1 Planning permission is sought for the removal of condition 3 of approved planning permission MO/2022/0085 for the erection of part single storey, first floor extension, erection of a first floor side extension, 2 No. front dormers and rooflights to rear roof elevation, to allow the use of clear glazing to first floor window.

2.2 The applicant states that condition 3 is not required due to the level of screening on the southern boundary and the current window in the hip roof is already clear glazed serving a bedroom.

3 Relevant Planning History

MO/2022/0085
 Larch Corner, Crampshaw Lane, Ashtead, Surrey, KT21 2UD
 Erection of part single storey, first floor extension, erection of a first floor side extension, 2 No. front dormers and rooflights to rear roof elevation.
 APPROVED WITH CONDITIONS
 10-Jun-2022

4 Statutory/Internal Consultations

4.1 None.

5 Third Party/Other Representations

Representation	Officer Comment	Relevant Condition
Summary of Responses Received:		
The condition was correct and proportionate and should be adhered to, there is no substantive new information set out in the application that was not already known to the planners on which the original decision was based.	Noted.	

6 Constraints

Built-up Area
 Tree Preservation Order
 Within 5m of Res Area of Sp Character
 Flooding - surface water 1in30yr shallow
 LandscapeCharArea - BoxHill
 Ashtead NDP Neighbourhood Area

7 Development Plan Policies

Core Strategy (CS)

CS1 – Where Development will be Directed
 CS14 - Townscape, Urban Design and the Historic Environment

Local Plan (LP)

ENV15 – Species Protection
 ENV22 – General Development Control Criteria
 ENV23 – Respect for Setting
 ENV24 - Density of Development and Space about Buildings
 ENV32 – House Extensions
 MOV2 – The Movement implications of Development
 MOV5 – Parking Standards

Ashtead Neighbourhood Development Plan (ANDP)

AS-H5: Maintaining Built Character

AS-H6: Off Street Parking

AS-En3 Retaining Character

8 Material Considerations

Government Guidance – National Planning Policy Framework (NPPF)

Section 2 – Achieving Sustainable Development

Section 5 – Delivering a sufficient supply of homes

Section 11 – Making effective use of land

Section 12 – Achieving well-designed places

Section 15 – Conserving and enhancing the natural environment

Supplementary Documents

Built Up Areas Character Appraisal

Vehicular and Cycle Parking Guidance

9 Planning Analysis

9.1 Legislation dictates how all planning applications must be determined. Section 73 of the Town and Country Planning Act (as amended) states provides a mechanism for the variation or non-compliance with conditions imposed on planning permissions.

9.1.1 Section 73(2)(a) and (b) are pertinent to this application. This section states that –

9.1.2 (2) On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and—
(a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and
(b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.

The Local Planning Authority therefore has a duty to consider a valid application. In making such consideration the Local Planning Authority is required. In considering such an application Section 70 of the Town and Country Planning Act 1990 (as amended) requires Local Planning Authority's to "have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations."

The outcome of this application, if approved, will provide new planning permission, meaning the two permissions for the same scheme. It is not necessary for the decision maker to consider the original permission other than the reason for the condition within Section 73(2)(a) and (b).

9.1.3 The main planning issues for consideration are discussed below.

9.2 Principle of Development

- 9.2.1 The principle of the development has already been established under approved planning application MO/2022/0085, this application is only concerning the removal of condition 3 in relation to an obscurely glazed window. The condition subject to this application reads as follows;

“Prior to the first occupation the first floor window in the southern elevation of the development hereby permitted shall be glazed in obscured glass and only openable above a height of 1.7 metres above the internal floor level. The window shall be permanently retained in that condition thereafter.

Reason: To protect the amenities and privacy of adjoining residential properties in accordance with Mole Valley Local Plan policy ENV22”.

- 9.2.2 Application MO/2022/0085 was heard at the 8th June 2022 Committee Meeting where members resolved to granted planning permission subject to three conditions one of which was condition 3 requiring obscure glazing to the first floor window in the southern elevation.
- 9.2.3 The condition was considered reasonable and necessary at the time the decision was made. The key planning consideration therefore is whether there has been any material change since then to warrant a different decision regarding that particular condition. This shall be assessed below.

