

REPORT SUMMARY

REFERENCE NO - 21/502853/LDCEX		
APPLICATION PROPOSAL		
Lawful development certificate (existing) for conversion of loft into habitable space, with hip to gable roof alterations and insertion of a rear dormer and 4no. front rooflights.		
ADDRESS 3-5 Bower Place Maidstone Kent ME16 8BG		
RECOMMENDATION – Refuse for the reasons set out in section 8.0		
SUMMARY OF REASONS FOR REFUSAL		
<ul style="list-style-type: none"> - The works completed to the roofs of both numbers 3 and 5 Bower Place amount to works beyond the scope of an addition or alterations to the roof of a dwellinghouse and therefore fail to meet the requirement of Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). Based on the information submitted the development would also fail to meet points B.1 (b) and (c) and Condition B.2 (a), such considers that the works exceed the height of the highest part of the original dwellinghouse, extend beyond the plane of the roof slope of the principal elevation and the materials used are not similar in appearance to the existing dwellinghouse. - The works completed to the roofs of both numbers 3 and 5 Bower Place amount to works beyond the scope of an addition or alterations to the roof of a dwellinghouse and therefore it is not considered that the rooflights have been inserted into the original roofslope and as such they would fail to be permitted development under point C.1 (b) of Schedule 2, Part 1, Class C of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). 		
REASON FOR REFERRAL TO COMMITTEE		
The application has been called in by the Ward Councillor, Cllr Harper on the grounds of the level of local concern. Other reasons are set out in his comments below.		
WARD Fant	PARISH/TOWN COUNCIL	APPLICANT Tunji Salami AGENT CJS Planning & Building Services
DECISION DUE DATE 23/07/21	PUBLICITY EXPIRY DATE N/A	OFFICER SITE VISIT DATE
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):		
3 Bower Place		
20/503136/PNEXT Prior notification for a proposed single storey rear extension which: A) Extends by 4.5 metres beyond the rear wall of the original dwelling. B) Has a maximum height of 2.85 metres from the natural ground level. C) Has a height of 2.7 metres at the eaves from the natural ground level Permitted		
5 Bower Place		
20/504815/FULL Erection of a single storey side and rear extension Permitted		

3-5 Bower Place

21/504384/LAWPRO: Lawful Development Certificate for the proposed rendering of the front of the house. Pending consideration

21/502019/FULL Roof alterations to create second floor living accommodation with front and rear dormers (Part Retrospective). Refused for the following reasons:

- (1) It is considered by virtue of its design and mass, the proposal, in particular the flat 'mansard' style roof would appear convoluted, incongruous, bulky and subsume the original dwellings and would harm the character and appearance of the area, host properties and street scene as such the proposal would be contrary to the National Planning Policy Framework 2019, Policies DM1 and DM9 of the Maidstone Borough Local Plan 2017 and the Councils Residential Extensions Supplementary Planning Document and that there are no overriding material considerations to justify approval that outweigh the harm identified above.
- (2) The proposal would result in harm to the amenity of the adjacent neighbouring properties by being unduly overbearing and causing a loss of outlook such the proposal would be contrary to the National Planning Policy Framework 2019, Policies DM1 and DM9 of the Maidstone Borough Local Plan 2017 and the Councils Residential Extensions Supplementary Planning Document and that there are no overriding material considerations to justify approval that outweigh the harm identified above.

MAIN REPORT

1.0 DESCRIPTION OF SITE

1.01 The application site comprises two semi-detached properties located to the north eastern side of Bower Place. The properties are set back from the highway and have fairly small gardens to the rear. The surrounding area is predominantly residential in character and features a range of housing styles and types. The application site is not subject to any specific designations within the local plan but is located within Maidstone's Urban Area Boundary.

2.0 PROPOSAL

2.01 The application seeks the determination of a Lawful development certificate (existing) for the conversion of loft into habitable space, with hip to gable roof alterations and insertion of a rear dormer and 4no. front rooflights.

2.02 The certificate is for an existing lawful development certificate as the works have already been carried out. The certificate is submitted in respect of two dwellinghouses (numbers 3 and 5 Bower Place), the works carried out have been mirrored on both dwellings and are summarised as follows:

2.03 *Hip to gable roof alteration*

The original hipped roofs have been altered on each dwelling, to provide gable ended roofs. The gables extend from the original eaves and is shown to adjoin to the original ridge.

