Expiry Date - 06/03/2024

Development Control – Delegated Officer Report

Application Number: AWDM/0041/24 Recommendation – APPROVE

Site: 43 Winchester Road Worthing West Sussex BN11 4DH

Proposal: Application for a Lawful Development Certificate for Proposed Replacement windows

Site visit: N

Proposal, Site and Surroundings

The application relates to a semi-detached Victorian-era single dwelling house located to the south side of Winchester Road. The property lies within Winchester Road Conservation Area and is also recognised by the Council as a local interest building.

The proposal seeks confirmation, within an application for Lawful Development Certificate for a proposed use or development, that the proposed replacement of timber windows to UPVC to the front (north), side (west), and rear (south) is permitted development as defined within the Town and County Planning (General Permitted Development) (England) Order 2015.

Relevant Planning History: None.

Planning Assessment

Principle

The proposal will be viewed against the criteria of permitted development, as laid out within The Town and Country Planning (General Permitted Development) (England) Order 2015.

No Article 4 Direction is in place for Winchester Road Conservation Area.

Consideration

Schedule 2, Part 1, Development within the curtilage of a dwellinghouse Permitted Development

<u>Class A – Enlargement, improvement or other alteration of a dwellinghouse</u>

A.1 Development is not permitted by Class A if-

a) permission to use the dwellinghouse as a dwellinghouse has been granted only by virtue of Class M, N, P, PA or Q of Part 3 of the Schedule (changes of use);

Analysis: The dwelling house has not been created through change of use by virtue of Part 3.

b) as a result of the works, the total area of ground covered by buildings within the curtilage of the dwellinghouse (other than the original dwellinghouse) would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse);

Analysis: The application does not propose any increase in the footprint of the property.

c) the height of the part of the dwellinghouse enlarged, improved or altered would exceed the height of the highest part of the roof of the existing dwellinghouse;

Analysis: The application does not propose any increase in the scale of the property.

d) the height of the eaves of the part of the dwellinghouse enlarged, improved or altered would exceed the height of the eaves of the existing dwellinghouse;

Analysis: As per the analysis for (c).

e) the enlarged part of the dwellinghouse would extend beyond a wall which:
i) forms the principal elevation of the original dwellinghouse; or
ii) fronts a highway and forms a side elevation of the original dwellinghouse;

Analysis: As per the analysis for (c).

f) subject to paragraph g) the enlarged part of the dwellinghouse would have a single storey and-
i) extend beyond the rear wall of the original dwellinghouse by more than 4m in the case of a detached dwellinghouse, or 3m in the case of any other dwellinghouse, or
ii) exceed 4m in height;

Analysis: As per the analysis for (c).

g) for a dwellinghouse not on article 2(3) land nor on a site of special scientific interest, the enlarged part of the dwellinghouse would have a single storey and-
i) extend beyond the rear wall of the original dwellinghouse by more than 8 m in the case of a detached dwellinghouse, or 6m in the case of any other dwellinghouse, or
ii) exceed 4m in height;

Analysis: As per the analysis for (c).

h) the enlarged part of the dwellinghouse would have more than a single storey and-
i) extend beyond the rear wall of the original dwellinghouse by more than 3m, or
ii) be within 7 m of any boundary of the curtilage of the dwellinghouse being enlarged which is opposite the rear wall of that dwellinghouse;

Analysis: As per the analysis for (c).

i) the enlarged part of the dwellinghouse would be within 2m of the boundary of the curtilage of the dwellinghouse, and the height of the eaves of the enlarged part would exceed 3m;

Analysis: As per the analysis for (c).

j) the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse, and would-
i) exceed 4m in height;
ii) have more than a single storey; or
iii) have a width greater than half the width of the original dwellinghouse; or
(ja) any total enlargement (being the enlarged part together with any existing enlargement of the original dwellinghouse to which it will be joined) exceeds or would exceed the limits set out in sub-paragraphs (e) to (j).

Analysis: As per the analysis for (c).

k) it would consist of or include-
i) the construction or provision of a verandah, balcony or raised platform,
ii) the installation, alteration or replacement of a microwave antenna,
iii) the installation, alteration or replacement of a chimney, flue or soil and vent pipe, or
iv) an alteration to any part of the roof of the dwellinghouse.

Analysis: None of the above apply.

(l) the dwellinghouse is built under Part 20 of this Schedule (construction of new dwellinghouses).

Analysis: The dwelling house has not been created by virtue of Part 20.

A.2 In the case of a dwellinghouse on article 2(3) land, development is not permitted by Class A if:-

a) it would consist of cladding of any part of the exterior of the dwelling house with stone, artificial stone, pebble dash, render, plastic or tiles.
b) the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse;

c) the enlarged part of the dwellinghouse would have more than a single storey and extend beyond the rear wall of the original dwelling house.
d) any total enlargement (being the enlarged part together with any existing enlargement of the original dwellinghouse to which it will be joined) exceeds or would exceed the limits set out in sub-paragraphs (b) and (c).

