

<b>Reference:</b>	20/02066/AMDT	
<b>Ward:</b>	Chalkwell	
<b>Proposal:</b>	Application to vary condition number 13 to remove the requirement for the front bay window to be glazed with obscure glass (Minor Material Amendment of planning permission 19/00390/FUL dated 03.05.2019) (Retrospective)	
<b>Address:</b>	71 Chalkwell Esplanade Westcliff-On-Sea Essex SS0 8JH	
<b>Applicant:</b>	Mr & Mrs G Allison	
<b>Agent:</b>	Mr Tim Knight	
<b>Consultation Expiry:</b>	04.01.2021	
<b>Expiry Date:</b>	05.02.2021	
<b>Case Officer:</b>	Oliver Hart	
<b>Plan Nos:</b>	103b; 104a, 114	
<b>Recommendation:</b>	<b>GRANT PLANNING PERMISSION</b>	



## 1 Site and Surroundings

- 1.1 Following implementation of planning permission Ref. 19/00390/FUL, the application site is now occupied by a substantially completed two storey detached dwellinghouse of contemporary design, with dual gabled bay projections and balconies (yet to be installed) to the front and rear elevations. The front curtilage has been given over to hardstanding and enables off street parking for more than 2 vehicles.
- 1.2 The surrounding area is residential in character, comprising mainly of detached dwellings of a similar scale but differing in style and design and some flatted blocks located to the western end of the road.
- 1.3 A small section of the frontage of the site is located within flood zones 2 and 3. The existing and proposed dwelling is all located within flood zone 1. In terms of site specific planning policies, the application site is located within Seafront Character Zone 4 (Chalkwell Esplanade to San Remo), as designated in policy DM6 of the Development Management Document (2015).

## 2 Proposal

- 2.1 Permission is sought to vary condition 13 of planning permission 19/00390/FUL which was granted on 03.05.2019 to *'Demolish existing building and erect detached three storey dwellinghouse with amenity space to rear and layout parking to front'*

- 2.2 Condition 13 states:

*The proposed first floor flank windows of the dwelling shall only be glazed in obscure glass (the glass to be obscure to at least Level 4 on the Pilkington Levels of Privacy, or such equivalent as may be agreed in writing with the local planning authority) and fixed shut, except for any top hung fan light which shall be a minimum of 1.7 metres above internal floor level unless otherwise agreed in writing by the local planning authority. In the case of multiple or double glazed units at least one layer of glass in the relevant units shall be glazed in obscure glass to at least Level 4. The windows shall be retained as such in perpetuity thereafter.*

*Reason: To protect the privacy and environment of people in neighbouring residential properties, in accordance with the National Planning Policy Framework (NPPF), Core Strategy (2007) policy CP4, Development Management Document (2015) policy DM1 and the Design and Townscape Guide (2009).*

- 2.3 The minor material amendment being sought relates to the removal of the requirement for a first floor side window within the (west) front bay window to be glazed with obscure glass. As the development has already been carried, this application relates to retention of this feature and as such, is retrospective in nature.
- 2.4 The other works associated with the initially approved application Ref. 19/00390/FUL remain unchanged and are not the subject of further consideration within this report.
- 2.5 The application has been called in by Cllr Folkard.

### **3 Relevant Planning History**

- 3.1 20/02110/AD - Application for approval of details pursuant to condition 05 (details of renewable energy) and condition 10 (details of hard and soft landscaping) of planning permission 19/00390/FUL dated 03.05.2019 – Pending consideration
- 3.2 20/00108/AMDT - Application to vary condition 09 (accessible and adaptable dwellings) to change it to a requirement to comply with building regulation Part M (1) (Minor Material amendment of planning permission 19/00390/FUL dated 03/05/2019) – refused
- 3.3 19/01013/AD - Approval of details pursuant to condition 03 (details of materials) of Planning Permission 19/00390/FUL dated 03.05.2019 - granted
- 3.4 19/00390/FUL - Demolish existing building and erect detached three storey dwellinghouse with amenity space to rear and layout parking to front – granted
- 3.5 18/01668/FULH - Erect first floor front, single storey side and two storey rear extensions, install external staircase at rear, replace and increase roof height to form habitable accommodation, install balconies to front and rear and alter elevations – granted

