

**Application No:** 20/1295/FH

**Location of Site:** 5 Castle Avenue, Hythe. CT21 5HD

**Development:** Section 73 application for removal/variation of Condition 2 (submitted plans) of Y19/0766/FH (Erection of a two storey side extension, single storey front and side extension and single storey rear extension along with the rendering of the first floor elevations)

**Applicant:** Mr. John Triffitt

**Officer Contact:** Isabelle Hills

## **SUMMARY**

This report considers whether a retrospective Section 73 application should be granted for the increase in height of the single storey rear extension approved under planning application Y19/0766/FH. The increase in height is approximately 0.375 metres. The submitted plans under this application also show the whole of the first floor east elevation finished in white render. The original plans only showed half of this elevation finished in render.

Section 73 of the Town and Country Planning Act 1990 (as amended) allows an applicant to seek to vary their planning permission by means of amending or removing a planning condition. It is the Local Planning Authority's responsibility to determine if the proposal is minor and if the proposal is acceptable. There is no set definition of minor and this is a matter of fact and degree and each application must be assessed on its own merits. In this case the application seeks to vary condition 2 (submitted plans) of application Y19/0766/FH. Condition 2 specifies the approved plans under which the development may proceed. The applicant has submitted the application as they are of the view that the proposal is materially different from the approved plans but that the amendment is minor and is seeking a determination on that basis.

From assessing the application it is considered that this change in height is a minor material amendment to the original application which can be considered as a Section 73 application and does not result in a significantly adverse impact upon the amenity of neighbouring residents nor detrimentally alter the character of the host property. The application is recommended for approval subject to the conditions set out at the end of the report.

## **RECOMMENDATION:**

<b>That planning permission be granted subject to the conditions set out at the end of the report and any others that the Chief Planning Officer deems to be necessary.</b>
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## **1. INTRODUCTION**

1.1. The application is reported to Committee due to being called in by Councillor Whybrow.

## **2. SITE AND SURROUNDINGS**

- 2.1. The application site is located within the defined settlement of Saltwood in Hythe within an Area of Archaeological Potential. The property is located on Castle Avenue which is characterised predominantly by two-storey pitched roof dwellings with spacious front gardens and side garages.
- 2.2. The building itself as existing is a two-storey detached property. The building has a brick façade with a white weatherboard feature at first floor level, clay-tiled pitched roof and a single-storey flat roof garage to the side (east) elevation.
- 2.3. The application site and the neighbouring property to the east, 3 Castle Avenue, have adjoining side garages and similar frontages, albeit no. 3 has been extended over time.
- 2.4. A site location plan is attached to this report as **Appendix 1**.

## **3. PROPOSAL**

- 3.1 This is a Section 73 application for the variation of condition 2 (submitted plans) of application Y19/0766/FH which was granted householder planning permission for the erection of a two storey side extension, single storey front and side extension and single storey rear extension along with the rendering of the first floor elevations. The roof of the single storey rear extension has been constructed approximately 0.375 metres higher than what was shown on the approved plans. This application has been submitted to regularise this discrepancy. No other alterations to the approved plans are proposed.

3.2 The originally approved elevations are shown in **Figure 1** and the elevations submitted under this application are shown in **Figure 2**.

