From: Kate Eastman <kateeastmanphotography@googlemail.com>
Sent: 28 August 2013 09:39
To: Matthew Porter
Subject: Re: AWDM/0815/13 15 Fowey Close
Attachments: Fowey Proposed P2 A1.pdf

Importance: High

Hi Matthew,

Please find attached the revised drawing that acknowledges the new interpretation of 20cm set back. Thank you for forwarding the High Court Decision.

Best wishes, Kate

On 27 Aug 2013, at 17:10, Matthew Porter <Matthew.Porter@adur-worthing.gov.uk> wrote:

> As discussed, please see thread.

Matthew Porter - Senior Planning Officer, Development Management |Adur & Worthing Councils
Location: Development Management, Adur & Worthing Councils, Portland House, 44 Richmond Road, Worthing, West Sussex, BN11 1HS
Internal: 63478 | External: 01903 221355 | E-mail: matthew.porter@adur-worthing.gov.uk

Please think before you print this and save paper

From: Peter Barnett
Sent: 12 August 2013 09:03
To: Jo Morin; Peter Devonport; Matthew Porter; Rebekah Smith; Hannah Barker; Claire Pink; Marie O'Keeffe
Subject: FW: The Planning Jungle website - Updates by Email (weekly) - Date: 12/08/2013

Update from Steve Speed about dormers and 20cm set back

From: Steve Speed - Planning Jungle Limited [mailto:steve=planningjungle.com@mail75.atl11.rsgsv.net] **On Behalf Of** Steve Speed - Planning Jungle Limited
Sent: 12 August 2013 07:59
To: Peter Barnett
Subject: The Planning Jungle website - Updates by Email (weekly) - Date: 12/08/2013

The Planning Jungle website

At a glance:

- **IMPORTANT: High Court judgement about 20cm set-back under Part 1 Class B.**
- **Consultation on proposed new PD rights for A1, A2, B1, C1, C2, C2A, D2, etc.**
- **"Part 1 of the GPDO - Appeal Decision Summaries": 3 additional appeal decisions.**

IMPORTANT: High Court judgement about 20cm set-back:

In my opinion, all Councils, planning consultants, and developers should ensure that they're aware of the following recent **High Court judgement**, which has found that the advice in the DCLG "Technical Guidance" document (August 2010, updated January 2013) is **incorrect** in relation to **condition B.2(b)**of Schedule 2, **Part 1, Class B** of the GPDO 1995.

The High Court has found that that **the 20cm set back should be measured from the closest point of the projecting eaves (which is the intersection with the wall)**, rather than from the outer edge of the projecting eaves.

For reference, for a roof extension, condition B.2(b) requires the following:

"B.2 Development is permitted by Class B subject to the following conditions—
…
(b) other than in the case of a hip-to-gable enlargement, the edge of the enlargement closest to the eaves of the original roof shall, so far as practicable, be not less than 20 centimetres from the eaves of the original roof;"

In relation to the above condition, the DCLG "Technical Guidance" document provides the following advice:

"The measurement of 20cm should be made along the original roof slope from the outermost edge of the eaves (the edge of the tiles or slates) to the edge of the enlargement. Any guttering that protrudes beyond the roof slope should not be included in this measurement."

The above interpretation has also been supported by the majority of appeal decisions that have dealt with this particular issue. For example, the "Part 1 of the GPDO – Appeal Decision Summaries" document on the Planning Jungle website shows that from October 2008 until June 2013 there were 10 appeal

decisions that supported the above interpretation versus 2 appeal decisions that contradicted the above interpretation.

However, it appears that the recent High Court case of ***"Waltham Forest LBC v Secretary of State for Communities and Local Government"***, for which judgement was handed down on **18/06/2013**, has found that the above interpretation is **incorrect**. Although it appears that a transcript for this judgement is not yet publicly available, the following quotes from 2 recent appeal decisions provide further information about this judgement:

Appeal Decision reference: APP/T5150/X/12/2181645

Decision date: 15 July 2013

Link: http://www.pcs.planningportal.gov.uk/pcsportal/ViewCase.asp?caseid=2181645&coid=2181132

