

PLANNING COMMITTEE - 17 OCTOBER 2019

PART I – DELEGATED

7. **19/1473/FUL – Removal of Condition 4 (External lighting details) and Condition 9 (removal of permitted development rights) pursuant to planning permission 18/2118/RSP (Two storey side and rear extension, part single part two storey front extension including creation of gable and increase in height, conversion of garage to habitable space and loft conversion including extension to roof and rear dormer, insertion of rooflights and new external materials) at 20 CHESTNUT AVENUE, RICKMANSWORTH, WD3 4HB.**

Parish: Chorleywood

Ward: Chorleywood North & Sarratt

Expiry of Statutory Period: 14.10.2019

Case Officer: Tom Norris

Recommendation: That Planning Permission be Refused.

Reason for consideration by the Committee: called to Committee by Chorleywood Parish Council.

1 Relevant Planning and Enforcement History

- 1.1 19/0028/COND – Planning Appeal against imposition of conditions pursuant to planning permission 18/2118/FUL – The appeal was never made valid by The Planning Inspectorate.
- 1.2 19/0632/DIS - Discharge of Condition 4 (External Lighting) pursuant to planning permission 18/2118/FUL – Details refused - 04.06.2019
- 1.3 18/2118/RSP - Part Retrospective: Two storey side and rear extension, part single part two storey front extension including creation of gable and increase in height, conversion of garage to habitable space and loft conversion including extension to roof and rear dormer, insertion of rooflights and new external materials – Permitted subject to conditions, substantially implemented - 25.01.2019
- 1.4 18/1058/FUL - Two storey side and rear extension, part single part two storey front extension including creation of gable and increase in height, conversion of garage to habitable space and loft conversion including extension to roof and rear dormer - Permitted, part-implemented - 18.07.2018
- 1.5 18/0185/COMP - Enforcement Enquiry – Works not in accordance with approved plans - Pending consideration.
- 1.6 18/0406/FUL - Two storey side and rear extension, part single part two storey front extension, single storey front extension and conversion of garage to habitable space and insertion of rooflights - Permitted - 23.04.2018
- 1.7 8/297/86 - Garage, Store, Bathroom, 2 Dressing Rooms - 11.09.1986
- 1.8 8/174/84 - Porch - 06.04.1984

2 Description of Application Site

- 2.1 The application site comprises a two-storey, detached dwelling on the north-western side of Chestnut Avenue, Rickmansworth. The application dwelling is set back from the public highway by approximately 18m.
- 2.2 The application dwelling has grey tiled hipped roof forms with front gable end features and has a white painted render exterior having substantially implemented planning permission 18/2118/RSP. External lighting has been installed within the front gable extension which

was controlled by Condition 4 of the extant planning permission. A wall has also been partially constructed enclosing the front and site boundaries of the site within the frontage.

- 2.3 To the rear of the dwelling is an amenity garden of some 1,200sqm which is predominantly laid as lawn with a patio area adjacent to the rear of the dwelling and a swimming pool. The boundary treatment consists of mature trees, some of which are covered by a Tree Preservation Order, dense hedging and fencing.
- 2.4 The neighbouring dwellings are largely positioned on the same building line. The street scene along this part of Chestnut Avenue can be characterised by detached dwellings of varied style, set back from the public highway.

3 Description of Proposed Development

- 3.1 This application seeks full planning permission to remove Condition 4 (External lighting details) and Condition 9 (removal of permitted development rights) pursuant to planning permission 18/2118/RSP which state:

Condition 4

Within ONE MONTH of the date of the permission, the external lights affixed to the two storey front extension hereby permitted shall be permanently removed unless details of their siting, intensity and colour have been submitted to and approved in writing by the Local Planning Authority. The agreed details shall be installed within 14 days of the agreement in writing by the Local Planning Authority and be permanently retained thereafter.

Condition 9

Immediately following the implementation of this permission, notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any other revoking and re-enacting that order with or without modification) no development within the following Classes of Schedule 2 of the Order shall take place.

