

REPORT SUMMARY

REFERENCE NO: - 22/502738/FULL		
APPLICATION PROPOSAL: Erection of a two storey side and rear extension with detached garage (Resubmission-21/504328/FULL).		
ADDRESS: Upper Little Boy Court Boy Court Lane Headcorn Ashford Kent TN27 9LA		
RECOMMENDATION: GRANT subject to the planning conditions set out in Section 8.0 of the report.		
SUMMARY OF REASONS FOR RECOMMENDATION: For the reasons set out below it is considered that the proposed development would be acceptable and would not cause significant visual harm or harm to neighbouring amenity, nor be unacceptable in terms of any other material planning considerations such that the proposed development is considered to be in accordance with current Development Plan Policy and planning guidance.		
REASON FOR REFERRAL TO COMMITTEE: The application was called in by Ulcombe Parish Council by reason of the recommendation being contrary to their comments (see report below and original report in appendix A for reasons). The application was deferred at Planning Committee on 15 th December 2022. The reason for deferral was to enable Officers to seek to negotiate a solution to concerns raised regarding overlooking of Upper Boy Court Oast from the proposed windows in the first-floor north-east elevation facing that property.		
WARD: Headcorn	PARISH/TOWN COUNCIL: Ulcombe	APPLICANT: Ms Felicity Nichols AGENT: Kent Design Studio Ltd
CASE OFFICER: Angela Welsford	VALIDATION DATE: 09/06/22	DECISION DUE DATE: 28/02/23
ADVERTISED AS A DEPARTURE: NO		

MAIN REPORT

1. REASON FOR DEFERRAL

- 1.01 The application seeks permission for the erection of a two-storey side and rear extension to the dwelling and erection of a detached garage. The application was deferred at Planning Committee on 15th December 2022; the reason for deferral being to enable Officers to seek to negotiate a solution to concerns raised regarding overlooking of Upper Boy Court Oast from the proposed windows in the first-floor north-east elevation facing that property.
- 1.02 All the details of the proposal are contained in the original Committee Report of 15th December 2022, which is attached as appendix A to this report. The main assessment for the proposal remains as set out in the original Committee Report. The remainder of this report sets out and assesses the amendments made by the applicant to address the reason for deferral.

2. AMENDMENTS TO PROPOSAL (to address reason for deferral)

- 2.01 The following amendments have been made to the proposals:

- complete omission of the smaller proposed window to Bedroom 3;
- addition of obscure-glazing to the proposed bathroom window, to achieve Pilkington Level 4 privacy standard;
- addition of native planting along the north-eastern boundary with Upper Boy Court Oast. A total of 7 new trees are proposed along this boundary – one Hawthorn, two Common Lime and one Crab Apple in the area forward of the proposed garage, and three Holly in the area between the existing mature tree on this side boundary and the front boundary (directly between the eastern corner of the proposed side extension and the western corner of Upper Boy Court Oast). Details given on the amended proposed block plan and in the covering email indicate that all new tree planting would be between Advanced Heavy Standard and Semi-Mature in size (minimum height on planting between 4m and 5m).

3. POLICY AND OTHER CONSIDERATIONS

Maidstone Borough Local Plan (2011-2031): Policies SP17, DM1, DM3, DM23, DM30, DM32

Emerging Policies: Maidstone Borough Council – Local Plan Review Regulation 22 Submission. The Regulation 22 Submission comprises the draft plan for submission (Regulation 19) dated October 2021, the representations and the proposed main modifications. It is a material consideration and some weight must be attached to the document because of the stage it has reached. This weight is limited, as it has yet to be the subject of an examination in public.

Relevant Policies:

Policy LPRSP9 – Development in the countryside

Policy LPRSP15 – Principles of Good Design

Policy LPRQ&D4 – Design principle in the countryside

LPRHou11 – Rebuilding, Extending and Subdivision of Dwellings in the countryside

Policy LPRTRA4 - Parking Matters

The National Planning Policy Framework (NPPF)

National Planning Practice Guidance (NPPG)

Supplementary Planning Documents: Residential Extensions SPD (adopted May 2009)

4. REPRESENTATIONS

Further representations of both support and objection have been received in response to the consultation on the amendments submitted to address the reason for deferral. (All representations received hitherto are summarized in the original Committee Report – see appendix).