### **4 Representation Summary**

#### **Public**

- 4.1 9no. neighbouring properties were notified and three letters of objection from two addresses have been received. Summary of objections;
  - Harm to residential amenity.
  - Cannot understand why council's instructions ignored.
  - Concerns an approval would set a precedent along Chalkwell Esplanade.
  - The window in question does not belong within a bay feature.
  - The views possible are not the same as those from the street on account of the elevated position of the window.
  - The original flank windows were smaller and served bedrooms as opposed to kitchen/dining accommodation such that the use and impact are different.
  - The view from the proposed balcony would not be the same view as from the window in question given their different positions.
  - The view from the second floor bedroom window faces predominantly south/southwest such that the impact is reduced.
  - Examples of similar arrangements along Chalkwell Esplanade cannot be compared to No.71 as they are smaller and serve predominantly bedroom accommodation. As such, the use will be different and the impact lessened.
  - The applicant's state they removed a second window so as not to encroach on No.73 however this second window would have been subject of the condition regardless.
  - Flank windows of neighbouring properties when first built were instructed to obscure all flank windows to protect the privacy and environment of people in neighbouring properties.

**[Officer Comment]** All relevant planning considerations are assessed within the appraisal section of the report. These concerns are noted and they have been taken into account in the assessment of the application but have not been found to represent reasons for refusal in the circumstances of this case.

## **5 Planning Policy Summary**

- 5.1 The National Planning Policy Framework (2019)
- 5.2 Core Strategy (2007) Policies KP1 (Spatial Strategy), KP2 (Development Principles), CP3 (Transport and Accessibility), CP4 (Environment & Urban Renaissance) and CP8 (Dwelling Provision).
- 5.3 Development Management Document (2015) Policy DM1 (Design Quality), DM2 (Low Carbon Development and Efficient Use of Resources), DM3 (Efficient and Effective Use of Land), DM6 (The Seafront), DM7 (Dwelling Mix, Size and Type), DM8 (Residential Standards), and DM15 (Sustainable Transport Management).
- 5.4 Design & Townscape Guide (2009)
- 5.5 CIL Charging Schedule 2015

## **6 Planning Considerations**

- 6.1 The main issues for consideration are the principle of the development, the design and impact on character and appearance, impact on neighbour amenity, standard of accommodation for future occupiers, highways and parking implications, sustainable development and CIL contributions.

## **7 Appraisal**

### **Principle of Development**

- 7.1 The principle of the development was accepted under the previously approved planning application. There are no material changes in relevant planning policies or variations to the development or its circumstances which alter this view. The determining material planning considerations are discussed below.
- 7.2 The proposed changes are considered to fall within the remit of a minor material amendment to the consented scheme in principle. The development description is unchanged and the development site is no larger than that approved under the substantive permission

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

- 7.3 Good design is a fundamental requirement of new development to achieve high quality living environments. Its importance is reflected in the NPPF (National Planning Policy Framework), in Policies KP2 and CP4 of the Core Strategy and also in Policy DM1 of the Development Management Document. The Design and Townscape Guide also states that; *“the Borough Council is committed to good design and will seek to create attractive, high-quality living environments.”*

- 7.4 Paragraph 124 of the NPPF (2018) states that; *“good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.”*
- 7.5 The importance of good design is further reflected in policies KP2 and CP4 of the Core Strategy (2007). Policy KP2 states that new development should *“respect the character and scale of the existing neighbourhood where appropriate and secure improvements to the urban environment through quality design”*. Policy CP4 of the Core Strategy furthers this understanding, requiring that development proposals *“maintain and enhance the amenities, appeal and character of residential areas, securing good relationships with existing development and respecting the scale and nature of that development”*.
- 7.6 The application relates solely to the retention of a first floor, clear rather than obscure glazed side window in the east flank elevation. The window in question belongs to a more extensive glazing array to the front elevation of the application dwelling and serves a kitchen/dining area of No.71.
- 7.7 The proposal would introduce no new impacts with respect to the scale, layout, position and proximity of the development works to boundaries. Consistent with the basis of the previous decision, the proposed window arrangements would suitably maintain the character and appearance of the host dwelling and the locality more widely and in these regards, the development is considered to be acceptable and policy compliant.