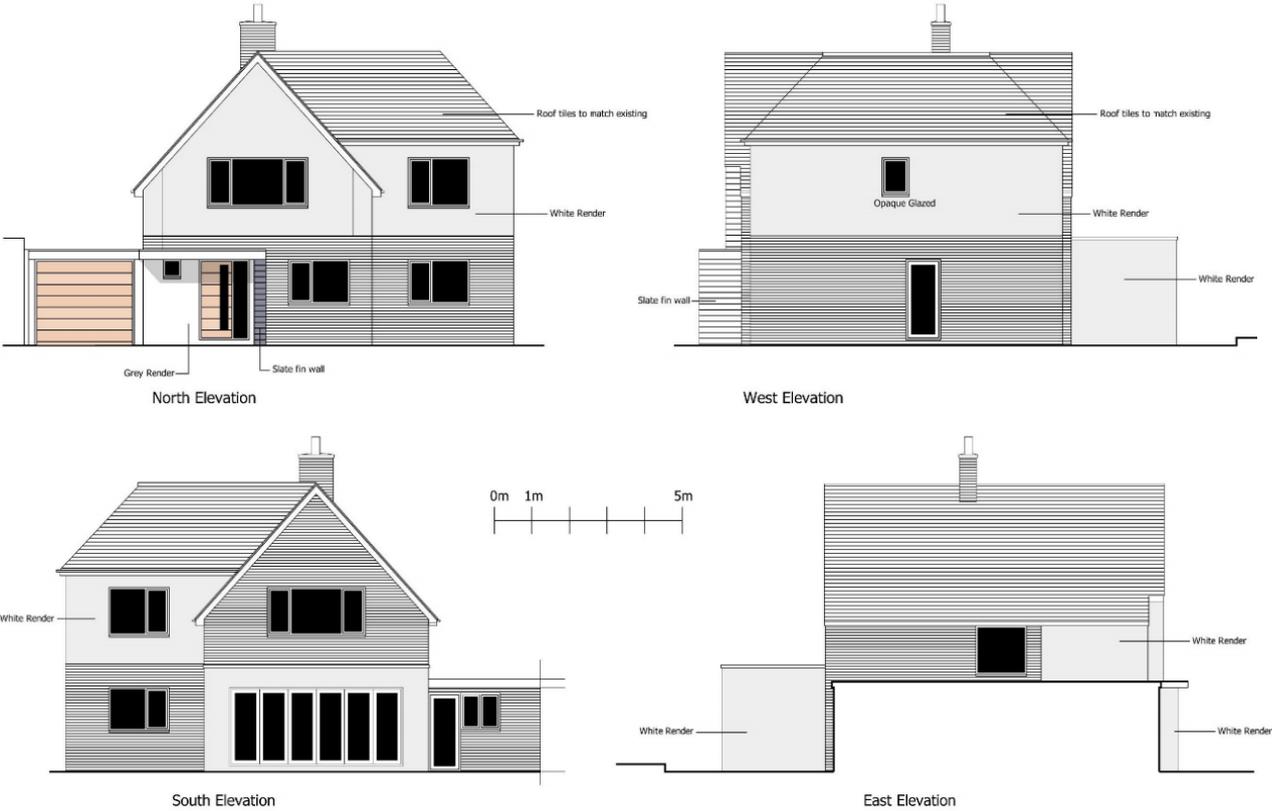


Figure 1

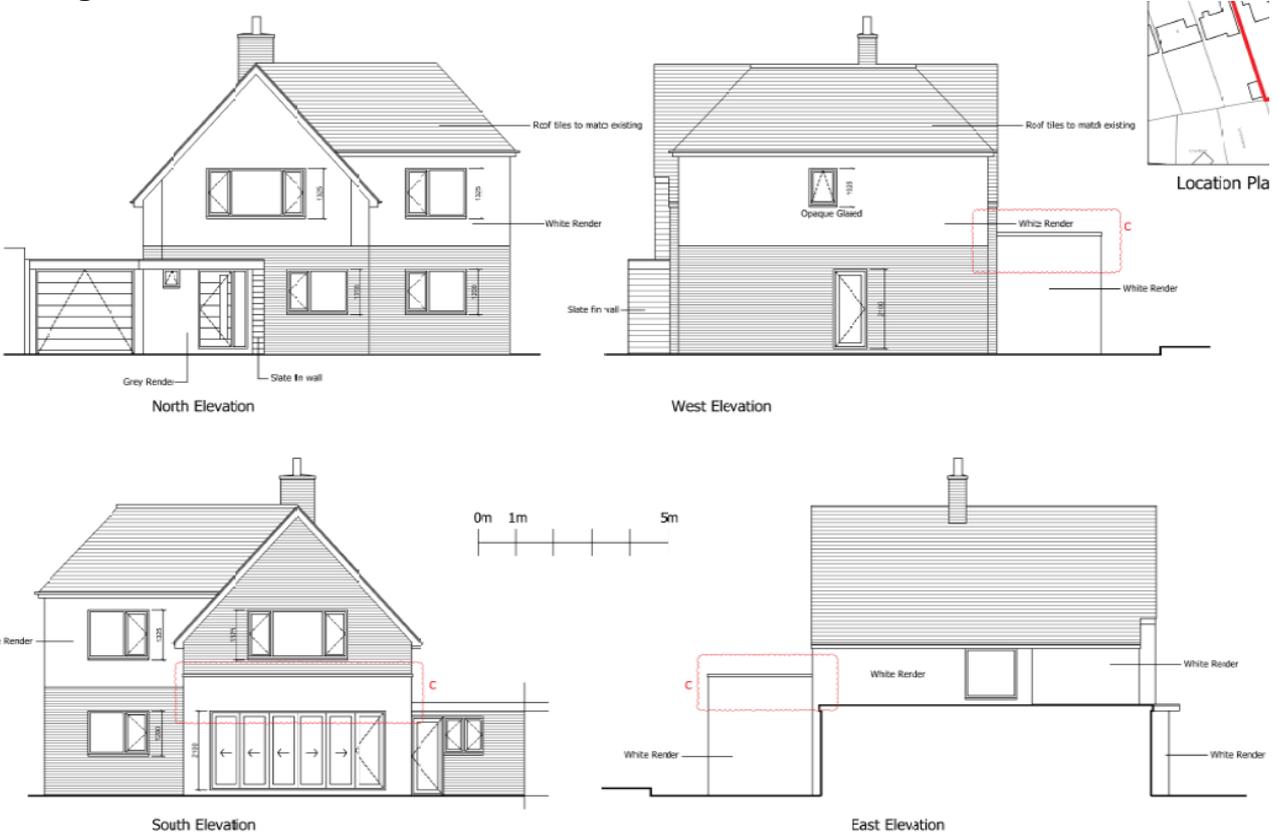


Figure 2

#### **4. RELEVANT PLANNING HISTORY**

- 4.1 Y19/0766/FH Erection of a two storey side extension, single storey front and side extension and single storey rear extension along with the rendering of the first floor elevations. Approved with conditions.

#### **5. CONSULTATION RESPONSES**

- 5.1 The consultation responses are summarised below.

##### **Consultees**

**Hythe Town Council:** Object on the following grounds:

On the grounds that this matter should not be subject to a Section 73 application but should be submitted as a new planning application.

##### **Local Residents Comments**

- 5.2 8 neighbours were directly consulted, two representations were received.
- 5.3 Responses are summarised below and are available in full on the planning file on the Council's website:

<https://searchplanapps.folkestone-hythe.gov.uk/online-applications/>

5.4

- Rear extension has not been built in accordance with the approved plans.
- Original plans showed a building that would have been much better balanced when compared to neighbouring houses even if the render was out of keeping with those properties.
- The extension is unpleasant to look at and detracts from the character of the immediate neighbourhood
- Neighbour letters were not received.
- Dispute that an application under section 73 of the TCPA is the appropriate way of dealing with the breach of planning permission. Case Law examples have been provided.
- Not an insignificant breach
- The application would be a delegated decision. Hythe Town Council have objected and therefore this is against Part 8 of the Shepway District Council Constitution.
- The absence of objections from the occupants of other properties will reflect their inability to see or be affected by the extension.
- Appropriate weight should be given to the number of objections received in relation to the number of consultation letters sent.
- The submitted plans do not show the extent of the present breach of permission.
- The structure as built has effectively created a balcony, although, at the moment there is no doorway access onto it.

- Unsure how a second planning application can be made to override a planning condition that has been approved.
- Increase in height has increased mass and extension is now out of proportion with the rest of the extended house.
- Recommend refusal and the structure should be built in accordance with the originally approved plans
- Section 73 makes no mention of the bathroom windows facing the side of our house subject to condition 4 – appears to be in breach of this.