Part 1

Class A - enlargement, improvement or other alteration to the dwelling

Class E - provision of any building or enclosure

Part 3

Class L - small HMOs to dwellinghouses and vice versa

No development of any of the above classes shall be constructed or placed on any part of the land subject of this permission.

- 3.2 It is noted that plans have been submitted with the application however these remain as per those approved under 18/2118/RSP and include drawing numbers: S/565/05 Rev D, S/565/06 Rev H, S/565/07 Rev K, S/565/08 Rev J.

4 Consultation

4.1 Statutory Consultation

- 4.1.1 Chorleywood Parish Council: [Objection]

The Committee had Objections to this application and wish to CALL IN, unless the Officers are minded to refuse this application on the following grounds:-

** Condition 4 must remain*

** Condition 9 must remain.*

There are no factors of change that give rise to the need to remove the above Conditions.

Officer comment: The Parish Council clarified that they wished for the application to go to Committee regardless.

4.1.2 Landscape Officer: [No objection]

"The current application has no further influence on trees than the original application. I therefore have no objections."

4.1.3 Chorleywood Residents Association: [Objection]

"I write representing Chorleywood Residents Association. We, along with local residents, are very concerned about this application and strongly object to the removal of conditions applied to the application 18/2118/RSP.

1. *Condition 4 requiring the removal of external lights is essential. Due to the intensity, colour and positioning of the new lights they have a significant impact on the amenity of neighbouring properties and the street scene. It should be noted that nothing has changed since this condition was included in the granting of the permission that justifies removing the condition. It is concerning that over 6 months after this condition should have been complied with, the lights have not been removed nor has enforcement action been taken against the applicants.*
2. *Condition 9 removing elements of permitted development are, as stated in the decision notice, essential to ensuring the maintenance of the visual amenity of the locality and the residential amenity of the neighbouring properties. Nothing has changed since this condition was included in the granting of the permission that justifies its removal.*
 - a. *The rationale that this is discriminatory to the applicant does not stand up to examination. The approved planning applications for numbers 2, 26 and 49 are significantly smaller in scale. Bearing in mind the impact the existing development under application 18/2118/RSP is having on neighbour's amenity, to allow further development without proper consideration would be extremely unwise and likely to produce a significant adverse impact on neighbour's residential amenity. It could be argued that removing this condition would be discriminatory to neighbouring residents.*
 - b. *The condition does not prevent the provision of enclosure of the pool by building or fence, it simply requires that it is done with proper consideration of the impact on the locality by way of applying for planning permission. After all, applying for planning permission does not seem to be a problem for this applicant bearing in mind the number of times they have already undertaken this, including this application.*
 - c. *Chestnut Avenue and the surrounding roads consist solely of single family dwellings and the area is ill suited for HMO dwellings as there are no local facilities and the local village & town centres are well outside walking distance from the property. Unlike other developments in the area, the changes recently undertaken to the property are potentially aligned to use as an HMO and, bearing in mind the siting of the property, it is therefore completely reasonable to exclude change of use without proper consideration of the implication to residents of the dwelling and the local area through planning application.*

In light of the above, we strongly recommend that this application be refused."

4.1.4 National Grid: [No response received]

4.2 Public/Neighbour Consultation

4.2.1 Number consulted: 32

4.2.2 Number of formal responses received: 3

4.2.3 Site Notice: not required Press notice: not required

4.2.4 Summary of Responses:

- All conditions should remain in place
- The lights are out of keeping with the street scene and cause direct disturbance to neighbours
- Condition 9 must remain in place to ensure adequate planning control over the site
- The condition does not prevent a fence around the pool for safety
- Given the extensive development on site it is correct to ensure additional buildings are not build without planning permission
- The condition preventing a change to an HMO under permitted development needs to remain in place
- There are discrepancies between the approved plans and those submitted with this application with regard to the roof height
- Boundary walls have been erected to the front of the property which are out of keeping with the street
- The external lighting has been switched on which contravenes previous conditions