#### **Impact on Residential Amenity**

- 7.8 Paragraph 343 of the Design and Townscape Guide under the heading of ‘Alterations and Additions to Existing Residential Buildings’ states 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.”*
- 7.9 Policy DM1 of the Development Management Document requires all development to be appropriate in its setting by respecting neighbouring development and existing residential amenities *“having regard to privacy, overlooking, outlook, noise and disturbance, sense of enclosure/overbearing relationship, pollution, daylight and sunlight.”*
- 7.10 The application seeks to retain a first floor, clear glazed side window in the east flank elevation which presently is in breach of planning condition 13.
- 7.11 The purpose of condition 13 was to *“protect the privacy and environment of people in neighbouring residential properties”* and consequently, this proposal seeks to revisit, in specific detail, the impact of the window in this regard. The position of the window is such that No.73 Chalkwell Esplanade (to the west) is where the potential for most amenity impact is identified.
- 7.12 The historic relationship of the properties is such that No.71 is sited significantly forward of No.73. Having regard to the forward position of the window in question, views are afforded to the front garden area and front living accommodation of No.73, most notably a first floor balcony and open porch area.

Limited views are also possible to a ground floor, clear glazed flank door serving the neighbours lounge to the front of the property. This is positioned in excess of 12m away from the window.

- 7.13 Noting the nature of the condition imposed in the first instance, the basis of the proposal is considered to turn on a balanced assessment of whether the areas impacted by the window in question fall within what would reasonably be interpreted as areas that are deliberately and distinctly 'private' spaces by design, i.e areas that in their day to day use would be expected to be afforded a reasonable degree of privacy based on the characteristics typical of the area in which it is located. On this basis, it is considered that the areas most affected by the window in question; the front garden area and front living accommodation of No.73, most notably a first floor balcony and open porch area do not reasonably meet this definition, open to view as they are from the public highway and which in themselves contribute to the degree of inter-looking which exists and is a characteristic of local amenity along Chalkwell Esplanade.
- 7.14 Whilst it is possible to gain views of the side elevation and part of the side accessway of No.73 leading to the neighbouring rear garden from the window subject of this application, it is not considered a natural position to do so, with regard also to be had to the reasonable day to day use of the kitchen/dining area it serves (i.e the preparation & consumption of food) and the very intention of the re-development to capitalise on views out to the Estuary (south). In addition, regard is had to the former layout of No.71 prior to its redevelopment, where 2no. first floor flank windows were present facing No.73. These were clear glazed and served as secondary outlooks to bedroom accommodation such that whilst the use is different, a degree of overlooking of the front/flank elevation of No.73 is a historic feature and in this regard, holds some limited weight in the assessment of this development's impact on the amenity of occupiers of No.73.
- 7.15 On balance therefore, it is considered that any impact resulting from the clear glazed window in question would not be so materially harmful as to justify refusal on this basis. The proposal therefore maintains neighbour amenity to an acceptable degree and is therefore considered to be, on balance acceptable and policy compliant in the above regards.

### **Standard of Accommodation for Future Occupiers**

- 7.16 Living conditions for future occupiers including space standards, outlook, and light, provision of refuse storage and amenity space were assessed in detail and found acceptable and policy compliant under application reference 19/00390/FUL. No changes are proposed to this aspect of the proposal.
- 7.17 Development Management Policy DM8 requires all new homes to be accessible and meet the standards set out in Building Regulations M4(2) Accessible and Adaptable Dwellings. Subject to a condition requiring full compliance with M4(2), the proposal is acceptable and policy compliant in this regard.

## **Traffic and Transport Issues**

- 7.18 Traffic and transport issues were assessed in detail and found acceptable and policy compliant under application reference 19/00390/FUL. No changes are proposed to this aspect of the proposal.

## **Community Infrastructure Levy**

- 7.19 This application is CIL liable. However, the application has been made pursuant to Section 73 of the Town and Country Planning Act 1990 and as such CIL Regulation 9(6) applies. As the amount of CIL payable would not change from the previous permission ref. 19/00390/FUL, the chargeable development is the development for which permission was granted by the previous permission as if that development was commenced. Therefore, CIL Liability Notice ref. 19/00390/FUL/0001 still applies to the permission hereby granted.