## **6. RELEVANT PLANNING POLICY**

- 6.1 The Development Plan comprises the Shepway Core Strategy Local Plan (2013) and the Places and Policies Local Plan (2020) which has now been adopted.
- 6.2 The relevant development plan policies are as follows:-

### Shepway Local Plan Core Strategy (2013)

DSD Delivering Sustainable Development

### Places and Policies Local Plan (2020)

HB1 Quality Places through Design  
HB8 Alterations and Extensions to Buildings  
T2 Parking Standards

### Core Strategy Review Submission Draft (2019)

The Submission draft of the Core Strategy Review was published under Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations (2012) for public consultation between January and March 2019. Following changes to national policy, a further consultation was undertaken from 20 December 2019 to 20 January 2020 on proposed changes to policies and text related to housing supply. The Core Strategy Review was then submitted to the Secretary of State for independent examination on 10 March 2020.

Accordingly, it is a material consideration in the assessment of planning applications in accordance with the NPPF, which states that the more advanced the stage that an emerging plan has reached, the greater the weight that may be given to it (paragraph 48). Based on the current stage of preparation, the policies within the Core Strategy Review Submission Draft may be afforded weight where there has not been significant objection.

- 6.3 The following are also material considerations to the determination of this application.

## **Government Advice**

### National Planning Policy Framework (NPPF) 2019

6.4 Members should note that the determination must be made in accordance with the Development Plan unless material considerations indicate otherwise. A significant material consideration is the National Planning Policy Framework (NPPF). The NPPF says that less weight should be given to the policies above if they are in conflict with the NPPF.

Paragraph 11	development proposals that accord with an up-to-date development plan should be approved “without delay”
Paragraph 47	applications for planning permission be determined in accordance with the development plan
Paragraph 124	the development process should achieve high quality buildings

6.5 National Planning Policy Guidance (NPPG)

Design: process and tools

**7. APPRAISAL**

7.1 In light of the above the main issues for consideration are:

- a) Principle of development
- b) Visual amenity
- c) Residential amenity
- d) Parking and Highways
- e) Other issues

**a) Principle of development**

7.2 During the assessment of the original application, the PPLP was at an advanced stage and considerable weight was given to it during the assessment of the application. The wording of PPLP policies HB1 and HB8 remain as it did during the assessment of the original application and therefore I am satisfied that the principle of development continues to be acceptable and in accordance with the development plan, subject to all other material planning considerations being addressed.

7.3 Applicants who carry out works without planning permission do so at their own risk and applying retrospectively for planning permission does not guarantee that permission will be granted. Retrospective applications are assessed on the same grounds as proposed development.

7.4 Comments from Hythe Town Council and neighbouring residents raising concerns with regard to the Section 73 process are noted. To confirm, Section 73 of the Town and Country Planning Act 1990 (as amended) allows an applicant to seek to vary their planning permission by means of amending or removing a planning condition. It is the

Local Planning Authority's responsibility to determine if the proposal is minor and if the proposal is acceptable. There is no set definition of minor and this is a matter of fact and degree and each application must be assessed on its own merits.

- 7.5 In this case the applicant is seeking to vary condition 2 (submitted plans) of application Y19/0766/FH. Condition 2 specifies the approved plans under which the development may proceed. The applicant has submitted the application as they are of the view that the proposal is materially different from the approved plans but that the amendment is minor and is seeking a determination on that basis.
- 7.6 From assessing the application I am satisfied that the change in height as a matter of principle can be considered to be a minor material amendment to the original application and as such can be considered under the process of a Section 73 application.

#### **b) Visual amenity**

- 7.7 The approved two storey side extension, single storey front and side extension and the rendering of the first floor elevations shown on the submitted plans do not differ from the plans approved under the original application. Despite the change in the development plan since the previous application, the now adopted PPLP policies were considered in determining the previous application. In light of this I am satisfied that these elements of the proposal remain to be acceptable in accordance with the development plan and therefore the assessment relates only to change in height of the approved single storey rear extension which deviates from the original plans.
- 7.8 PPLP policy HB8 states that extensions should seek to reflect the scale, proportions, materials, roof line and detailing of the original building and not have a detrimental impact on the streetscene. The extension as built is approximately 0.375 meters higher than what was shown on the originally approved plans. The extension remains to be set down a considerable way from the main roof and as a result I am satisfied that the extension appears as a subservient addition to the host property in terms of its scale, mass and proportions.
- 7.9 The extension is located to the rear of the dwelling and as a result is obscured from the Castle Avenue streetscene by the existing dwelling. I am satisfied that the increased height of the extension has not resulted in the extension gaining significant visual presence within the streetscene and as such has not significantly detracted from the character of the immediate neighborhood.
- 7.10 Amended plans were received on the 17<sup>th</sup> November to show the whole of the first floor east elevation finished in white render. The original plans showed only half of this elevation being finished in render and the slight increase in coverage of render is not considered adversely impacts upon the overall character of the dwelling nor negatively impacts upon the streetscene.
- 7.11 Overall, I am content that the increased height of the single storey rear extension and additional rendering has not resulted in significantly greater visual impact than the extension already approved and therefore the extension is considered acceptable in terms of its design and visual impact.

