

13 DCNE2007/3855/F - REMOVAL OF CONDITION 6 OF PLANNING PERMISSION NE2003/1293/F TO ALLOW CLEAR GLASS TO BE USED FOR 2 WINDOWS AT FIRST FLOOR ON SOUTH EAST ELEVATION AT ASHDOWN HOUSE, HOMEND CRESCENT, LEDBURY, HEREFORDSHIRE, HR8 1AQ

For: Barrington Frank Outwin at above address.

Date Received:
14th December 2007

Ward:
Ledbury

Grid Ref:
71080, 37979

Expiry Date:
8th February 2008

Local Members: Councillors M. Cooper, K. Swinburne and P. Watts

1. Site Description and Proposal

- 1.1 The application site is located within an established residential area within Ledbury, which is in close proximity to the central shopping and commercial area. The area is urban in nature and features a mix of housing styles, types and sizes.
- 1.2 The existing dwelling, subject of this application, is a 4 bedroom detached dwelling with associated garden curtilage area. The dwelling is brick under a pitched roof with quarter hip and accommodation at first floor being provided in a dormer style. The principle elevation and aspect being westwards across Ledbury Town.
- 1.3 The proposal is for the removal of a condition placed upon the original permission for the dwelling (NE03/1293/F) now known as 'Ashdown House'. This condition (No. 6) states:

“Prior to the use or occupation of the dwelling hereby permitted, and at all times thereafter, the windows on first floor on the south east elevations shall be glazed with obscure glass only.

Reason: In order to protect the residential amenity of adjacent properties.”

2. Policies

National Planning Policy:
Circular 11/95 – Use of Conditions in Planning Permissions

Unitary Development Plan (adopted 2007):
DR1 – Design
DR2 – Land use and activity
H13 – Sustainable residential design

3. Planning History

NE2003/1293/F - Approved with conditions, erection of one dwelling

4. Consultation Summary

Statutory Consultations

None required

Internal Council Advice

Transportation Manager – no objections

5. Representations

5.1 The Town Council objects to the proposal, commenting 'the original condition was put there for a specific reason which as far as (members) aware, has not changed'.

5.2 One letter of objection has been received from Mr D Hunter, 19 Bank Crescent, Ledbury. The comments are summarised as:

- The windows in question overlook the only area of (my) garden, which currently has any degree of privacy. As my house is on a triangular plot of cross roads most parts of the garden are exposed.
- Concern about children being watched by 'prying eyes' when previously they were free to play in a private sheltered place
- Loss of privacy to other areas of the garden
- Questions the need and intentions of the application and the applicant, who knew of the condition when purchasing the property

5.3 The full text of these letters can be inspected at Northern Planning Services, Garrick House, Widemarsh Street, Hereford and prior to the Sub-Committee meeting.

6. Officer's Appraisal

6.1 Government advice in Circular 11/95 – Use of Conditions in Planning Permissions, stresses that conditions should only be imposed where they are necessary and reasonable, as well as enforceable, precise and relevant both to planning and to the development to be permitted. Attention is particularly drawn to paragraphs 15-17 which advise that in considering whether a condition is necessary authorities should ask themselves whether planning permission would have to be refused if the requirements of that condition were not impose.

6.2 The existing original condition, subject of this application, is considered onerous and unnecessary. The area of the garden where the 'overlooking' occurs cannot be considered the private amenity space of 19 Bank Crescent. The distance from the windows subject of this application, to the facing wall of 19 Bank Crescent is approximately 28 metres. This distance is considered acceptable and not to cause a material harm to enjoyment of 19 Bank Crescent, indeed I believe that the windows in

the facing elevation comprise bathroom and landing at first floor level, and kitchen at ground floor.

- 6.3 19 Bank Crescent enjoys in my opinion at least 3 separate garden curtilage areas, which enjoy high degrees of privacy. Given this dwelling is located within an urban environment and close to the town centre, this is unusual. Indeed the actual 'private amenity' garden area of no.19 is a considerable distance from the windows in Ashdown House, subject of this application. Indeed these windows are approx 10metres away from the site boundary, and then a further distance onto no.19 as outlined above.
- 6.4 Circular 11/95 states 'Conditions which will remain in force after the development has been carried out always need particular care. They can place onerous and permanent restrictions on what can be done with the premises affected, and they should therefore not be imposed without scrupulous weighing of the balance of advantage'.
- 6.5 The overlooking 'harm' caused by the removal of the condition is less than the existing situations which currently exist. These arguably could cause more distress to the occupiers of 19 Bank Crescent and their enjoyment of their house. Accordingly, following the advice in Circular 11/95, the condition presents no advantage to the occupiers of 19 Bank Crescent, whilst at the same time being onerous on the occupiers of Ashdown House for the following reasons:
- a) The occupiers of Ashdown House can from their garden, overlook not only the garden area of no.19 referred to be the owner of 19, but actually a far greater area of the garden area/ dwelling
 - b) From the public highway/ footpath it is possible to look into no.19's garden at the area in question (children's play area) and not be prevented from doing so.
 - c) The rooms within Ashdown house are a bedroom and study - in regards to the bedroom, these are normally used at specific periods of the day and not used as 'viewing platforms' for any considerable time. Indeed, on inspection of the windows and views offered, occupiers are likely to enjoy the fleeting glimpses and views offered as they pass about their business rather than stand at the window and specifically cause harm.
 - d) It is noted that the Condition did restrict the use of "opening windows". Therefore the perceived "harm" could be created, or the Condition circumnavigated legally and without any planning control or enforcement action being applicable. Accordingly, in the event of the perceived harm the existing condition does not mitigate against this appropriately.
- 6.6 Turning to the comments of the objecting neighbour and the impact upon 19 Bank Crescent.