4.2.5 Officer comments:

- The plans submitted accompanying this application are the same as those permitted under 18/2118/RSP and include the following drawing numbers: S/565/05 Rev D, S/565/06 Rev H, S/565/07 Rev K, S/565/08 Rev J. There are no discrepancies between the plans accompanying this application and those approved.
- The boundary wall constructed to the front of the site does not form part of the consideration of this application. It is noted however that the wall does not benefit from any express written consent from the Local Planning Authority however may fall within the limitations of permitted development. This can be investigated as part of the ongoing enforcement case at the site.

5 Reason for Delay

5.1 Committee cycle.

6 Relevant Planning Policy, Guidance and Legislation

6.1 National Planning Policy Framework and National Planning Practice Guidance

In February 2019 the new National Planning Policy Framework was published. This is read alongside the National Planning Practice Guidance (NPPG). The determination of planning applications is made mindful of Central Government advice and the Local Plan for the area. It is recognised that Local Planning Authorities must determine applications in accordance with the statutory Development Plan, unless material considerations indicate otherwise, and that the planning system does not exist to protect the private interests of one person against another. The NPPF is clear that "existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework".

The NPPF 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'. The NPPF retains a presumption in favour of sustainable development. This

applies unless any adverse impacts of a development would 'significantly and demonstrably' outweigh the benefits.

6.2 The Three Rivers Local Plan

The application has been considered against the policies of the Local Plan, including the Core Strategy (adopted October 2011), the Development Management Policies Local Development Document (adopted July 2013) and the Site Allocations Local Development Document (adopted November 2014) as well as government guidance. The policies of Three Rivers District Council reflect the content of the NPPF.

The Core Strategy was adopted on 17 October 2011 having been through a full public participation process and Examination in Public. Relevant policies include Policies CP1, CP9, CP10 and CP12.

The Development Management Policies Local Development Document (DMLDD) was adopted on 26 July 2013 after the Inspector concluded that it was sound following Examination in Public which took place in March 2013. Relevant policies include DM1, DM6, DM9, DM13 and Appendices 2 and 5.

6.3 Other

The Community Infrastructure Levy (CIL) Charging Schedule (adopted February 2015).

The Localism Act received Royal Assent on 15 November 2011. The growth and Infrastructure Act achieved Royal Assent on 25 April 2013.

The Wildlife and Countryside Act 1981 (as amended), the Conservation of Habitats and Species Regulations 2010, the Natural Environment and Rural Communities Act 2006 and the Habitat Regulations 1994 may also be relevant.

7 **Planning Analysis**

7.1 Overview

7.1.1 The submitted application is commonly referred to as a section 73 planning application. It should be noted that section 73 of the Town and Country Planning Act 1990 (as amended) enables an applicant to submit applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted. Under this type of application the Act makes it clear that local planning authorities 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.

7.1.2 Consequently, if the Local Planning Authority feel that the previous granted conditions should remain in place, the planning application should be refused. If this occurs, the applicant would then have to rely on the extant planning permission, reference 18/2118/RSP. If during the application process it is considered reasonable to vary or remove any previous condition a new planning permission would need to be issued.