**c) Residential amenity**

- 7.12 The depth of the extension shown on the submitted plans is 2.8 metres which is the same depth as shown on the originally approved plans. The extension submitted under this application also does not encroach any closer to the shared boundary than was shown on the originally approved plans. In light of this I am satisfied that this remains to have an acceptable impact on the amenity of neighbouring occupants as was concluded within the determination of the original application. Therefore this application must consider the impact of the increase in height of the extension on the amenity of neighbouring occupants.
- 7.13 The extension has been built some 0.375 metres higher than shown on the originally approved plans. The extension extends rearwards to approximately the same point as the rear projection at number 7. This rear projection does not benefit from any side windows and as a result I am satisfied that the proposal would not result in significant overshadowing. In addition to this, the extension has been constructed within the same footprint as the extension previously approved and I am satisfied that an increase in height by some 0.375 metres has not resulted in an undue sense of enclosure or overbearing impact to the occupants of number 7 when viewed from within the property and the rear garden.
- 7.14 I have visited the rear garden of number 3 Castle Avenue to view the extension. The extension is visible from the garden and it is accepted that the additional height has somewhat increased the visibility of the extension. However there is an existing high boundary fence separating both properties and the extension remains to be set some 5.66 metres away from the side elevation of the extension at number 3 which is the closest elevation. As a result I am satisfied that the increase in height of the extension has not resulted in a significantly undue sense of enclosure to the detriment of neighbouring amenity. The side window of number 3's extension faces the extension at number 5. However this appears to be a secondary window serving the room and as a result I am satisfied that the increase in height of the extension has not resulted in significantly detrimental overshadowing to the extension at number 3.
- 7.15 A neighbour comment raised concerns that the extension has effectively created a balcony. Although this is not shown on the plans and there is no access shown onto the roof, it can be secured by condition that the flat roof shall not be used as a balcony.

**d) Parking and Highways**

- 7.16 The proposed development would take the existing property from a 3 bed to a 4 bed dwelling. Policy T2 of the PPLP identifies that a 4 bedroom dwelling should have 2 off-street parking spaces. To consolidate the conclusion reached within the original application, the proposal would continue to retain two off-street parking spaces to the front of the property. As a result I am satisfied that the proposal would provide sufficient parking in accordance with policy T2 of the PPLP.

**e) Other Issues**

- 7.17 Neighbour consultation letters were sent when the application was validated which expired on the 14<sup>th</sup> October 2020. However neighbour comments were received stating that the letters had not been received. Although the letters showed as being sent on

the file, a second round of consultation letters were sent out to ensure neighbours had 21 days to comment on the application. The revised expiry date was the 4<sup>th</sup> November 2020.

- 7.18 Neighbour comments raised with regard to the number of consultation responses received are noted. However each application must be assessed in accordance with the development plan irrespective of the number of responses received as a result of the neighbourhood consultation process. The consultation responses received have been noted and considered in the formulation of this report.
- 7.19 Condition 4 of the original permission requires, prior to the first occupation of the dwelling, for the upper floor windows on the western side elevation of the building to be fitted with obscure-glazed glass and fixed shut below 1.7m from immediate floor level. This has been discussed with the applicants and a new window is planned to be installed on this elevation to comply with the condition. The building is not currently occupied and thus far this condition has not been breached. It is proposed for this condition to be included within this application to ensure compliance prior to the first occupation of the dwelling.