Analysis: The dwelling house is within the Winchester Road Conservation Area but (a)-(d) do not apply.

A.3 Development is permitted subject to:-

a) materials must be of a similar appearance to those used in the construction of the exterior of the existing dwelling;
b) any upper-floor windows located in a wall or roof slope forming a side elevation must be:-
    i) obscured-glazed, and
    ii) non-opening unless the parts of the window which can be opened are more than 1.7m above the floor of the room in which the window is installed.
c) Where the enlarged part of the dwelling house has more than one storey or forms an upper storey on an existing enlargement of the original dwelling house the roof pitch of the enlarged part must so far as practicable be the same as the roof pitch of the original dwellinghouse.

Analysis: The key consideration is whether the proposed change of windows from timber to UPVC constitutes a material 'of a similar appearance' as laid out in criteria A.3 (a).

The onus is on how the Council interprets the legislation having regard to the context of the building.

The Government's Technical Guidance 'Permitted Development Rights for Householders' (last updated 2019) states that Condition A.3 *'is intended to ensure that any works to enlarge, alter or improve a house result in an appearance that minimises visual impact and is sympathetic to existing development. This means that the materials used should be of a similar visual appearance to those in the existing house, but does not mean they need to be the same materials.*

For example:

…It may be appropriate to replace existing windows with new uPVC double-glazed windows or include them in an extension even if there are no such windows in the existing house. What is important is that they give a similar visual appearance to those in the existing house, for example in terms of their overall shape, and the colour and size of the frames.'

The application is supported by drawings and sections of the existing and proposed windows. The windows in-situ to the front and side appear to be original to the property as there is nothing on the Council's records that

indicates otherwise. Replacement windows would be inserted into existing openings and be like-for-like insofar as dimensions and colour are concerned. The replacement windows to the property's elevations which are visible to the street scene (the front and side) would be from the 'Legacy PVCu Sliding Sash Windows' range. Whilst the frame thickness will not be exactly replicated, the replacement UPVC 'Legacy' windows would sympathetically replicate the profile, open style, and detailing (with run-through sash horns and deep bottom rail) of the existing timber windows (with the exception of the arch-style bespoke window to the first-floor side elevation labelled 'window 10' which will be sympathetically replicated in its unique design). To the rear of the property, all vertical sliding sash windows would be replaced with 2-pane (top pane fixed, bottom pane top-hung opening) casement windows.

The Council approaches these nature of applications on a case-by-case basis as it recognises there is a degree of judgement in interpreting 'similar visual appearance', notwithstanding the guidance as laid out above, therefore, different Local Planning Authorities will be guided based on how they independently interpret the legislation. In deciding whether works materially affect the external appearance, a measure of subjective judgement is involved, with reference to the Burroughs Day v Bristol CC (1996) case, the courts have established that such judgment will involve consideration of the nature of the building, the nature of the alterations, and the change to the external appearance of the building as a whole, and the changes must be visible from a number of vantage points.

Examples of this dilemma in practice are most profound at the appeal stage where inspectors have reversed decisions made by LPA's based on contrasting interpretations of the legislation where the onus is on whether the Council's decision to refuse an LDC is well founded. Appeal Ref: APP/Y2620/X/19/3234869 (13 Feb 2020) is a suitable example in this instance as the context closely matches the application in hand; the proposed removal of existing timber windows and door and the installation of PVCu double-glazed replacements was deemed lawful by the inspector, justified most palpably within the report under reason 17, which states 'in this context I am satisfied that although the proposed windows (and door), would not be of the same materials or exactly the same design as existing, they would nonetheless have a similar visual appearance in terms of their overall shape, colour and size of frames.' Given that proposal involved changes to the glazing strips as-well-as the frame size and material, this decision bolsters the viewpoint of the Council that the proposed replacement windows the subject of this application, by virtue of their sympathetic form and design which would closely resemble what exists, particularly to those elevations which are visible to the street scene, satisfies criteria A.3 (a) of Schedule 2, Part 1 of the GPDO and the Government's Technical Guidance in that they would have a 'similar visual appearance'.

Recommendation

Issue a Certificate of Lawfulness for Proposed Development, the submission of a planning application for the works will be not required. This is due to the proposed UPVC replacement windows being similar in appearance to the existing timber windows. As such, it is considered that the development is permitted by Class A of Part 1 Schedule 2 of the Town and Country Planning (General Permitted development) (England) Order 2015 (As Amended).

Reasons for Recommendation

The proposal constitutes 'development' as defined by Section 55 of the Town and Country Planning Act 1990, but is permitted by Class A of Part 1 Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (As Amended).

Case Officer: Jason Albon Date: 11/03/2024

Authorised by: Jo Morin Date: 12.03.2024