2.04 *Rear flat roof dormer*

This extends across almost the full width of both dwellings with a projection from the original roofslope of approximately 3.1m and a height of approximately 2.45m. The dormer measures approximately 4m in width on each side of the party wall of each property.

Each rear dormer measures approximately 15.2m³

2.05 *Rooflights*

Two rooflights have been inserted in the front roof planes of each dwelling.

2.06 *Other alterations shown*

When comparing the as built plans and those of the original dwelling there are differences between the submitted plans and that observed on site, these are summarised as:

- the plans indicate that the overall roof height has been lowered and the form of the roof altered, consequently resulting in an extended flat roof to the ridge and a different shape to the original roof. The plans show the top of the dormer sited at the same level as the new ridge. However, as observed on site the position of the flat roof rear dormer sites below the new ridge height

- The materials also differ. The plans appear to indicate brick and tile hung, whereas render has been utilised on the new gables and the walls of the rear dormer.

3.0 POLICY AND OTHER CONSIDERATIONS

Town and Country Planning Act 1990 (as amended)

The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

Permitted development rights for householder – Technical Guidance September 2019

4.0 LOCAL REPRESENTATIONS

This type of submission does not have any statutory requirement for consultation, however comments have been received which are summarised below. The NPPG sets out that *Views expressed by third parties on the planning merits of the case, or on whether the applicant has any private rights to carry out the operation, use or activity in question, are irrelevant when determining the application.*

Cllr Perle (summarised comments, photographs and other evidence included with comments)

Comments relating to GPDO

- Distinction between C3 and C4 use
- Roofscape has been altered
- Height of original roof has been exceed
- Cubic content would exceed 50 cubic metres

Planning merits/other comments

- Property is to be used as an HMO

Cllr Harper (summarised comments, it should be noted that the comments principally relate to the planning merits of the development rather than whether the proposal meets permitted development criteria.)

- Out of character
- Overdevelopment
- Lack of outdoor space
- Impact on local services
- Lack of parking
- Does not accord with planning policy
- Impact on neighbouring amenity (overbearing, loss of privacy)

12 Neighbour representations have been received raising the following (summarised points), these are split between those which relate to the planning merits or those that relate to permitted development:

Comments relating to the G.P.D.O

- Development exceeds height of original dwelling
- Plans do not show other extensions which have now been constructed
- HMOs don't have permitted development rights
- Roof of rear extension take the development over cubic volume
- Before some development take place 'prior approval' is required and consent cannot be applied for retrospectively
- Materials do not match the original dwelling
- No details are given of the obscenity level of the side windows

Planning or other merits of the scheme

- Out of scale and out of keeping
- Insufficient parking
- HMO would be too large
- Overlooking and loss of privacy
- Waste water and sewerage
- Loss of light
- Retrospective nature of the development
- Lack of details
- Impact on biodiversity
- Climate change, does the proposal meet insulation standards etc
- Does the proposal meet affordable development requirements
- Does the proposal meet HMO guidelines
- Does the proposal meet building regulations

5.0 CONSULTATIONS

None

6.0 APPRAISAL

6.01 The application is made under Section 191 of the Town and Country Planning Act 1990 for a Certificate for an existing use or operation. It is to establish whether or not the development constitutes permitted development. Under 191(1) "If any person wishes to ascertain whether...any operations which have been carried out in, on, over or under land are lawful...he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter". Section 191(4) states "if, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the... operation...they shall issue a certificate to that effect". The determination of an application under section 191 is made purely on the basis of fact and law. Considerations as to the proposed planning merits of the development are irrelevant in this application.

6.02 In this respect the applicant has provided the following supporting evidence/information:

- Application form
- Drawing D01 (Site Location and Block Plans)
- Drawing D02 (Existing Floor and Roof Plans) – Original dwellings
- Drawing D03 (Existing Elevations) – Original dwellings
- Drawing D04 (Existing Basement Floor Plan) – Original dwellings
- Drawing D05 (Existing Ground Floor Plan)
- Drawing D06 (Existing First Floor Plan)
- Drawing D07 (Existing Roof Plan)
- Drawing D08 (Existing Rear Elevation)
- Drawing D09 (Existing Front Elevation)
- Drawing D10 (Existing Flank and Side Elevations)
- Drawing D11 (Existing Second Floor Plan)
- Drawing D12 (Existing Section AA)

- Statement produced by CJS Planning and Building Services dated 23rd June 2021

6.03 In considering the proposal the key issue is whether the works meet the criteria set out in The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). In determining this the following matters will be considered:

- Does the proposal meet Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).(additions to the roof of a dwellinghouse)
- Does the proposal meet Schedule 2, Part 1, Class C of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).(other alterations to the roof of a dwellinghouse).
- Any other matters

Does the proposal meet Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

6.04 As the works mirror each other on both dwellings, the below appraisal relates equally to numbers 3 and 5 Bower Place.