## **Other Matters**

### **Permitted Development Rights**

- 7.20 Given the layout, involving two storey projection beyond the rear building line of neighbouring dwellings, it was considered that any alterations or extensions of the dwelling allowed by the General Permitted Development Order or any order revoking and re-enacting that Order with or without, modification, could result in unacceptable living conditions for the future occupiers (i.e. should the rear amenity space be significantly reduced by a rear extension) or impact on the neighbouring properties (i.e. dominance and an overbearing impact as a result of rear extensions). For this reason permitted development rights for the dwellinghouse are removed by condition.

## **8 Conclusion**

- 8.1 Having taking all material planning considerations into account, it is found that the proposed development would, on balance, be acceptable and compliant with the objectives of the relevant development plan policies and guidance. The proposal would have an acceptable impact on the character and appearance of the application site and the locality, and on balance would not result in materially harmful overlooking and invasion of privacy for neighbouring occupiers. This application is recommended for approval.

## **9 Recommendation**

**GRANT PLANNING PERMISSION subject to the following conditions;**

- 1 The development hereby permitted shall be carried out in accordance with the following approved plans: 103b; 104a, 114**

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

- 2** The development hereby approved shall be constructed in accordance with the material details previously submitted to and approved in writing by the local planning authority under the approval of details application reference 19/01013/AD, or any other material details which have previously been submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details before the dwelling is occupied.

**Reason:** To safeguard character and appearance of surrounding area in accordance with Policies KP2 and CP4 of the Core Strategy and Policies DM1 and DM3 of the Development Management Document (2015) and the advice contained within the Design and Townscape Guide (2009).

- 3** Other than the areas labelled as balcony and terrace on the approved plans, the roof of the first floor flat roof of the dwelling shall not be used as a balcony, roof garden or similar amenity area or for any other purpose unless otherwise agreed in writing by the local planning authority. The roof can however be used for the purposes of maintenance or to escape in an emergency.

**Reason:** To protect the privacy and environment of people in neighbouring residential properties, in accordance with the National Planning Policy Framework (2018), Core Strategy (2007) Policy CP4, Development Management Document (2015) Policy DM1 and The Design and Townscape Guide (2009).

- 4** A scheme detailing how at least 10% of the total energy needs of the development will be supplied using on site renewable sources must be submitted to and agreed in writing and implemented in full prior to the first occupation of the development. This provision shall be made for the lifetime of the development.

**Reason:** In the interests of providing sustainable development in accordance with Policy KP2 of the Core Strategy and Development Management Document policy DM2.

- 5** Water efficient design measures as set out in Policy DM2 (iv) of the Development Management Document to limit internal water consumption to 105 litres per person per day (lpd) (110 lpd when including external water consumption), including measures of water efficient fittings, appliances and water recycling systems shall be installed prior to the first occupation of the development hereby approved and retained in perpetuity.

**Reason:** To minimise the environmental impact of the development through efficient use of water in accordance with the National Planning Policy Framework, Core Strategy (2007) policy KP2, Development Management Document (2015) policy DM2 and the guidance within the Design and Townscape Guide (2009).

- 6 No part of the development shall be occupied until space has been laid out within the site for 2 cars to be parked. The parking spaces shall be made available for use prior to first occupation of the dwelling hereby approved and shall be permanently retained thereafter solely for the parking of occupiers of the development hereby approved and their visitors.**

**Reason: To ensure that adequate car parking is provided and retained to serve the development in accordance with Policies CP3 of the Core Strategy (2007) and Policy DM15 of the Development Management Document (2015).**

- 7 Prior to first occupation of the development hereby granted, secure, covered refuse and recycling storage areas to serve the development shall be provided and made available for use in accordance with details that have previously been submitted to and agreed in writing by the Local Planning Authority prior to the occupation of the development and these facilities shall be permanently retained as such thereafter.**

**Reason: To ensure that adequate waste storage is provided and retained to serve the development in accordance with Policies CP3 of the Core Strategy (2007) and Policies DM1 and DM15 of the Development Management Document (2015).**