8 representations have been received in total in response to consultation on the amended details. 5 are objections, from 2 different properties and 3 are in support, from 3 different properties.

All points of objection and support listed in the original Committee Report have been raised again. In addition, the following (summarized) material planning considerations and points relating to the amendments to the scheme have also been raised:

Objections

- Proposals are contrary to planning policy and guidance;
- Proposed tree planting cannot replace the volume, number and scale of trees removed, will take years to mature and will provide limited screening;
- Obscure-glazing to one window is welcomed, but is only to be expected because it would serve a bathroom;
- Removal of the small window will have little impact in terms of the loss of privacy;
- Complete removal of the proposed windows and/or replacement with roof lights would overcome the loss of privacy;
- Upper Boy Court Oast residents have not been involved in negotiations to amend the proposal;
- Amended proposals do not address the concerns raised at the December Planning Committee;
- Overlooking of Upper Boy Court Oast's garden, wildflower meadow, chicken run, designated seating area and patio and into the kitchen/diner.

Support

- Proposals comply with planning policy and guidance, and are the result of pre-application engagement and advice;
- Number of proposed trees to be planted exceeds the number of diseased trees taken down;
- Proposed first floor side-facing windows would afford similar views to the existing;
- Proposed windows do not face Upper Boy Court Oast; they would face a field, the roof of the neighbour's outbuilding and a large vehicle, and the drive;
- Vernacular design and traditional materials;
- Subservient;
- Development in part replaces a pre-existing structure;
- No harm to the countryside.

Many other points which are not material planning considerations have also been raised in representations, but those cannot be taken into consideration in the determination of the application.

5. CONSULTATIONS

(Please note that summaries of consultation responses to the amended plans submitted following deferral are set out below with the response discussed in more detail in the main report where considered necessary. All previous responses are set out in the original Committee Report in the appendix.)

Ulcombe Parish Council

5.01 Recommends refusal and wishes application to be referred to Planning Committee if approval is recommended. Objects on the following (summarised) grounds:

- The neighbours were not involved in the negotiations, so they were one-sided;

- Removal of one window and obscure-glazing to the bathroom window are welcomed;
- The two proposed bedroom windows will still overlook the neighbours' house and garden;
- Proposed tree screening is inappropriate as it will take many years to reach 20 feet high; pre-existing trees should have been kept instead;
- Over-fenestration is a reason for refusal.

6. APPRAISAL

In view of the reason for deferral and the nature/purpose of the amendments made, the key issue under consideration in this report is overlooking/loss of privacy. The main assessment for the proposal, in relation to other matters, remains as set out in the original Committee Report (see appendix).

Overlooking / Loss of Privacy

- 6.01 In terms of planning policy background, criterion iv of Local Plan Policy DM1 requires new development to respect the amenities of occupiers of neighbouring properties and states that it should not result in, *inter alia*, an unacceptable loss of privacy for the occupiers of nearby properties. The Council's adopted Residential Extensions SPD sets out the following relevant design guidance in relation to privacy:

In order to safeguard the privacy of neighbours, the introduction of windows in extensions which would overlook windows of habitable rooms in any adjoining property at a close distance and would result in an unreasonable loss of privacy will not be permitted. For similar reasons, a window overlooking the private area immediately adjacent to the rear of an adjoining dwelling may also be inappropriate. If a window which overlooks a habitable room or amenity space is included, it should protect against overlooking and maintain privacy by, for example, containing obscure glazing or being non-opening. The Borough Council will normally calculate the private amenity area as a depth of 5 metres from the back of the property which, if it has been extended, will be measured from the back edge of the extension. (Paragraph 5.52, Chapter 5 - "Extensions within the Countryside").

- 6.02 The application was deferred at Planning Committee on 15th December 2022 to enable Officers to seek to negotiate a solution to concerns raised regarding overlooking of Upper Boy Court Oast from the proposed windows in the first-floor north-east elevation, facing that property. It is acknowledged that those windows would face onto and overlook land forming part of the large plot belonging to the Upper Boy Court Oast property, however, it is not considered that the impact would be so significantly detrimental as to justify a refusal of planning permission that could be sustained at appeal. Material considerations in reaching that conclusion are:

- There would be no direct inter-looking, window to window – the flank windows at Upper Boy Court Oast face at an angle of almost 90° to the direction the proposed windows would face.
- The angled distance between the proposed window closest to Upper Boy Court Oast and the nearest corner of that building itself (not its windows) would be approximately 24m, which exceeds the 21m separation distance normally applied in a planning assessment of impact on privacy. (The

distance from the other proposed windows would be greater; more than 30m from the rearmost.)