6.05 Schedule 2, Part 1, Class B of the GPDO sets out the following, with the Officer's consideration of each point:

6.06 Class B – additions etc to the roof of a dwellinghouse

The merits of the works to each dwellinghouse are considered independently and as such the works are considered to be works to the roof of a single dwellinghouse.

6.07 Permitted development

B. The enlargement of a dwellinghouse consisting of **an addition or alteration** to its roof.

The GPDO at Article 3, Schedule 2, Part 1, Class B, grants planning permission for the enlargement of a dwelling consisting of an addition or alteration to its roof. The reference to 'addition or alteration' makes it clear that to benefit from this Class, there must be a roof structure in situ which is being added to or altered. The right conferred by Class B does not extend to the demolition and reconstruction of the original roof. Whether something would amount to an addition or alteration to the roof of a dwelling is therefore a matter of fact and degree in every case.

The GPDO does not define 'addition', 'alteration' or 'other alteration', however extensive appeal decisions exist on this matter.

The application is not accompanied by any schedule of how the works were carried out, however the submitted plans in themselves clearly indicate that the roof form has been altered. The plans suggest that there has been a decrease in height and the original flat ridge has been extended and flattened further. I would question the accuracy of the plans as the as built elevations indicate the rear dormer to be flush with the new ridge but it actually sits below the as built ridge height. (see extract plans and photographs below)

Original side elevation

As built side elevation



Original side elevation



As built side elevation



6.08 Representation received provides photographic evidence which shows a new roof being constructed (see below)



- 6.09 Consequently it is considered that the works extend beyond addition/alterations within the GPDO and the works have resulted in a new roof being constructed with a new roof form created. The works amount to more than the **addition** of the rear dormers and the hip-gable extension.
- 6.10 Therefore in this respect the application for a certificate fails and should be refused. On this basis it is not necessary to fully consider the application in respect of whether it would meet the criteria below, but on the grounds of completeness and should Members disagree with the appraisal above, each criteria is considered below.

Development not permitted

B.1 Development is not permitted by Class B if—

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

Officer comment: N/A

- 6.12 (b) any part of the dwellinghouse would, as a result of the works, exceed the height of the highest part of the existing roof;

Officer comment: There is ambiguity on this basis, the submitted plans clearly show that the development is lower than the original ridge height, however the plans are considered to be incorrect. Neighbour representation suggests a height increase has occurred and the photograph above concurs with this viewpoint. As such it is considered that a height increase has occurred and the application fails to demonstrate it has not.

- 6.13 (c) any part of the dwellinghouse would, as a result of the works, extend beyond the plane of any existing roof slope which forms the principal elevation of the dwellinghouse and fronts a highway;

Officer comment: The roof form of the original dwelling has been altered and the submitted plans and on-site development would suggest that the roof pitch has changed, this has resulted in the extended flat roof along the ridge. As a consequence it is considered that the resultant roof form sits above the original roof slope and thus extends beyond the plan of the existing roof slope.

- 6.14 (d) the cubic content of the resulting roof space would exceed the cubic content of the original roof space by more than—
(i) 40 cubic metres in the case of a terrace house, or
(ii) 50 cubic metres in any other case;

Officer comment: As each property is semi-detached the new volume of the roof space created shall not exceed 50 cubic metres. The application supplies details that the volume increase for each dwelling is approximately 16.71cubic metres for the hip-to-gable volume and 16.115cubic metres for the rear dormer. This totals approximately 32.8 cubic metres for each dwelling, thus being lower than the 50 cubic metres allowable.

My calculations for the rear dormer are similar at around 15 cubic metres. The other roof form changes are unable to be calculated accurately due to ambiguity in the plans, however this is unlikely to differ significantly from those calculated by the

applicants. It is therefore considered that the changes would be unlikely to exceed 50cubic metres.

