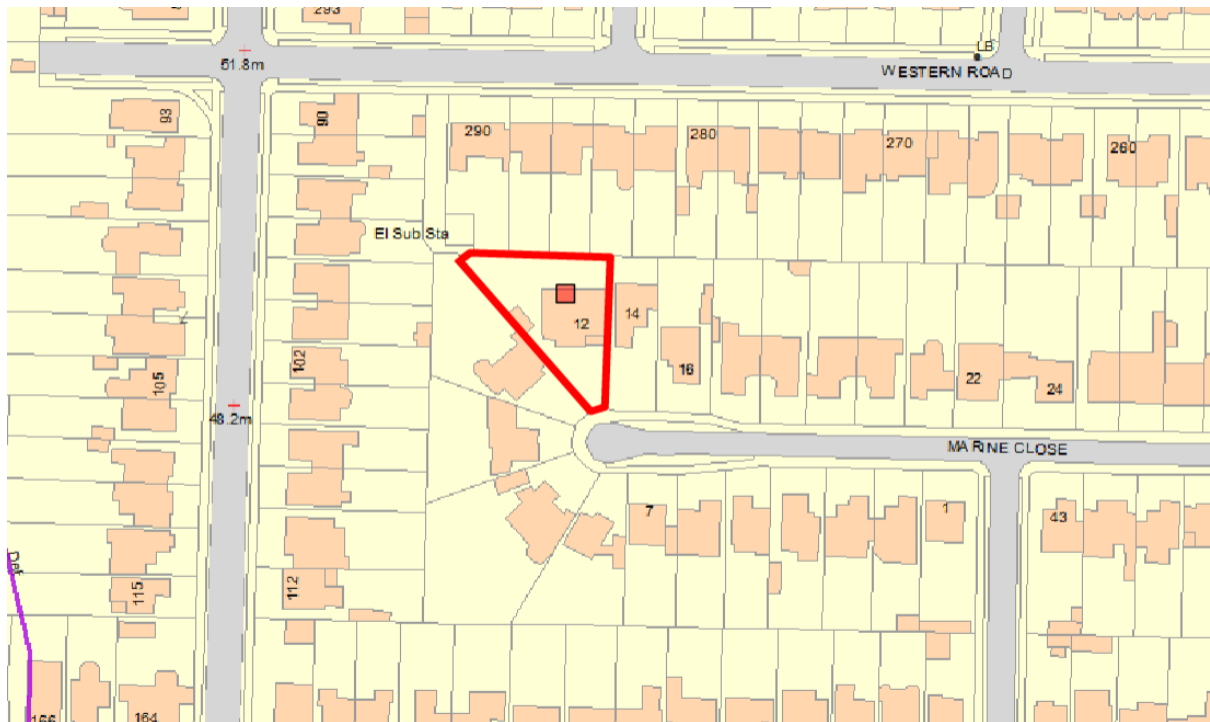


<b>Reference:</b>	16/01730/AMDT	
<b>Ward:</b>	West Leigh	
<b>Proposal:</b>	Application to remove conditions 03 and 04 relating to details of materials and parking construction of Planning Permission 11/01435/FUL allowed on appeal 17/05/2012	
<b>Address:</b>	12 Marine Close, Leigh-On-Sea, Essex, SS9 2RD	
<b>Applicant:</b>	Mr And Mrs N Collins	
<b>Agent:</b>	Knight Gratrix Architects	
<b>Consultation Expiry:</b>	09/11/16	
<b>Expiry Date:</b>	15/11/16	
<b>Case Officer:</b>	Ian Harrison	
<b>Plan Nos:</b>	626 030, 626 031, Location Plan and Site Plan.	
<b>Recommendation:</b>	<b>Delegate authority to GRANT PLANNING PERMISSION subject to the expiry of the public notification period.</b>	



## **1 The Proposal**

1.1 The application seeks permission for the removal of conditions that were attached to planning permission 11/01435/FUL. That permission approved the erection of a two storey dwelling and associated parking.

1.2 The development was undertaken in general accordance with the approved plans, but it is noted that conditions 3 and 4 of the permission were not discharged. Those conditions read as follow:

*3) No development shall take place until written details and samples of the materials to be used in the construction of the external surfaces of the development hereby permitted, including those of the parking and manoeuvring space to the front of the dwelling, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.*

*4) No development shall take place until written details of the means of constructing the parking and manoeuvring space to the front of the dwelling hereby permitted have been submitted to and approved in writing by the local planning authority. The details to be submitted shall include the provision of permeable or porous surfacing. Development shall be carried out in accordance with the approved details and the dwelling hereby permitted shall not be occupied until the parking spaces have been provided. The parking spaces shall be retained for that purpose thereafter.*

1.3 The submitted application form stated that the proposed development would be constructed from brickwork, timber and render, with a slate roof, aluminium windows and aluminium and timber doors. Timber fencing, brick walls and block paving would be formed within the site. 3D images were also provided which show the use of materials that are similar to that which have been used.