- Although Upper Boy Court Oast stands on a large plot and reference is made to overlooking of a designated seating area, the guidance on assessment of impact on privacy set out in the Council's own adopted Residential Extensions SPD clearly states that "*The Borough Council will normally calculate the private amenity area as a depth of 5 metres from the back of the property*" (paragraph 5.52) and that area, as indicated on the proposed block plan, lies more than 21m from the proposed windows. Furthermore, notwithstanding the degree of separation, the angle of view from the windows would be oblique and much of that protected area would consequently be shielded by its own dwelling in relation to them.

- 6.03 Notwithstanding the above, the applicant has nevertheless agreed to make further amendments to the scheme in response to Members' deferral of the application. One of the four proposed windows has been removed altogether and another, serving the bathroom, would be obscure-glazed to a high privacy standard. This obscure-glazing is the applicant's choice, therefore, a condition has been imposed to require it to be obscure glazed as shown on the amended plans. However, it is considered that without the applicant's agreement, this specific condition would not meet the tests of necessity or reasonableness, as laid down in the NPPF and NPPG, because the separation distance from habitable room windows and the 5m deep protected area at the rear of Upper Boy Court Oast exceeds 21m.
- 6.04 Similarly, it is considered that a condition requiring the other two proposed clear-glazed first floor flank windows to be obscure-glazed would not meet the tests of necessity or reasonableness either, because again, in both cases, the separation distance from habitable room windows and the 5m deep protected area at the rear of Upper Boy Court Oast exceeds 21m. It is noted that these two windows would serve bedrooms, which would not reasonably be expected to experience heavy use during daylight hours in any case. The applicant has not offered these 2 secondary windows to be obscure glazed, which again is the applicant's choice as to what scheme is applied for.
- 6.05 In addition to removing one window and proposing obscure-glazing to another, the applicant also now proposes to plant seven native trees along the boundary with Upper Boy Court Oast. These would provide additional natural screening to that already arising from the existing mature tree on the boundary. The submitted details show that these would all be between Advanced Heavy Standard and Semi-Mature in size, which means that they would stand a minimum height of between 4m and 5m on planting. In particular, three Holly trees (providing evergreen foliage) are proposed in the area between that existing mature tree and the front boundary line, which means that they would be positioned directly between the eastern corner of the proposed side extension and the western corner of Upper Boy Court Oast. One Hawthorn, two Common Lime and one Crab Apple are also proposed along the section of common boundary forward of the proposed garage.
- 6.06 It is considered that the planting of all these trees can reasonably be secured by condition, for although the argument set out above regarding privacy separation distances obviously still applies, the justification for such a condition would be the visual benefit in terms of softening the development into its rural surroundings and also the ecological benefit in terms of habitat creation and biodiversity enhancement; the screening effect, enhancing privacy, would be a beneficial by-product of those primary effects recognized in the reason for the condition.
- 6.07 In summary, it is considered that the proposed development would not give rise to so significantly detrimental a loss of privacy for the occupants of Upper Boy Court Oast as to justify a refusal of planning permission that could be sustained at appeal, and that, notwithstanding that, the amendments made to the application following

deferral at the December 2022 Planning Committee, go above and beyond what can be reasonably expected or required in relation to that matter.

Other Matters

6.08 All points of objection and support raised in representations previously were considered in the assessment set out in the original Committee Report, which still stands, so those have not been covered again here, even though they were raised again in the most recent round of consultation.