It is considered that 19 Bank Crescent enjoys various areas of private amenity space, which would not be affected by the proposal, including to the rear and front of the property. It should be remembered that the dwelling is located in an urban area in close proximity to the town centre. The dwelling enjoys not only a large garden curtilage area for such a location, but also, surprisingly, a considerable amount of garden area which is 'private' and not overlooked.

The area of garden where the children's play equipment is located cannot be considered a 'private sheltered place' given the distance of this area from the dwelling. In addition, it is not considered that this area is private at all, given the overlooking,

which can take place from both the public highway and garden area of Ashdown House.

6.7 Finally, in regards to any motives of the occupiers of Ashdown House, and their knowledge of this condition being in place when purchasing the property is irrelevant and not a planning mater. Government advice in Circular 11/95 notes that ‘an unreasonable condition does not become reasonable because an applicant suggests it or consents to its terms. The condition will normally run with the land, and may therefore still be operative long after the applicant has moved on; it must always be justified on its planning merits’.

6.8 Given all of the above, if the original application was submitted, condition 6 would not be applied or recommended. It is considered that the potential concern, which led to the condition being placed on the original application has not materialised. Consequently approval is recommended to this application, as it is in accordance with UDP Policies DR1, DR2 and H13, and the original condition is not in accordance with Government advice contained in Circular 11/95.

RECOMMENDATION

That planning permission be granted.

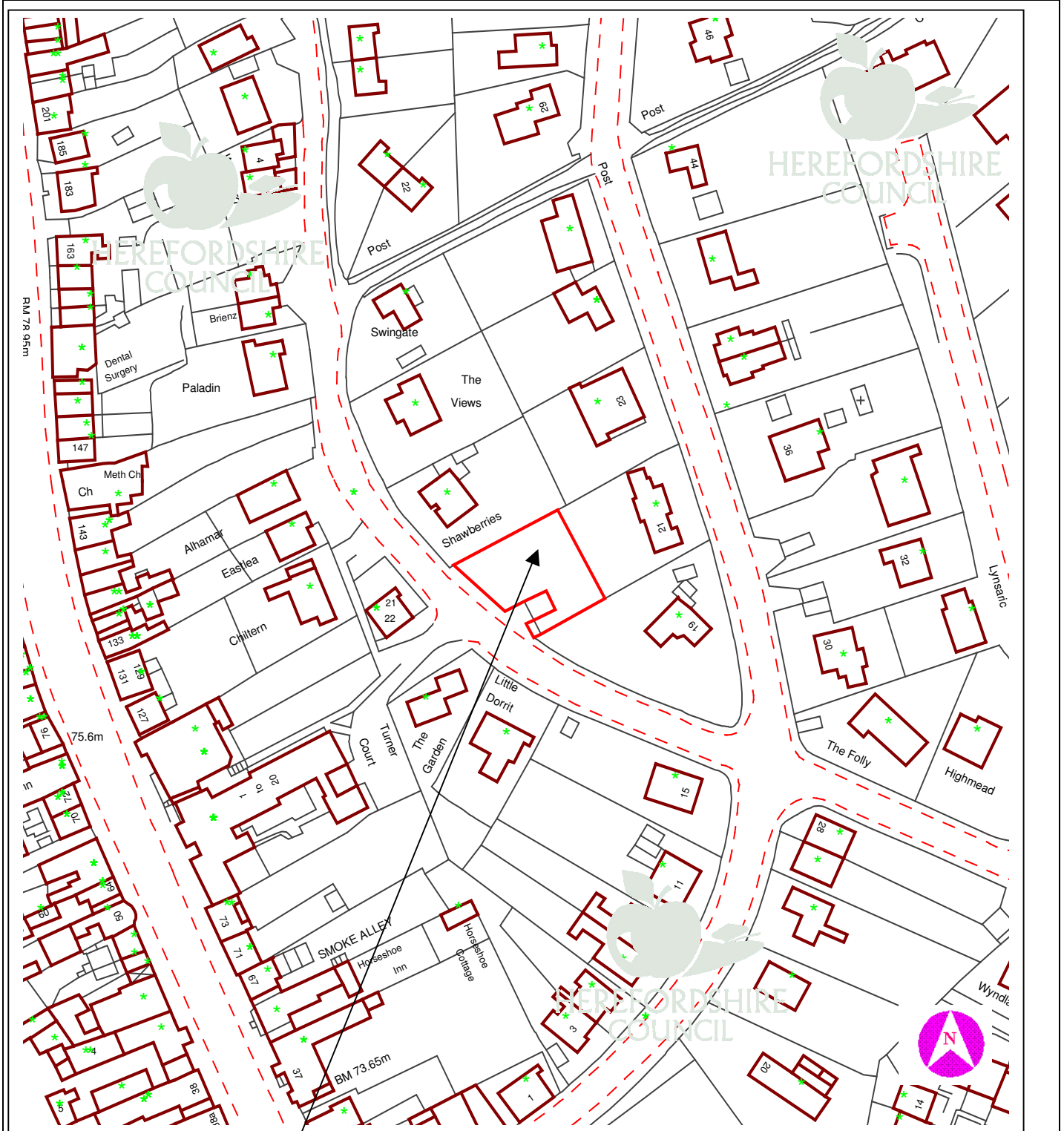
Decision:

Notes:

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Background Papers

Internal departmental consultation replies.



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APPLICATION NO: DCNE2007/3855/F

SCALE : 1 : 1250

SITE ADDRESS : Ashdown House, Homend Crescent, Ledbury, Herefordshire, HR8 1AQ

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