Quote: *"The Department for Communities and Local Government's [DCLG's] Technical Guidance "Permitted development for householders" says "The measurement of 20cm should be made along the original roof slope from the outermost edge of the eaves (the edge of the tiles or slates) to the edge of the enlargement. Any guttering that protrudes beyond the roof slope should not be included in this measurement" [page 35]. However Waltham Forest [LBC v Secretary of State for Communities and Local Government] held that eaves were the part of the roof overhanging or projecting from the wall below and on a natural interpretation, the measurement of 20 cm in condition B.2 (b) should be from the nearest point of the eaves. To this extent the Technical Guidance is wrong."*

Appeal Decision reference: APP/L5810/C/12/2190152

Decision date: 24 July 2013

Link: http://www.pcs.planningportal.gov.uk/pcsportal/ViewCase.asp?caseid=2190152&coid=2165568

Quote: *"A recent court judgement [Waltham Forest LBC v Secretary of State for Communities and Local Government 2013] confirms that the measurement of 20cm 'from the eaves' means 20cm from the point at which the eaves start (i.e. the intersection with the wall), rather than from where the eaves end (i.e. the gutter or the edge of the eaves). The judge found the Department for Communities and Local Government Technical guidance to be in error in this respect."*

As such, in my opinion, regardless of the advice in the "Technical Guidance" document and the majority of previous appeal decisions, Councils should now be applying the interpretation set out by the above High Court judgement – i.e. that **the 20cm set back should be measured from the closest point of the projecting eaves (which is the intersection with the wall)**, rather than from the outer edge of the projecting eaves.

It should be noted that it appears that DCLG has still not updated its "Technical Guidance" document to correct the above advice that the High Court found to be incorrect in June 2013. This is very disappointing, because it means that a member of the public could now erect a roof extension (without an LDC) based on the advice that is still currently provided by the government about its own legislation, only to subsequently find out that their roof extension is unlawful (and potentially subject to enforcement action).

Consultation on proposed new PD rights:

DCLG has published the following **public consultation**, which runs from 06/08/2013 to **15/10/2013**:

- August 2013: Greater flexibilities for change of use – Consultation (pdf) (link).

The proposed new PD rights would consist of the following:

A1 or A2 to C3:

- This would allow **A1 (shops) or A2 (financial and professional services)** to change to **C3 (dwellinghouses)**. The latter could be a **house** or **up to 4 flats**, but **not** a small HMO.
- There would be an upper threshold of 150m2.
- Some operational development would be allowed, such as a new frontage, windows and doors.
- This would **not** apply on article 1(5) land.
- **Prior approval** would be required with respect to design (specified as design, material types, and outlook), the impact of the loss of the retail unit on the economic health of the town centre, the need to maintain an adequate provision of essential local services (e.g. post offices), and the impact of the change of use on the character of the local area.

A1 to banks and building societies:

- This would allow **A1 (shops)** to change to **banks and building societies**. It would not be possible to subsequently change to other A2 uses (e.g. betting shops, etc).

Agricultural buildings to C3:

- This would allow **agricultural buildings** to change to **C3 (dwellinghouses)**. The latter could be**up to 3 additional houses or flats**.
- The agricultural building must have been constructed prior to 20/03/2013.
- There would be an upper threshold of 150m2 for a single house.

- Some operational development would be allowed, including the **demolition and rebuilding** of the property on the same footprint.
- This **would** apply on **article 1(5)** land.
- **Prior approval** would be required with respect to siting and design (specified as design, materials, and outlook), transport and highways impacts, noise impacts, contamination risks, and flooding risks.
- There would provisions to **restrict** the ability to use both the above new PD rights and the existing Part 6 of the GPDO.

B1, C1, C2, C2A, or D2 to Nursery:

- This would allow **B1 (business), C1 (hotels), C2 (residential institutions), C2A (secure residential institutions), or D2 (assembly and leisure)** to change to **nurseries**. The latter must be on the Early Years Register which is regulated by Ofsted.
- Some operational development would be allowed, as is the case for schools under Part 32 of the GPDO.
- **Prior approval** would be required with respect to transport and highways impacts, noise impacts, and contamination risks.

Agricultural buildings to state-funded schools:

- This would allow **agricultural buildings** to change to **state-funded schools**.
- There would be a cumulative size limit of 500m2.
- Some operational development would be allowed, via a modified version of Part 41 Class B of the GPDO.
- **Prior approval** would be required with respect to transport and highways impacts, noise impacts, contamination risks, and flooding risks.