### **Environmental Impact Assessment**

- 7.20 In accordance with the EIA Regulations 2017, this development has been considered in light of Schedules 1& 2 of the Regulations and it is not considered to fall within either category and as such does not require screening for likely significant environmental effects.

### **Local Finance Considerations**

- 7.21 Section 70(2) of the Town and Country Planning Act 1990 (as amended) provides that a local planning authority must have regard to a local finance consideration as far as it is material. Section 70(4) of the Act defines a local finance consideration as a grant or other financial assistance that has been, that will, or that could be provided to a relevant authority by a Minister of the Crown (such as New Homes Bonus payments), or sums that a relevant authority has received, or will or could receive, in payment of the Community Infrastructure Levy.
- 7.22 In accordance with policy SS5 of the Core Strategy Local Plan the Council has introduced a Community Infrastructure Levy (CIL) scheme, which in part replaces planning obligations for infrastructure improvements in the area. This application is not liable for the CIL charge.

### **Human Rights**

- 7.23 In reaching a decision on a planning application the European Convention on Human Rights must be considered. The Convention Rights that are relevant are Article 8 and Article 1 of the first protocol. The proposed course of action is in accordance with domestic law. As the rights in these two articles are qualified, the Council needs to balance the rights of the individual against the interests of society and must be satisfied that any interference with an individual's rights is no more than necessary. Having regard to the previous paragraphs of this report, it is not considered that there is any infringement of the relevant Convention rights.

## **Public Sector Equality Duty**

7.24 In determining this application, regard has been had to the Public Sector Equality Duty (PSED) as set down in section 149 of the Equality Act 2010, in particular with regard to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it. It is considered that the application proposals would not undermine objectives of the Duty.

It is considered that the application proposals would not conflict with objectives of the Duty.

## **Working with the applicant**

7.25 In accordance with paragraphs 38 of the NPPF, Folkestone and Hythe District Council (F&HDC) takes a positive and creative approach to development proposals focused on solutions. F&HDC works with applicants/agents in a positive and creative manner.

## **8. CONCLUSION**

8.1 From assessing the submitted plans against the originally approved plans I am satisfied that the increase in height of the extension is a minor material amendment to the original application which is able to be assessed under a Section 73 application to vary condition 2 of application Y19/0766/FH. The increased height of the extension is not considered to result in a significant increase of mass to the extension and this remains to appear as a subservient addition to the host property in terms of its scale and proportions. Subsequently the proposal is not considered to result in a significantly adverse visual impact on the host dwelling or surrounding streetscene. Such increase in height is not considered would result in any significantly additional impact upon the amenity of neighbouring residents than was considered under the original application. Therefore it is recommended that the application be approved subject to the conditions set out at the end of the report.

## **9. BACKGROUND DOCUMENTS**

9.1 The consultation responses set out at Section 5.0 are background documents for the purposes of the Local Government Act 1972 (as amended).

## **10. RECOMMENDATION**

**That planning permission be granted subject to the following conditions:**

Conditions:

1. The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans 190627-P-001 Rev C and 190627-P-002 Rev C received 07.09.2020.

Reason:

For the avoidance of doubt and in order to ensure the satisfactory implementation of the development.

2. The development hereby approved shall be carried out in complete accordance with the details of materials as specified in the application, unless otherwise agreed in writing by the Local Planning Authority.

Reason:

To ensure the appropriate appearance of the completed development and in the interests of visual amenity.

3. Prior to the first occupation of the extension hereby approved, the upper floor windows on the western side elevation of the building shall be fitted with obscure-glazed glass and shall be fixed shut below 1.7m from immediate floor level and shall be permanently retained as such thereafter.

Reason:

To protect the amenity of neighbouring properties in accordance with Policy HB8 of the Places and Policies Local Plan.

4. The roof of the single storey flat roof extension hereby permitted shall not be utilised as a balcony or any form of platform at any time.

Reason:

To protect the amenity of neighbouring occupants from potential overlooking in accordance with Policy HB8 of the Places and Policies Local Plan.

## **Appendix 1 – Site Location Plan**