- 7.1.3 The extant planning permission was granted on 25 January 2019 following the decision of Members of the Planning Committee to grant planning permission subject to conditions. In April 2019 a Discharge of Condition Application (19/0632/DIS) was submitted in relation to details pursuant to the external lighting (controlled by Condition 4) which was refused in June 2019. In early July 2019 a planning appeal was made against conditions imposed by the Local Planning Authority but this was never validated. Immediately following the outcome of the planning appeal the current application has been submitted which has meant any enforcement action in respect of the lights (and/or failure to comply with any other conditions) has been held in abeyance until the determination of the current application.
- 7.1.4 The following paragraphs consider the planning acceptability of the application.
- 7.2 Condition 4 (External Lighting Details)
- 7.2.1 This application proposes that the planning condition imposed on 18/2118/RSP, for details of the lighting installed in the extension be provided to the LPA for consideration or their permanent removal, is removed.
- 7.2.2 As set out above details in relation to the condition were submitted as part of 19/0632/DIS including a front elevation showing the location of the lights in-situ and a product specification. The product specification highlighted that the lights are LED spotlights which are blue in colour. A Planning Officer visited the site to view the lights on 31.05.2019 at around 10pm in order to gain a full appreciation of their visual appearance at night time.
- 7.2.3 In consideration of this application, the Planning Officer noted that Chestnut Avenue is characterised by large detached dwellings of varied design and finish, set back from the public highway, on relatively spacious plots. The area is therefore characterised by its sense of spaciousness as opposed to the design of the dwellings within it. It was also noted that there are some dwellings which have installed subtle or low-key external lighting of a white or a traditional lightbulb colour. The nearby external lighting examples also appear to have been physically attached to the external elevations of the houses in the same way as a security light is affixed and as a result generally are not considered to constitute development. However, in this instance the external lights are affixed within the soffits of the front gable addition and thus form part of the extension rather than appearing as standalone lights.
- 7.2.4 Notwithstanding the examples of other nearby external lighting, the Planning Officer considers that the external lighting at the host property is highly visible in comparison, not only when observing the dwelling directly from the frontage but from a considerable distance when approaching. The lights, by virtue of their brightness, colour and intensity are considered to be excessively prominent and materially alter the visual appearance and character of the dwelling and street scene. The lights are also considered intense to the extent that concerns are raised over light spillage to the immediately adjoining neighbours to the detriment of their residential amenity. The Council's Environmental Health Officer commented during the application to discharge the condition that the lights are very obvious and causing an amount of light pollution and in their opinion the lights in their current state are likely to impact on the amenity of the area.
- 7.2.5 Taking the above factors into consideration, the lights in-situ remain unacceptable in terms of their impact on the amenity of the area. It is therefore considered appropriate for Condition 4 to remain in place in order to ensure adequate planning control over the lighting. Lights of a reduced brightness and intensity and of a traditional colour that are less visually obtrusive would need to be considered by the applicant.
- 7.2.6 Following the determination of 19/0632/DIS, it was instructed that the lights should be turned off and removed prior to occupation of the extended dwelling. An enforcement case remains open and consideration into taking formal action will occur following the determination of this application in conjunction with the Environmental Health department.

7.3 Condition 9 (Removal of Permitted Development Rights)

7.3.1 The application was initially recommended for approval by officers and was referred to Planning Committee on 13th December 2019 and then deferred to Planning Committee on 17th January 2019. Having considered the application, Members resolved to grant approval of the application subject to additional conditions. A condition was imposed on the grant of permission that restricted the future permitted development rights of the site which read:

Immediately following the implementation of this permission, notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any other revoking and re-enacting that order with or without modification) no development within the following Classes of Schedule 2 of the Order shall take place

Part 1

Class A - enlargement, improvement or other alteration to the dwelling

Class E - provision of any building or enclosure

Part 3

Class L - small HMOs to dwellinghouses and vice versa

Reason: To ensure adequate planning control over further development having regard to the visual amenities of the locality and the residential amenity of neighbouring occupiers in accordance with Policies CP1, CP9, and CP12 of the Core Strategy (adopted October 2011) and Policies DM1, DM6, DM13 and Appendices 2 and 5 of the Development Management Policies LDD (adopted July 2013).

7.3.2 Paragraph 55 of the National Planning Policy Framework makes clear that planning conditions should be kept to a minimum, and only used where they satisfy the following tests:

- necessary;
- relevant to planning;
- relevant to the development to be permitted;
- enforceable;
- precise; and
- reasonable in all other respects.