Other Notes:

The proposed new PD rights would **not** apply to the following:

- Listed buildings and scheduled monuments.
- Buildings within Sites of Special Scientific Interest (SSSIs).
- Safety hazard zones and military explosives storage areas.
- Development where an environmental impact assessment is required:

Part 1 of the GPDO - Appeal Decision Summaries:

The Part 1 of the GPDO - Appeal Decision Summaries document has been updated to include **3 additional appeal decisions** (0 "LDC Appeals" and 3 "Enforcement Appeals"), for which the **"Main Conclusions"** are as follows:

August 2013 – Code e2013-024 (ground (c) dismissed):

- Where parts of an outbuilding are within 2m of a boundary, the 2.5m height limit applies **not only**to those parts within 2m of the boundary, but to **all parts** of the outbuilding. (*)

August 2013 – Code e2013-023 (ground (c) allowed):

- The side wall of an **original single storey side projection** can constitute “a wall forming a side elevation of the original dwellinghouse”.

August 2013 – Code e2013-022 (ground (f) dismissed):

- Permitted development rights do **not** apply to an **unlawful** building.
- Where works exceed the tolerances of permitted development and have been **substantially completed** (i.e. unlawfully), it is **not** possible to alter the works so that they become permitted development.

Notes:

- Any conclusions above marked with a ”(*)” **contradict** other appeal decisions – for further info, please view Part 1 of the GPDO - Appeal Decision Summaries document.
- For further information about the project to add **“Enforcement Appeals"** to the "Part 1 of the GPDO - Appeal Decision Summaries" document, please see here.

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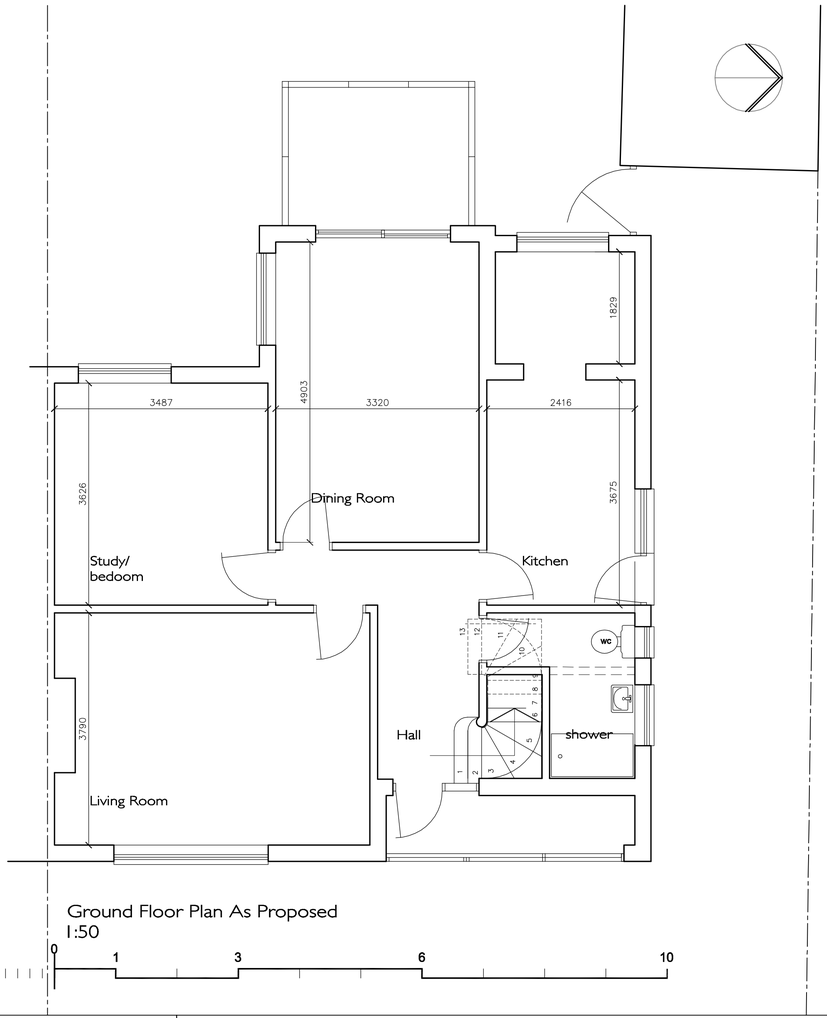
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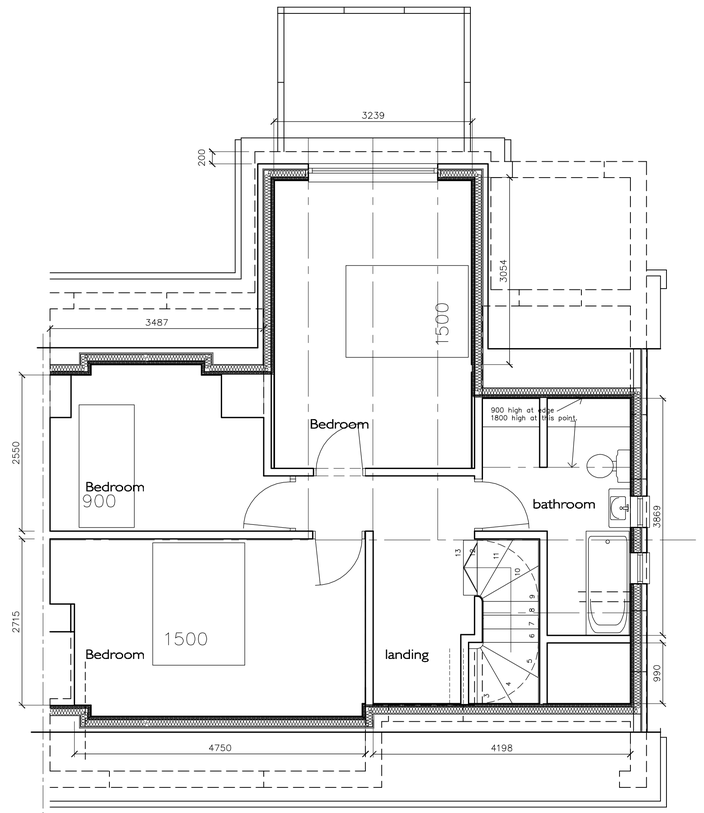
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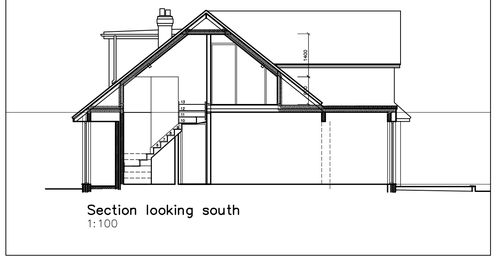