1.4 An application to discharge conditions 03 and 04 was received in 2015 and given reference number 15/00560/AD, but found to be invalid and was not determined. As the conditions were not discharged, the applicant seeks permission for the removal of those conditions. This would effectively grant permission for the dwelling as built, retrospectively approving the materials that have been used which includes the following:

- 'Paddlestone' cladding to the chimney and the 'frame' projections that surround the main door and the window at the front of the dwelling.
- Welsh slate roof tiles.
- Western Red Cedar timber cladding to the first floor front elevation.
- Silicone render to the elevations at ground floor.
- Aluminium windows

## **2 Site and Surroundings**

2.1 The appeal site is a triangular plot at the head of one of the cul-de-sac arms of Marine Close. The site was formerly occupied by a bungalow but now contains a two storey dwelling that is described above.

- 2.2 There is a bungalow, 14 Marine Close, to the east of the application site and a 2 storey house, 11 Marine Close, to the west. The street comprises a mixture of 2 storey houses and bungalows, both detached and semi-detached, although the majority of the properties clustered around the end of the cul-de-sac are detached houses. To its rear, the appeal site borders onto the back gardens of houses in Western Road and Tattersall Gardens.

#### **4 Planning Considerations**

- 4.1 The key considerations of this application are the principle of the development and the design and impact on the character of the area.

#### **5 Appraisal**

##### **Principle of Development**

##### **National Planning Policy Framework 2012, Core Strategy Policies KP2 and CP4, Development Management Policy DM1 and SPD1**

- 5.1 Section 73 of the Town and Country Planning Act 1990 states that *“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.”*

- 5.2 In relation to applications of this type, Planning Practice Guidance states that *“Where an application under section 73 is granted, the effect is the issue of a new planning permission, sitting alongside the original permission, which remains intact and unamended. A decision notice describing the new permission should be issued, setting out all of the conditions related to it. To assist with clarity decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged.*

- 5.3 Planning Practice Guidance addresses conditions by stating that to be imposed a condition must be:
- necessary
  - relevant to planning and;
  - to the development to be permitted;
  - enforceable;
  - precise and;
  - reasonable in all other respects.
- 5.4 As the development has already occurred and substantially completed, it is considered that conditions 01 (time limit for commencement) and 02 (plans by which development shall be undertaken) of the original permission are no longer necessary and should not therefore be re-imposed.
- 5.5 As set out above, by applying for the removal of conditions 03 and 04, the applicant is seeking planning permission for a development that has occurred without complying with those conditions. It is therefore necessary to consider whether the development that has occurred is acceptable in respect of those matters. As a planning permission has been granted, no other matters can reasonably be considered as the Local Planning Authority can only assess the development that has occurred in the context that the stated conditions have not been complied with.

#### **Design and Impact on the Character of the Area:**

#### **National Planning Policy Framework 2012, Core Strategy Policies KP2 and CP4, Development Management Policies DM1 and DM3 and SPD1**

- 5.4 Good design is a fundamental requirement of new development to achieve high quality living environments. Its importance is reflected in the NPPF, in policy DM1 Policy of the Council's Development Management DPD which states that development should "add to the overall quality of the area and respect the character of the site, its local context and surroundings in terms of its architectural approach, height, size, scale, form, massing, density, layout, proportions, materials, townscape and/or landscape setting, use, and detailed design features." The Design and Townscape Guide (SPD1) also states that "*the Borough Council is committed to good design and will seek to create attractive, high-quality living environments.*"
- 5.5 In the NPPF it is stated that "*good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people.*"

5.6 When the previous application was refused by the Local Planning Authority, one of the reasons for refusal was that *“the proposed development by reason of its form and detailed design would fail to integrate satisfactorily with immediate neighbouring buildings and the wider street scene resulting in an incongruous for of development detriment to the character and appearance of the street.”* At appeal, the case of the Local Planning Authority argued as follows:

*“the palette of materials proposed for the elevations include timber, render, glazing and brick, with a slate roof. Whilst there are a number of designs of properties within Marine Close the properties are united in character by the use of a consistent palette of materials and by their roof forms. The properties within the streetscene have a number of architectural features including casement windows whilst many of the houses have projecting bays or hipped front projections. There are no examples of slate, timber or this level of glazing within the streetscene. The sharp contrast in materials is considered to exacerbate the incongruousness of the appearance of the dwelling in the streetscene.”*