- 6.15 (e) it would consist of or include—
(i) the construction or provision of a veranda, balcony or raised platform, or
(ii) the installation, alteration or replacement of a chimney, flue or soil and vent pipe;

Officer comment: No veranda, balcony or raised platform has been constructed. Although not explicit the soil and vent pipe has been altered. This is however considered as permitted development under Schedule 2, Part 1, Class G of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) whereby the pipe does not exceed the highest part of the roof by more than 1m.

- 6.16 (f) the dwellinghouse is on article 2(3) land.;

Officer comment: N/A

- 6.17 (g) the dwellinghouse is built under Part 20 of this Schedule (construction of new dwellinghouses).;

Officer comment: N/A

- 6.18 (h) the existing dwellinghouse has been enlarged in reliance on the permission granted by Class AA (enlargement of a dwellinghouse by construction of additional storeys).

Officer comment: N/A

Conditions

B.2 Development is permitted by Class B subject to the following conditions—

- 6.19 (a) the materials used in any exterior work must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse;

Officer comment: The original dwelling is predominantly brick built with the frontage being ragstone. Stone detailing can be found at the junction of the front elevations with the side elevations and around the window and doors.

There was no render on the original dwelling. It could be argued that the feature stonework around the corner of the dwellings and the windows is of a similar appearance to the render. However, I would not agree that this 'feature detailing' is the dominant material on the dwellinghouse and it is not render.

As such, I am of the opinion that the materials used in the external construction of the new gable and rear dormer are not of a similar appearance to those in the construction of the exterior of the existing dwellinghouse.

- 6.20 (b) the enlargement must be constructed so that—
(i) other than in the case of a hip-to-gable enlargement or an enlargement which joins the original roof to the roof of a rear or side extension—
(aa) the eaves of the original roof are maintained or reinstated; and
(bb) the edge of the enlargement closest to the eaves of the original roof is, so far as practicable, not less than 0.2 metres from the eaves, measured along the roof slope from the outside edge of the eaves; and

Officer comment: The rear dormer is sited so that it retains at least a 0.2m from the eaves.

- 6.21 (ii) other than in the case of an enlargement which joins the original roof to the roof of a rear or side extension, no part of the enlargement extends beyond the outside face of any external wall of the original dwellinghouse; and

Officer comment: The development is not considered to extend beyond the outside face of any external wall.

- 6.22 (c) any window inserted on a wall or roof slope forming a side elevation of the dwellinghouse must be—

- (i) obscure-glazed, and
- (ii) non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed.

Officer comment: There are windows in the side elevation of both dwellinghouses. These are however fitted with obscure glazing and fixed shut (see photograph below), as such the proposal would comply with this condition.



6.23 *Overall*

The works completed to the roofs of both numbers 3 and 5 Bower Place amount to works beyond the scope of an addition or alterations to the roof of a dwellinghouse and therefore fail to meet the fundamental requirement of Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). Based on the information submitted the development would also fail to meet points B.1 (b) and (c) and Condition B.2 (a), such that the Local Planning authority is not wholly convinced that on the balance of probability that the works have not exceeded the height of the highest part of the original

dwellinghouse, do not extend beyond the plane of the roof slope of the principal elevation and the materials used of not similar in appearance to the existing dwellinghouse.

Does the proposal meet Schedule 2, Part 1, Class C of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

**6.24 Class C – other alterations to the roof of a dwellinghouse
Permitted development
C. Any other alteration to the roof of a dwellinghouse.**

Class C applies when considering the rooflights which have been inserted into the front roof slope of both dwellinghouses.

6.25 Development not permitted

C.1 Development is not permitted by Class C if—

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

Officer comment: N/A

- 6.27 (b) the alteration would protrude more than 0.15 metres beyond the plane of the slope of the original roof when measured from the perpendicular with the external surface of the original roof;

Officer comment: As set out above it is considered that the roof pitch of the original dwellinghouses are likely to have been altered and as such due to the rooflights not being inserted into the original roof the development would fail on this point.

- 6.28 (c) it would result in the highest part of the alteration being higher than the highest part of the original roof; or

Officer comment: The rooflights would not be higher than the highest part of the original roof

- 6.29 (d) it would consist of or include—

(i) the installation, alteration or replacement of a chimney, flue or soil and vent pipe, or

(ii) the installation, alteration or replacement of solar photovoltaics or solar thermal equipment.; or

Officer comment: The matter relating to the soil and vent pipe is addressed above. None other matters apply

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

Officer comment: N/A

6.31 Conditions

C.2 Development is permitted by Class C subject to the condition that any window located on a roof slope forming a side elevation of the dwellinghouse must be—
(a) obscure-glazed; and

(b) non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed.