6.09 Turning to those material planning considerations not previously listed in the Consultations and Representations sections of the original Committee Report and not already considered above:

- Ulcombe Parish Council correctly points out that over-fenestration can be a reason for refusal, however, it is not considered that this proposal is over-fenestrated. The arrangement of windows on the proposed north-east elevation is considered to present a well-balanced façade, with an appropriate level of glazing to create an interesting and active elevation. The proportion of glazing to solid wall is considered acceptable, plus the windows are aligned sympathetically, both with each other and with the roof form. It is considered that a completely solid expanse of wall at first floor level, devoid of windows, would look bland. Equally, in view of the roof form, which has been specifically employed in order to subordinate the extension and minimise bulk at roof level, it is considered that it would be difficult to incorporate roof lights without them appearing cramped.
- The matters of vernacular design, use of traditional materials, subservience, replacement of the single-storey element to be removed, and impact on the countryside have all been considered in the assessment set out in the original Committee Report.
- For the reasons set out above and in the previous Committee Report, it is considered that the proposals do comply with Development Plan policy and planning guidance, and with the aims of the design guidance in the Council's adopted Residential Extensions SPD.

PUBLIC SECTOR EQUALITY DUTY

6.10 Due regard has been had to the Public Sector Equality Duty, as set out in Section 149 of the Equality Act 2010. It is considered that the application proposals would not undermine objectives of the Duty.

7. CONCLUSION

7.01 For the reasons set out above and in the original Committee Report (see appendix), it is considered that the proposed development would be acceptable and would not cause significant visual harm or harm to neighbouring amenity, nor be unacceptable in terms of any other material planning considerations such that the proposed development is considered to be in accordance with current Development Plan Policy and planning guidance. Subject to appropriate conditions, therefore, approval is recommended

8. RECOMMENDATION

GRANT planning permission subject to the following conditions

with delegated powers to the Head of Planning and Development to be able to settle or amend any necessary planning conditions in line with the matters set out in the recommendation and as resolved by the Planning Committee.

CONDITIONS:

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission;

Reason: In accordance with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

- 2) The development hereby permitted shall be carried out in accordance with the following approved plans and documents:

The Preliminary Ecological Appraisal dated 03/05/2022, referenced 2022/01/22 and received on 09/06/2022, drawing number 3906 13 Rev C and the email from Jack Coleman of Kent Design Studio timed at 13:54 on 14/09/2022, both received on 14/09/2022, and drawing numbers 3906 01 Rev D, 3906 10 Rev E, 3906 11 Rev G, 3906 12 Rev J and the email from Jack Coleman of Kent Design Studio timed at 09:49 on 16/01/2023, all received on 16/01/2023;

Reason: To clarify which plans and documents have been approved

- 3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall be as described on the application form;

Reason: To ensure a satisfactory appearance to the development.

- 4) Should any bats or evidence of bats be discovered during development, all work must cease with immediate effect until a suitably qualified ecologist has attended the site and been consulted, and all of their resultant recommendations have been carried out;

Reason: To prevent harm or injury to bats, which are a European Protected Species.

- 5) The development shall be carried out in strict accordance with the great crested newt mitigation during development measures set out on pages 20-21 of the Preliminary Ecological Appraisal dated 03/05/2022 and referenced 2022/01/22;

Reason: To prevent harm or injury to great crested newts, which are a European Protected Species.

- 6) The proposed ecological enhancements detailed on drawing number 3906 12 Rev J received on 16/01/2023, namely 5 timber bat boxes on the extended dwelling and 1 bat box, 2 bird boxes and 1 owl box on trees, shall be provided in accordance with the details on that drawing before the extension hereby permitted is first occupied. The proposed log pile behind the garage hereby permitted shall be provided before the first use of that garage. All ecological enhancements shall be maintained thereafter in perpetuity;

Reason: To enhance the ecology and biodiversity on the site in the future.

- 7) The proposed air source heat pump and one water butt attached to the dwelling shall be provided in accordance with the details on drawing number 3906 12 Rev J received on 16/01/2023 before the extension hereby permitted is first occupied, and the two water butts attached to the garage hereby permitted shall be provided

before the first use of that garage. These measures shall be maintained thereafter in perpetuity;

Reason: To ensure an energy efficient form of development and minimise surface water run-off.

