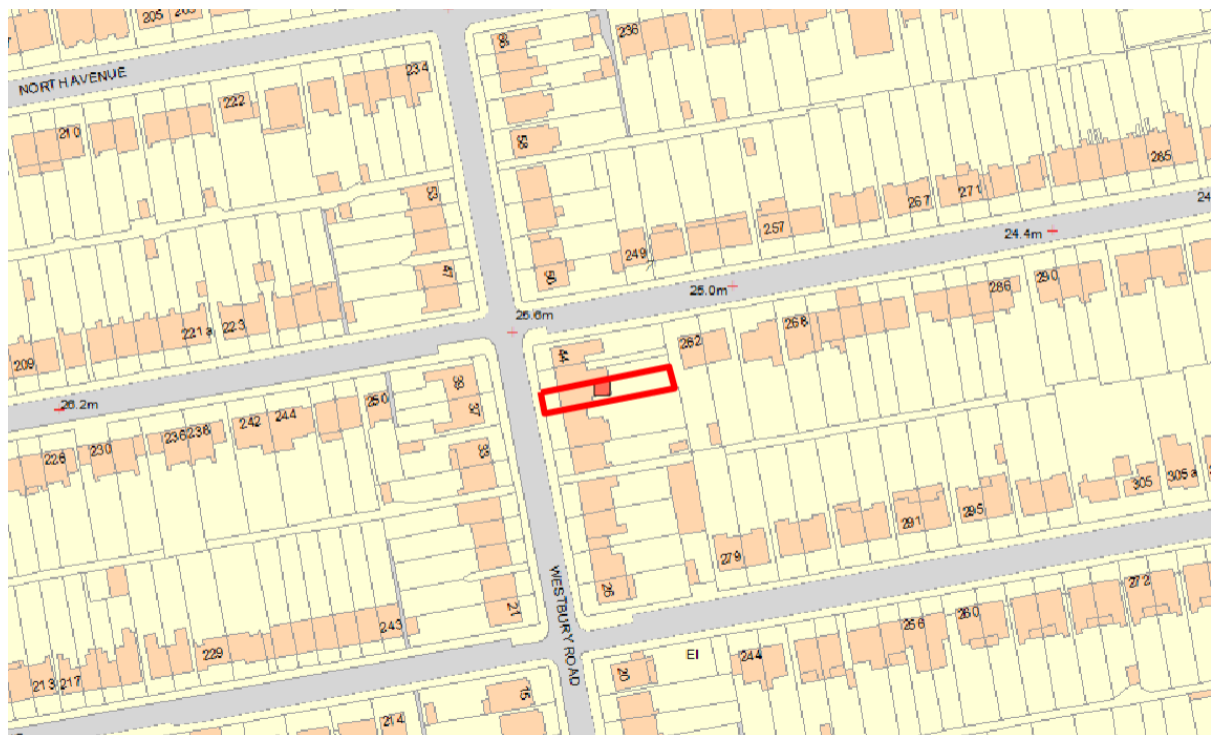


Reference:	17/00171/AMDT	
Ward:	St Lukes	
Proposal:	Application to vary condition 02 (Approved Plans) (Minor Material Amendment to planning permission 14/00198/FUL dated 21 May 2014)	
Address:	40 Westbury Road, Southend-On-Sea, Essex, SS2 4DP	
Applicant:	Dr Saqib Mahmud	
Agent:	Mr Graham Miles	
Consultation Expiry:	23/02/17	
Expiry Date:	29/03/17	
Case Officer:	Ian Harrison	
Plan Nos:	1472/OS, 1472/01-A, 1472/02, 1472/03, 1472/04-A and 1472/05	
Recommendation:	GRANT Planning Permission	