5.7 It is therefore the case that this matter was given full consideration by the Planning Inspectorate and in relation to this matter it was stated that *“Whilst white painted, rendered walls are predominant within the area, roofs are typically varying shades of grey or red and various feature materials, such as tiles and timbering, are evident. I am satisfied that, subject to the precise finish and shading, which can be controlled by imposition of a suitable condition, the combination of materials proposed and their use, in some cases, as features, would enliven the appearance of the development. In principle, therefore, they would not be incompatible with the local context and there would be no harm to the character and appearance of the area.”*

5.8 In this context, if an application had been received for the approval of details required by condition 03 of the planning permission, the Local Planning Authority would of had to apply significant weight to the findings of the Planning Inspector and approve the use of materials in accordance with that appeal decision. It is clear from the decision notice that the remit of the Local Planning Authority would have only reasonably been able in relation to the “precise finish and shading” of the materials that were shown on the approved plans. The finish and shading of the materials are considered to be acceptable and therefore, if this application had been submitted as an approval of details application, it is almost certainly the case that the materials used would have been approved.

5.9 Condition 04 required the hardstanding at the frontage of the site to be formed to provide parking prior to the occupation of the dwelling. The condition required details to be submitted in relation to the materials to be used, setting out that the materials must be permeable or porous. The applicant’s submissions state that the paving used is permeable and it is considered that the hardstanding is visually acceptable. It is therefore considered that if this application had been submitted as an approval of details application, it is almost certainly the case that the materials used would have been approved.

- 5.10 As the development is considered to have been undertaken in an acceptable manner and completed, it is considered that it is not necessary or reasonable to retain defunct conditions and as such it is considered that conditions 03 and 04 should be removed.

### **Community Infrastructure Levy**

- 5.11 Applications for the removal of conditions are not CIL liable

## **6 Conclusion**

- 6.1 In this instance it is considered that significant weight has to be afforded to the development that was previously granted planning permission at this site. Although conditions were not discharged at the appropriate time, it is considered that the development has been undertaken using appropriate materials and therefore no objection should be raised to the granting of planning permission for the development that has occurred without including the conditions that were previously used.

## **7 Planning Policy Summary**

- 7.1 National Planning Policy Framework

Development Management DPD Policies DM1 (Design Quality) and DM3 (Efficient and Effective Use of Land)

Core Strategy DPD (adopted December 2007) Policies KP2 (Spatial Strategy) and CP4 (Development Principles)

Community Infrastructure Levy Charging Schedule.

Design and Townscape Guide SPD (adopted December 2009)

## **8 Representation Summary**

### **Design and Regeneration Team**

- 8.1 No comments received.

### **Leigh-on-Sea Town Council**

- 8.2 An objection has been received on the grounds that The proposal would be out of keeping with the street scene, as well as out of character with the surrounding properties.

## **Public Consultation**

- 8.3 A site notice was posted and letters were sent to 11 neighbouring properties. At the time of writing no objections have been received. Interested parties have until 09/11/16 to comment on the application. The recommendation is subject to no new matters being raised prior to its expiry.

The application has been called-in to the Council's Development Control Committee by Councillor Evans.

## **8 Relevant Planning History**

- 8.1 Planning permission was granted at appeal for the erection of a replacement dwelling at the site under the terms of application 11/01435/FUL subject to the conditions that are discussed above.
- 8.2 An application to discharge conditions 03 and 04 was received in 2015 and given reference number 15/00560/AD, but found to be invalid and was not determined.
- 8.3 Earlier applications 10/02274/FUL and 11/00729/FUL also proposed a replacement dwelling at the site. Those applications were refused.

## **9 Recommendation**

- 9.1 **It is recommended that Delegated Authority is given to the Group Manager for Planning and Building Control or the Head of Planning and Transport to GRANT PLANNING PERMISSION provided that the public notification exercise raises no additional issues that would justify a different conclusion being reached and subject to the following condition:**

- 01 **The external parking spaces at the front of the application site shown on plan 031 shall be retained for the purposes of parking cars in perpetuity.**

**Reason: To ensure that adequate provision of car parking at the site in accordance with the National Planning Policy Framework and DPD2 (Development Management) Policy DM1.**

**The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework. The detailed analysis is set out in a report on the application prepared by officers.**

## **Informative**

**As this application has been made pursuant to Section 73 of the Town and Country Planning Act 1990, Community Infrastructure Levy (CIL) Regulation 128A applies. You are advised that in this instance there will be no CIL charge on this permission as there is no net increase in floorspace between the original permission and the S73 permission.**