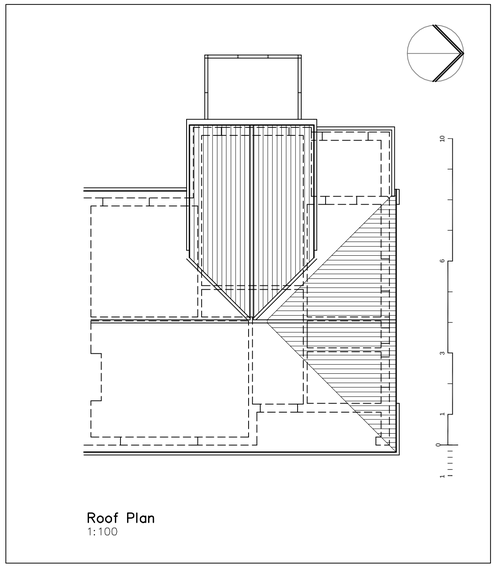
Ground Floor Plan As Proposed
1:50



First Floor Plan As Proposed



Section looking south
1:100



Roof Plan
1:100

Note:
Do not scale this drawing.
All levels and dimensions are to be checked on site.
This drawing is to be read in conjunction with all relevant consultants' requirements, drawings and specifications.
Any discrepancies between consultants' drawings to be reported to the Contract Administrator before any relevant work commences.

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Notes

Rev	Date	Description	Drawn	Checked
-	12.04.13	First issue	cad	SE
P1	26.08.13	200mm of extg roof retained at rear. North windows fixed shut.	cad	sje
P2	28.08.13	Rear gable set back to 200mm from extg eaves.	cad	sje

Proposed Alterations
15 Fowey Close, Shoreham-by-Sea,
Sussex, BN41 5HE

Plans & Elevations - As Proposed - Ph 1

Scale	Job	Dwg	Rev
1:50 & 100 @A1	Fow	101	P2

SEArch
ARCHITECTS
62 Benfield Way
Portslade
Brighton
BN41 2DL
T: 01273 418999
eastmens@ gmail.com