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Item No: 7.5

Application: 222779

Applicant: Cllr Jeremy Hagon

Agent: Mr Kevin Ayen

Proposal: Application for a lawful development certificate for proposed 4 metre single storey rear extension

Location: 71 Byron Avenue, Colchester, Essex, CO3 4HQ

Ward: Prettygate

Officer: Nicola Perry

Recommendation: Approval

1.0 Reason for Referral to the Planning Committee

- 1.1 This application is referred to the Planning Committee because the applicant is a current Councillor at Colchester City Council, representing Stanway Ward.

2.0 Synopsis

- 2.1 This application has been made by the applicant in order to request a formal legal determination as to whether or not the proposed development requires a planning application or can be undertaken via the planning permission granted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) and is therefore 'permitted development'.
- 2.2 The detailed assessment of the '4 metre single storey rear extension' proposed in this application against the relevant terms of the aforementioned Order, has confirmed that it meets the criteria set out in Schedule 2, Part 1, Class A: *The enlargement, improvement or other alteration of a dwellinghouse*. Therefore, it constitutes permitted development and the application is subsequently recommended for approval.

3.0 Site Description and Context

- 3.1 The application site comprises a single detached residential dwelling (see site plan for layout, orientation and relationship to neighbouring properties), located within the settlement boundary on the east side of Byron Avenue. The two-storey property accommodates a good-sized plot, set back from the highway with an area for off-street parking to the front, a single garage to the north side connected to the dwelling with a small canopy, and an enclosed garden to the rear. The external finishes of the property consist of brickwork and hanging tiles to the walls, under a tiled pitched roof. The application site does not contain a listed building and is not situated within designated land such as a Conservation Area or an Area of Outstanding Natural Beauty (AONB) (Article 2(3), 1(4), or 1 (5) land). The surrounding area is characterised by residential development of similar scale and design.

4.0 Description of the Proposal

- 4.1 The application is for a Lawful Development Certificate for a proposed development comprising a 4 metre single storey rear extension. The proposed extension spans 8.7 metres in width across the full rear elevation of the original dwellinghouse, projects 4.0 metres in depth and includes a flat roof with a 2.8 metre overall height. In addition, the submitted drawing shows an existing door in the north elevation would be replaced with a 500x500 millimetre ground floor window.

5.0 Land Use Allocation

- 5.1 Not applicable.

6.0 Relevant Planning History

6.1 The planning history for the site has been reviewed, although the original consent for the dwelling is not obtainable, there is no indication that permitted development rights have been removed from the site and there are no known restrictions.

6.2 The following planning permissions have previously been granted but there is no evidence that they have been implemented:

162180 – Proposed two storey and single storey extensions to form kitchen/sitting room; bedroom & en-suite. - Minor elevational changes to design approved under 160567 – Approve Conditional 12/10/2016.

160567 – Proposed two storey and single storey extensions to form kitchen/sitting room; bedroom & en-suite – Approve Conditional 29/06/2016.

7.0 Principal Policies

7.1 As the proposed development is for householder operations, the relevant consideration is The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) – “the Order”. Schedule 2, Part 1 sets out the criteria for the permitted development applicable to “Development Within The Curtilage Of A Dwellinghouse”.

7.2 Class A of Schedule 2, Part 1 relates specifically to ‘the enlargement, improvement or other alteration of a dwellinghouse’ and is therefore the relevant Class of the Order to be used in the assessment of this proposal. If all of the criteria are satisfied, then the proposal constitutes permitted development and planning permission is not required.

8.0 Consultations

8.1 No stakeholders were consulted on the proposal, given that it relates to a Lawful Development Certificate for a proposed development and no comments have been received.

9.0 Parish Council Response

9.1 The area is non-parished, however this type of consultation is not required for this proposed development, given that it relates to a Lawful Development Certificate for a proposed development under the Order.

10.0 Representations from Notified Parties

10.1 No notification letters were sent out to third parties for this proposal including neighbouring properties, given that it relates to a Lawful Development Certificate for a proposed development.

Note: As a legal determination, officers cannot take the usual material considerations, for example design and the impact of a development on neighbouring amenity into account.

11.0 Parking Provision

11.1 Not applicable.

12.0 Accessibility

12.1 Not applicable.

13.0 Open Space Provisions

13.1 Not applicable.

14.0 Air Quality

14.1 Not applicable.

15.0 Planning Obligations

15.1 Not applicable.

16.0 Report

16.1 The only consideration for this application is whether the proposed development meets the criteria of the relevant class in the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) – “the Order”. Material planning considerations do not apply to Lawful Development Certificates.

16.2 Class A of the Order stipulates that ‘the enlargement, improvement or other alteration of a dwellinghouse’ is permitted development, subject to various limits and conditions.