1 The Proposal

- 1.1 The application seeks permission for an amendment to a development that was granted planning permission under the terms of application 14/00198/FUL.
- 1.2 The site contains a two storey terraced building, with a two storey outrigger projection at the rear. To the rear of that is a small single storey projection. At the side of the outrigger is an external flight of stairs that lead to the first floor of the property. The building contains two flats and the former rear garden has been subdivided.
- 1.3 Planning permission was granted for a conservatory at the rear of the outrigger that measured 2.4 metres wide and 2.8 metres deep thereby remaining at the north side of the single storey projection that is described above. The conservatory was approved with an eaves height of 2.1 metres and a maximum height of 3.2 metres.
- 1.4 The conservatory that has been built measures 3.3 metres deep and 2.7 metres wide, thereby wrapping around the abovementioned single storey rear projection. The eaves height remains 2.1 metres as approved and the maximum height is 2.5 metres. The conservatory has been built with a rendered wall to the north elevation to a height of 1.9 metres with glazing above. As a temporary measure, part of a fence panel has been affixed to the south elevation to obscure views into the garden area to the south, this would be replaced with a rendered wall to match the north elevation if permission is hereby granted.
- 1.5 This application follows the refusal of application 16/01659/AMDT which was refused for the following reason:

“The conservatory that has been erected, by virtue of its design, the materials used in its construction, its size and its relationship to the existing building, is harmful to the character and appearance of the existing building and the surrounding area more widely. The proposal is therefore unacceptable and contrary to the National Planning Policy Framework, policies KP2 and CP4 of the Southend Core Strategy (2007), policies DM1 and DM3 of the Southend Development Management Document (2015) and the advice contained within the Southend Design and Townscape Guide (2009).”
- 1.6 The applicant has now provided additional details that demonstrate the manner in which land is owned at the site, which shows that the section of land to the south of the conservatory is ‘common land’ that is shared by the ground and first floor flats. It is therefore considered that the door that is proposed in the south elevation can legitimately open outwards onto land that the occupants have ability to use. However, it should be noted that land ownership, rights of way and rights of access are not a matter for assessment by the Local Planning Authority. The consideration must focus on material planning considerations, not matters that relate to land ownership.

2 Site and Surroundings

- 2.1 The site is located on Westbury Road. The site contains a two storey terraced building which is described above.
- 2.2 The site is not the subject of any site specific planning policies.

3 Planning Considerations

- 3.1 The key considerations for this application are the principle of the development, the design and impact on the character of the area and the impact on residential amenity.

4 Appraisal

Principle of Development

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

- 4.1 Planning Practice Guidance states that one of the uses of a section 73 application is to seek a minor material amendment, where there is a relevant condition that can be varied. It goes on to state that there is no statutory definition of a 'minor material amendment' but it is likely to include any amendment where its scale and/or nature results in a development which is not substantially different from the one which has been approved.
- 4.2 This proposal is considered in the context of the National Planning Policy Framework 2012 and Core Strategy Policies KP2 and CP4. Also of relevance is Development Management DPD Policy DM1 which relates to design quality. These policies and guidance support extensions to properties in most cases but require that such alterations and extensions respect the existing character and appearance of the building. Subject to detailed considerations, the proposed extension is considered to be acceptable in principle. In this regard it is noted that a conservatory has been granted previously at this site.

Design and Impact on the Character of the Area:

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

- 4.3 In the Council's Development Management DPD, policy DM1 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."
- 4.4 Due to the position of the extension at the rear of the building the visual impact of the conservatory is masked from the public domain of Westbury Road and due to the boundary treatments between the extension and the highway of Central Avenue, the conservatory also has very little impact on the character or appearance of the area when viewed from Central Avenue. Although deeper and wider than previously approved, the conservatory is lower in height. The proposed conservatory would be subordinate to the scale and form of the existing dwelling and uses materials that are visually acceptable. The attachment of a fence panel to the side of the conservatory is a temporary measure and would be replaced with a rendered wall to the south elevation which would match the wall that has been formed at the north elevation. This is considered to be visually acceptable. The limited visibility of the proposed conservatory means that the development has a minimal impact on the character and appearance of the site and the surrounding area.

- 4.5 It is considered that the extension would not represent the overdevelopment of the plot and would not cause harm to the character and appearance of the application site or the surrounding area.