9.3 The Use of Planning Conditions

- 9.3.1 Paragraph 55 of the NPPF states; Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations.
- 9.3.2 Paragraph 56 goes on to say planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
- 9.3.3 Paragraph 001 of the Planning Practice Guidance (PPG) states; *‘When used properly, conditions can enhance the quality of development and enable development to proceed where it would otherwise have been necessary to refuse planning permission, by mitigating the adverse effects. The objectives of planning are best served when the power to attach conditions to a planning permission is exercised in a way that is clearly seen to be fair, reasonable and practicable. It is important to ensure that conditions are tailored to tackle specific problems...’*
- 9.3.4 Both the NPPF and the PPG state that conditions should be reasonable and necessary; this will be assessed under impact to neighbouring properties below. However, in amenity terms condition 3 is considered to mitigate a specific identified issue in terms of overlooking.

9.4 Impact on Neighbouring Residential Amenity

- 9.4.1 Criteria 2 of policy ENV22 of the Local Plan requires that ‘development does not significantly harm the amenities of the occupiers of neighbouring properties by reason

of overlooking or its overshadowing or overpowering effect, noise, traffic or other adverse environmental impact’.

- 9.4.2 Condition 3 was imposed to protect neighbour amenity in terms of overlooking and resulting loss of amenity and privacy to the occupants of Thirty Trees. If this condition were to be removed it would result in a clear glazed window serving a habitable room in the new gable end of the extended dwelling and creating a direct view towards the neighbouring property..
- 9.4.3 The supporting statement submitted with the application states *‘the main house wall serving Larch Corner is some 10m away from the side boundary and will not move and the existing roof hip serving the southern aspect of Larch Corner already has the amenity of a low down clear glazed primary window set in the hip roof some 1m x 1m.’*
- 9.4.4 The southern ground floor flank wall is just under 9 metres from the side boundary and whilst this ground floor wall does not move the approved application would result in the first floor hip roof moving outwards towards this boundary to form a gable end with a vertical window that would have greater outlook on this aspect than at present. By comparison, the existing rooflight in the roofslope gives restricted outlook due to its angle and setting.
- 9.4.5 It should also be noted that requiring first floor windows in a side elevation to be obscurely glazed is a recognised practice and if the existing or proposed window were to be inserted under permitted development, the General Permitted Development Order (GDPO) would require by condition that the window needs to be obscurely glazed in order to meet with the GDPO.
- 9.4.6 The supporting statement goes on to state that the southern boundary fence *‘is higher than standard height and all of the mature hedging and trees are within the application site and comprises of yew trees and larch with low level hedging all being evergreen.’*
- 9.4.7 Whilst there is a level of vegetation present along the boundary this can not be relied upon in perpetuity as it falls within the application site and the neighbour who would be impacted by the window has no control over its long term retention.
- 9.4.8 The ground floor windows of Thirty Trees are now clear glazed further to application MO/2020/1010 which, alongside changes to the boundary fencing under Condition 5, removed condition 4 of MO/2019/1240 to obscure glaze the ground floor windows in the northern elevation of the extension. That was approved in July 2020.
- 9.4.9 The proposed window in the southern gable of the extension would be circa 9m from the boundary with Thirty Trees and about 12m flank to flank between these dwellings. It is noted that the ground floor windows at Thirty Trees are not habitable windows, however, it is considered that the proximity of the proposed clear glazed windows serving a habitable room at Larch Corner would result in an unacceptable relationship by reason of direct overlooking and loss of privacy.
- 9.4.10 For these reasons, officers are of the view that removing the condition requiring the flank window in the southern gable to be obscure glazed would result in significant harm to the privacy of Thirty Trees which would be contrary to Policy ENV22 of the Local Plan.

10 **Planning Balance**

- 10.1 Condition 3 imposed on application MO/2022/0085 is considered to be reasonable and necessary to protect the amenity of the neighbouring property and this is given significant weight in the planning balance. The circumstances remain the same as when the application was considered in the June 2022 Committee and it is recommended that the application be refused.

11 **Recommendation**

- 11.1 It is recommended that this application be refused.

Reason for Refusal

1. The removal of condition 3 of planning approval MO/2022/0085 would result in significant harm to the amenities of the neighbouring property Thirty Trees, by way of overlooking and loss of privacy. The amenity issue identified would be mitigated by condition 3 as NPPG guidance advises and should therefore remain on the granted permission. As such the proposed removal of condition would be contrary to Mole Valley Local Plan ENV22.