16.3 Paragraph A.1 of Class A sets out the exclusions where development would not be permitted under the Order. The Application is assessed under each of the criteria below: -

- a) Permission to use the property as a dwellinghouse has **not** been granted by virtue of Class G, M, MA, N, P, PA or Q of Part 3 of Schedule 2 (changes of use) of the Order.
- b) As a result of the proposal, the total area of ground covered by buildings within the curtilage of the dwellinghouse (other than the original dwellinghouse) would **not** exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse);
- c) The height of the part of the dwellinghouse enlarged, improved or altered would **not** exceed the height of the highest part of the roof of the existing dwellinghouse;

- d) The height of the eaves of the part of the dwellinghouse enlarged, improved or altered would **not** exceed the height of the eaves of the existing dwellinghouse;
Note: the height of the eaves of the proposed extension would exceed the height of the eaves of the garage which is attached via a canopy to the existing dwellinghouse. The Technical Guidance provides detailed rules on permitted development rights for householders and explains that 'Where the existing house has eaves of different heights, then the restriction on the height of the eaves for the part of the house enlarged, improved or altered is measured against the highest level of eaves on the existing house.' In this case, the proposed extension would not exceed the height of the highest level of eaves of the existing dwellinghouse.
- e) The enlarged part of the dwellinghouse would **not** 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
- f) Subject to paragraph (g), the enlarged part of the dwellinghouse would have a single storey and would **not**—
 - (i) extend beyond the rear wall of the original dwellinghouse by more than 4 metres in the case of a detached dwellinghouse, or 3 metres in the case of any other dwellinghouse, or
 - (ii) exceed 4 metres in height;
- g) Not applicable the proposal does not exceed the limitations of A.1 (f) above;
- h) Not applicable the enlarged part of the dwellinghouse would **not** have more than a single storey;
- i) The enlarged part of the dwellinghouse would be within 2 metres of the boundary of the curtilage of the dwellinghouse, and the height of the eaves of the enlarged part would **not** exceed 3 metres;
- j) The enlarged part of the dwellinghouse would **not** extend beyond a wall forming a side elevation of the original dwellinghouse, and would **not**—
 - (i) exceed 4 metres in height,
 - (ii) have more than a single storey, or,
 - (iii) have a width greater than half the width of the original dwellinghouse;
- ja) The enlarged part would not join any existing enlargement of the original dwellinghouse and would therefore **not** exceed the limits set out in subparagraphs (e) to (j);
- k) The development would **not** 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, or
 - (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, or
- l) the dwellinghouse is **not** built under Part 20 of this Schedule (construction of new dwellinghouses).

16.4 In addition the installation of a window in the north side elevation at ground floor level, to replace the existing external door would be permitted development.

- 16.5 Paragraph A.2 of Class A does not apply to this proposal as the Application Site is not located on article 2(3) designated land as described in this paragraph (e.g. a Conservation Area or Area of Outstanding Natural Beauty).
- 16.6 Development is permitted subject to meeting the conditions stipulated in Paragraph A.3 of Class A, which must be adhered to when implementing the development. Of relevance to this proposal is sub-paragraph (a), which requires the materials to be used in any exterior work to be of similar appearance to those used in the construction of the existing dwellinghouse.
- 16.7 Paragraph A.4 of Class A does not apply to this proposal as the development does not exceed the limits in Paragraph A.1(f).
- 16.8 On the basis of the above, the proposed '4 metre single storey rear extension' meets the requirements of Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) and is therefore permitted development.

17.0 Conclusion

- 17.1 Assessment of the proposal confirms it is development permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) Schedule 2, Part 1, Class A.

18.0 Recommendation to the Committee

- 18.1 The Officer recommendation to the Committee is for the following Lawful Development Certificate to be issued to the Applicant as the proposal constitutes permitted development.

COLCHESTER CITY COUNCIL hereby certifies that on 5th November 2022 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and outlined in red on the plan attached to this Certificate, would be lawful within the meaning of Section 192 of the Town and Country Planning Act 1990 (as amended) for the following reason:

The proposed Application for a Lawful Development Certificate for a proposed 4 metre single storey rear extension is development permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015, Schedule 2, Part 1, **Class A. 'enlargement, improvement or other alteration of a dwellinghouse'**, in that the Council considers the development would not fall within that described in paragraphs **A.1** or **A.2**, of the aforementioned Order, subject to compliance with the conditions listed in paragraph **A.3**.

FIRST SCHEDULE

Application for a lawful development certificate for a proposed 4 metre single storey rear extension as shown on Drawing Number(s): **220801-D-200-001**.

SECOND SCHEDULE

71 Byron Avenue Colchester Essex CO3 4HQ

19.0 Conditions

- 19.1 Development is permitted by Class A subject to the conditions set out in Paragraph A.3 of the Order which requires:
- a) the materials used in any exterior work (other than materials used in the construction of a conservatory) must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse;
 - b) any upper-floor window located in 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; and
 - c) where the enlarged part of the dwellinghouse has more than a single storey, or forms an upper storey on an existing enlargement of the original dwellinghouse, the roof pitch of the enlarged part must, so far as practicable, be the same as the roof pitch of the original dwellinghouse.