- 8) The proposed tree planting shown on drawing number 3906 12 Rev J received on 16/01/2023, namely three *Ilex aquifolium* (Holly), two *Tilia x europaea vulgaris* (Common Lime), one *Crataegus monogyna* (Hawthorn), and one *Malus sylvestris* (Crab Apple), shall be planted during the planting season (October to February) during which the extension hereby permitted is first occupied, if it is first occupied between October and February (inclusive), or the first planting season following first occupation of the extension, if it is first occupied between March and September (inclusive). The planted trees shall all be either Nursery Advanced Heavy Standard (16-18cm girth, 4-4.5m height), or Semi-Mature in size (18-20+cm girth, 4-5m height), conforming to the specifications of the current edition of BS 3936, planted in accordance with the current edition of BS 4428 and maintained until securely rooted and able to thrive with minimal intervention;

Reason: To ensure a satisfactory appearance to the development and enhance the ecological and biodiversity value of the site in the future.

- 9) Any tree planted in accordance with the conditions attached to this permission, or in replacement for such a tree, which within a period of ten years from the date of planting is removed, uprooted, destroyed, dies, or becomes, in the opinion of the Local Planning Authority, seriously damaged or defective, shall, in the same location, be replaced during the next planting season (October to February) by another tree of the same species and size as that originally planted, except where the Local Planning Authority requires any variation or where an alternative proposal has been submitted to and approved in writing by the Local Planning Authority prior to that planting season;

Reason: To ensure a satisfactory appearance to the development and to safeguard and enhance the ecological and biodiversity value of the site in the future.

- 10) Before the development hereby permitted is first occupied, the proposed first floor bathroom window on the north east side elevation shall be obscure glazed to the equivalent of Pilkington Level 4 and shall subsequently be maintained as such;

Reason: To prevent overlooking of adjoining properties and to safeguard the privacy of existing and prospective occupiers.

INFORMATIVES

- 1) All bat species and their roosts are legally protected. It is the applicant's responsibility to ensure that appropriate precautions are taken to ensure that an offence is not committed. Further advice can be sought from Natural England.
- 2) Due regard has been had to the Public Sector Equality Duty, as set out in Section 149 of the Equality Act 2010. It is considered that the application proposals would not undermine objectives of the Duty.
- 3) It is the responsibility of the developer to ensure, before the development hereby approved is commenced, that approval under the Building Regulations (where required) and any other necessary approvals have been obtained, and that the

details shown on the plans hereby approved agree in every aspect with those approved under such legislation.

4) Your attention is drawn to the following working practices which should be met in carrying out the development:

- Your attention is drawn to Sections 60 & 61 of the COPA 1974 and to the Associated British Standard COP BS 5228: 2009 for noise control on construction sites. Statutory requirements are laid down for control of noise during works of construction and demolition: if necessary you should contact the Council's environmental health department regarding noise control requirements.
- Clearance and burning of existing woodland or rubbish must be carried out without nuisance from smoke etc. to nearby residential properties. Advice on minimising any potential nuisance is available from the Council's environmental health department.
- Plant and machinery used for demolition and construction should only be operated within the application site between 0800 hours and 1900 hours on Mondays to Fridays and between 0800 hours and 1300 hours on Saturdays and at no time on Sunday and Bank Holidays.
- Vehicles in connection with the construction of the development should only arrive, depart, be loaded or unloaded within the general site between the hours of 0800 hours and 1900 Mondays to Fridays and 0800 to 1300 hours on Saturdays and at no time on Sundays and Bank Holidays.
- The importance of notifying local residents in advance of any unavoidably noisy operations, particularly when these are to take place outside the normal working hours is advisable. Where possible, the developer shall provide residents with a name of a person and maintain dedicated telephone number to deal with any noise complaints or queries about the work.
- Adequate and suitable provision in the form of water sprays should be used to reduce dust from the site.
- It is recommended that the developer produces a Site Waste Management Plan in order to reduce the volumes of waste produced, increase recycling potential and divert materials from landfill. This best practice has been demonstrated to both increase the sustainability of a project and maximise profits by reducing the cost of waste disposal.
- Adequate and suitable measures should be carried out for the minimisation of asbestos fibres during demolition, so as to prevent airborne fibres from affecting workers carrying out the work, and nearby properties. Only contractors licensed by the Health and Safety Executive should be employed.
- If relevant, the applicant must consult the Environmental Health Manager regarding an Environmental Permit under the Environmental Protection Act 1990

Case Officer: Angela Welsford

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.