- 8 The development hereby approved shall be carried out in a manner to ensure the houses comply with building regulation M4(2) 'accessible and adaptable dwellings' prior to first occupation.**

**Reason: To ensure the residential units hereby approved provides high quality and flexible internal layouts to meet the changing needs of residents in accordance with National Planning Policy Framework, Core Strategy (2007) Policy KP2, Development Management Document (2015) Policy DM2 and the Design and Townscape Guide (2009).**

- 9 The development shall not be first occupied unless and until full details of both hard and soft landscape works to be carried out at the site have been submitted to and approved in writing by the local planning authority. The approved hard landscaping works shall be carried out prior to first occupation of the development and the soft landscaping works within the first planting season following first occupation of the development, unless otherwise agreed in writing by the local planning authority. The details submitted shall include, but not limited to:-**
- i proposed finished site levels or contours;**
  - ii. means of enclosure, of the site including any gates or boundary fencing;**
  - iii. hard surfacing materials;**
  - iv. details of the number, size and location of the trees, shrubs and plants to be retained and planted together with a planting specification**
  - v. details of measures to enhance biodiversity within the site;**

**Any trees or shrubs dying, removed, being severely damaged or becoming seriously diseased within five years of planting shall be replaced with trees or shrubs of such size and species as may be agreed with the Local Planning Authority.**

**Reason:** In the interests of visual amenity and the amenities of occupiers and to ensure a satisfactory standard of landscaping and tree protections measures are implemented pursuant to Policy DM1 of the Development Management Document (2015) and Policy CP4 of the Core Strategy (2007).

- 10** Demolition or construction works associated with this permission shall not take place outside 08:00 hours to 18:00 hours Mondays to Fridays and 08:00 hours to 13:00 hours on Saturdays and at no time Sundays or Bank Holidays.

**Reason:** In order to protect the amenities of occupiers of the development surrounding occupiers and to protect the character the area in accordance with policies KP2 and CP4 of the Core Strategy (2007) and Policies DM1 and DM3 of the Development Management Document (2015).

- 11** Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (as amended), or any order revoking and re-enacting that Order with or without modification, no development shall be carried out at the development hereby approved falling within Schedule 2, Part 1, Classes A, B, E and F to those Orders.

**Reason:** To enable the Local Planning Authority to regulate and control development in the interest of the amenity of neighbouring properties and to safeguard the character of the area in accordance the National Planning Policy Framework, Core Strategy (2007) Policies KP2 and CP4, Development Management Document (2015) Policy DM1 and the Design and Townscape Guide (2009).

- 12** Other than the first floor west facing flank window within the front bay, the proposed first floor flank windows of the dwelling hereby approved shall only be glazed in obscure glass (the glass to be obscure to at least Level 4 on the Pilkington Levels of Privacy, or such equivalent as may be agreed in writing with the local planning authority) and fixed shut, except for any top hung fan light which shall be a minimum of 1.7 metres above internal floor level. In the case of multiple or double glazed units at least one layer of glass in the relevant units shall be glazed in obscure glass to at least Level 4. The windows shall be retained as such in perpetuity thereafter.

**Reason:** To protect the privacy and environment of people in neighbouring residential properties, in accordance with the National Planning Policy Framework (NPPF), Core Strategy (2007) policy CP4, Development Management Document (2015) policy DM1 and the Design and Townscape Guide (2009).

#### **Informative**

- 1** Community Infrastructure Levy (CIL): This application has been made pursuant to Section 73 of the Town and Country Planning Act 1990 and as such CIL Regulation 9(6) applies. You are advised that as the amount of CIL payable would not change from the previous permission ref. 19/00390/FUL, the chargeable development is the development for which permission was granted by the previous permission as if that development was commenced.

**Therefore, CIL Liability Notice ref. 19/00390/FUL/0001 still applies to the permission hereby granted.**

- 2 You should be aware that in cases where damage occurs during construction works to the highway in implementing this permission that Council may seek to recover the cost of repairing public highways and footpaths from any party responsible for damaging them. This includes damage carried out when implementing a planning permission or other works to buildings or land. Please take care when carrying out works on or near the public highways and footpaths in the borough.**