7.3.3 In respect of Part 1, Class A & Class E, the Council deemed it appropriate, given the scale of extensions approved at the property, to remove permitted development rights to ensure adequate planning control over future development on the site. The imposition of this part of the condition does not in any way restrict future development within the site however, in the interests of the visual amenities of the locality and the residential amenity of neighbouring occupiers it was considered necessary for the LPA to retain control over future development. Such future development of the site, including the enlargement, improvement or other alteration to the dwelling and the provision of any building or enclosure, without adequate planning control has the potential to result in harm, particularly given the level of extensions already implemented at the site. In addition, whilst the removal of permitted development rights for outbuildings is not directly concerned with the enlargement of the dwelling itself, any large outbuilding could, when viewed in close proximity to the house, appear somewhat over dominating and harmful to the spacious character of the area.

7.3.4 In respect of Part 3, Class L, the Council deemed it appropriate to regulate any future change of use from the building as a dwelling to a small HMO and vice versa by the removal of this permitted development right. Council Members considered, given that Chestnut Avenue is a wholly residential street characterised by large detached dwellings on spacious

plots in single family use, that adequate planning control over the future buildings use, given the level of extensions implemented, was considered necessary.

- 7.3.5 With regard to Paragraph 55 of the National Planning Policy Framework the above condition is required to satisfy the test as set out in the policy. For the reason appended to the condition in the first instance and expanded upon above, the condition is considered to be necessary to the approved development. The condition is deemed to be relevant to planning and relevant to the development in that only those Classes of the General Permitted Development Order have been removed in order to ensure adequate future planning control over the site. For the reasons expressed above in relation to its necessity including the level of extensions permitted and implemented to the dwelling. The condition is deemed to be enforceable as it would be possible to detect a contravention and prove a breach of its requirements. The condition is, in this instance, intended to prevent harm to the amenities of the area and it would not be difficult to monitor, as those affected by the contravention of its requirements are likely to be able to provide clear evidence of any breach. The condition is considered to be sufficiently precise in that it is unambiguous with regard to what rights of permitted development have been removed and the justification for why. The applicant is also able to clearly ascertain what is required of the condition.
- 7.3.6 Whilst the condition may be precisely worded, it is also important to consider its reasonableness. It is acknowledged that a condition may be unreasonable if it is unduly restrictive. The removal of future permitted development rights of the site is not considered to be unduly restrictive given the level of extensions permitted and implemented at the application site. The condition is not designed to restrict future development within the site but allow the Local Planning Authority adequate control. The condition is not considered to nullify the benefit of the permission granted nor would it put any severe limitations on the freedom of owners by requiring a planning application for future development in the Classes set out within the condition. The condition is therefore considered to be reasonable in all other aspects.

8 Recommendation

That PLANNING PERMISSION 19/1473/FUL BE REFUSED (as planning permission should be granted subject to the same conditions as those subject to which the previous permission 18/2118/RSP was granted) for the following reasons:

R1: The imposition of Condition 4 under planning permission 18/2118/RSP is necessary and reasonable in the interests of the visual amenity of the area and to meet the requirements of Policies CP1, CP9 and CP12 of the Core Strategy (adopted October 2011) and Policies DM6 and DM9 of the Development Management Policies LDD (adopted July 2013).

R2: The imposition of Condition 9 under planning permission 18/2118/RSP is necessary and reasonable to ensure adequate planning control over further development having regard to the visual amenities of the locality and the residential amenity of neighbouring occupiers in accordance with Policies CP1, CP9, and CP12 of the Core Strategy (adopted October 2011) and Policies DM1, DM6, DM13 and Appendices 2 and 5 of the Development Management Policies LDD (adopted July 2013).

8.1 Informatives:

- 11 The Local Planning Authority has been positive and proactive in considering this planning application in line with the requirements of the National Planning Policy Framework and in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2015. The Local Planning Authority encourages applicants to have pre-application discussions as advocated in the NPPF. The applicant and/or their agent did not have formal pre-application discussions with the Local Planning Authority and the proposed development fails to comply with the requirements of the Development Plan and does not maintain/improve the economic, social and environmental conditions of the District.