Officer comment: N/A the rooflights are to the front elevation

6.32 *Overall*

The works completed to the roofs of both numbers 3 and 5 Bower Place amount to works beyond the scope of an addition or alterations to the roof of a dwellinghouse and therefore it is not considered on the balance of probability that the rooflights have been inserted into the original roofslope and as such they would fail to be permitted development under point C.1 (b) of Schedule 2, Part 1, Class C of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Other matters

6.33 As the proposal fails to meet the criteria set out in Classes B and C of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), it has not been considered necessary to consider any further whether the Certificate applied for can relate to two separate dwellinghouses.

6.34 The matter of whether the property is a house of multiple occupancy (HMO) has been raised on a number of occasions. Based on the facts before us, neither property has been used as a HMO and an application cannot be determined on speculation or what may happen. As such the application has been considered on the basis of both properties being single dwellinghouses which is how they have been historically used. This change of use to a HMO is not part of the current LDC application as the works relate to a dwellinghouse. However, it should be noted that planning permission is not required to change the use of a dwellinghouse to a small scale HMO (6 persons or less) and vice versa.

7.0 CONCLUSION

7.01 The works completed to the roofs of both numbers 3 and 5 Bower Place amount to works beyond the scope of an addition or alterations to the roof of a dwellinghouse and therefore fail to meet the fundamental requirement of Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). Based on the information submitted the development would also fail to meet points B.1 (b) and (c) and Condition B.2 (a), such that the Local Planning Authority considers that the works have exceeded the height of the highest part of the original dwellinghouse, extend beyond the plane of the roof slope of the principal elevation and the materials used are not similar in appearance to the existing dwellinghouse.

7.02 The works completed to the roofs of both numbers 3 and 5 Bower Place amount to works beyond the scope of an addition or alterations to the roof of a dwellinghouse and therefore it is that the rooflights have been inserted into the original roofslope and as such they would fail to be permitted development under point C.1 (b) of Schedule 2, Part 1, Class C of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

7.03 The reports and recommendation has been reviewed and agreed with an Officer of Mid-Kent Legal Services (MKLS).

8.0 RECOMMENDATION - REFUSE for the following reasons:

- (1) The application fails to demonstrate that in accordance with Section 191 of the Town and Country Planning Act 1990 the existing development, namely the roof works to numbers 3 and 5 Bower Place would accord with Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), such that the works carried out fall beyond the scope of an addition and/or alteration to the roof of the respective dwellings.
- (2) Notwithstanding Reason 1, based on the information submitted the application fails to demonstrate that in accordance with Section 191 of the Town and Country Planning Act 1990 the existing development would comply with points B.1 (b) and (c) and Condition B.2 (a) of Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), such that the works have exceeded the height of the highest part of the original dwellinghouse, extend beyond the plane of the roof slope of the principal elevation and the materials used are not similar in appearance to the original dwellinghouses.
- (3) Notwithstanding Reasons 1 and 2, the application fails to demonstrate that the front facing rooflights have been inserted into the roofslope of the original dwellinghouses such that the submission fails to comply with point C.1 (b) of Schedule 2, Part 1, Class C of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

INFORMATIVES

- (1) The plans and information taken into consideration in reaching the decision are :
 - Application form
 - Drawing D01 (Site Location and Block Plans)
 - Drawing D02 (Existing Floor and Roof Plans) – Original dwellings
 - Drawing D03 (Existing Elevations) – Original dwellings
 - Drawing D04 (Existing Basement Floor Plan) – Original dwellings
 - Drawing D05 (Existing Ground Floor Plan)
 - Drawing D06 (Existing First Floor Plan)
 - Drawing D07 (Existing Roof Plan)
 - Drawing D08 (Existing Rear Elevation)
 - Drawing D09 (Existing Front Elevation)
 - Drawing D10 (Existing Flank and Side Elevations)
 - Drawing D11 (Existing Second Floor Plan)
 - Drawing D12 (Existing Section AA)

Statement produced by CJS Planning and Building Services dated 23rd June 2021

Case Officer: Rachael Elliott

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