Impact on Residential Amenity:

**NPPF; DPD 1 (Core Strategy) Policies KP2 and CP4; Development Management
DPD Policies DM1 and DM3 and SPD 1 (Design & Townscape Guide (2009))**

- 4.6 Paragraph 343 of SPD1 (under the heading of Alterations and Additions to Existing Residential Buildings) states, amongst other criteria, that extensions must respect the amenity of neighbouring buildings and ensure not to adversely affect light, outlook or privacy of the habitable rooms in adjacent properties. Policy DM1 of the Development Management DPD also states that development should “Protect the amenity of the site, immediate neighbours, and surrounding area, having regard to privacy, overlooking, outlook, noise and disturbance, visual enclosure, pollution, and daylight and sunlight.”
- 4.7 The conservatory that has been built is of equal eaves height as the conservatory that was approved and the maximum height of the conservatory is 0.7 metres lower. Although the extension is 0.5 metres deeper, it is considered that the low height of the conservatory ensures that the impact on the attached neighbouring property of 42 Westbury Road is not harmful to an extent that justifies the refusal of the application. Noting that a solid brick wall could be built at the boundary of the site to a height of 2 metres without needing permission, it is considered that the 1.9 metres tall side wall does not have an impact on residential amenity that is materially worse than a development that could be permitted development.
- 4.8 The garden of the first floor flat is located to the south west of the conservatory, but all windows within that property are above the height of the conservatory. The development therefore has no impact on the light, privacy or outlook of that flat. Moreover, it is considered that the structure is not of a scale or form that would materially detract from the usability of the amenity space that serves the flats at the site.
- 4.9 The applicant has provided additional details that demonstrate the manner in which land is owned at the site, which shows that the section of land to the south of the conservatory is ‘common land’ that is shared by the ground and first floor flats. It is therefore considered that the door that is proposed in the south elevation can legitimately open outwards onto land that the occupants have ability to use. However, it should be noted that land ownership, rights of way and rights of access are not a matter for assessment by the Local Planning Authority. The consideration must focus on the visual impact and the direct impact on the amenities of neighbours, not matters that relate to land ownership.
- 4.10 Due to the gap between the conservatory and all other neighbouring properties and the scale of the development that has occurred, it is considered that no other properties have been affected by the development to an extent that would justify the refusal of the application.

Community Infrastructure Levy

- 4.11 As the development creates less than 100 square metres of new floorspace at the application site, the development is not CIL liable.

Other Matters

- 4.12 It has been brought to the attention of Officers that there may have been some form of dispute between parties over the ownership of land and the encroachment of the conservatory onto land where it was not previously approved to be built. This is a civil matter between other parties that the Local Planning Authority has no scope or remit to be involved with or intervene in relation to. The simple fact that the conservatory is wider than previously approved should not be a reason to refuse this retrospective amendment application unless the implications of the increase are considered to be unacceptable on planning grounds.

5 Conclusion

- 5.1 In this instance it is considered that the development that has occurred does not cause harm to the amenities of neighbouring residents to an extent that would justify the refusal of the application and the proposal would not represent the overdevelopment of the existing dwelling or the plot on which it stands. The proposal is therefore considered to comply with the content of the development plan.

6 Planning Policy Summary

- 6.1 National Planning Policy Framework

National Planning Practice Guidance.

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

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

Design and Townscape Guide SPD (adopted December 2009)

CIL Charging Schedule

7 Representation Summary

Public Notification

- 7.1 8 neighbouring properties were notified of the application. No letters of objection have been received. At the time of writing, the public consultation period has not expired. A summary of any comments received will be provided within a Supplementary Report.
- 7.2 This previous application was called in to the Council's Development Control Committee by Councillors Ayling and Van Looy.

8 Relevant Planning History

- 8.1 Application 14/00198/FUL approved a conservatory at the rear of the dwelling. An amendment to that application was refused under the terms of application 16/01659/AMDT.
- 8.2 Planning permission was granted under the terms of application 16/01299/FUL for the erection of an outbuilding at the rear of the site.

9 Recommendation

9.1 GRANT PLANNING PERMISSION subject to the following conditions:

01. The development hereby permitted shall be carried out in accordance with the following approved plans: 1472/OS, 1472/01-A, 1472/02, 1472/03, 1472/04-A and 1472/05

Reason: To ensure that the development is carried out in accordance with the provisions of the Development Plan.

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

1. You are advised that as the proposed extension(s) to your property equates to less than 100sqm of new floorspace the development benefits from a Minor Development Exemption under the Community Infrastructure Levy Regulations 2010 (as amended) and as such no charge is payable. See www.southend.gov.uk/cil for further details about CIL.

2. Please note that the Local Planning Authority would wish to see the alteration of the conservatory to match the plans hereby approved within six months of the permission hereby granted. If the conservatory is not adapted within this timescale, the conservatory may be the subject of enforcement action.