

## DC/20/13

**Application No:** 20/0073/FH

**Location of Site:** Hillcroft, School Road, Saltwood, Hythe, Kent, CT21 4PP

**Development:** Section 73 application for the variation of conditions 1 (approved drawings) and 7 (obscure glass) of planning permission Y19/0272/SH (Erection of a detached two storey dwelling) to enable an increase in ridge height, additional fenestration, revisions to the ground floor layout and external materials.

**Applicant:** Mr Aldo Sassone-Corsi

**Agent:** N/A

**Date Valid:** 21.01.2020

**Expiry Date:** 04.03.2020

**EOT Date:**

**Date of Committee:** 25<sup>th</sup> August 2020

**Officer Contact:** Katy Claw

### SUMMARY / PROPOSAL

This application seeks to vary condition 1 (approved plans) and remove condition 7 (obscure glass) of planning permission Y19/0272/FH.

With regards to condition 1, this variation is sought to allow an amendment to the approved rear elevation drawing to include solar panels that have already been installed upon the rear elevation roof slope. Planning permission for solar panels on a domestic property usually falls under permitted development but in this case the dwelling was not complete before the solar panels were installed and so the works could not benefit from householder permitted development rights.

The variation of the approved plans would also include permitting an internal layout change to the previously approved first floor plan which relocates the position of a dividing wall and the bathroom and a bedroom swapping positions within the first floor and two windows (one to the front and one to the rear) being clear glass as opposed to obscure glazed.

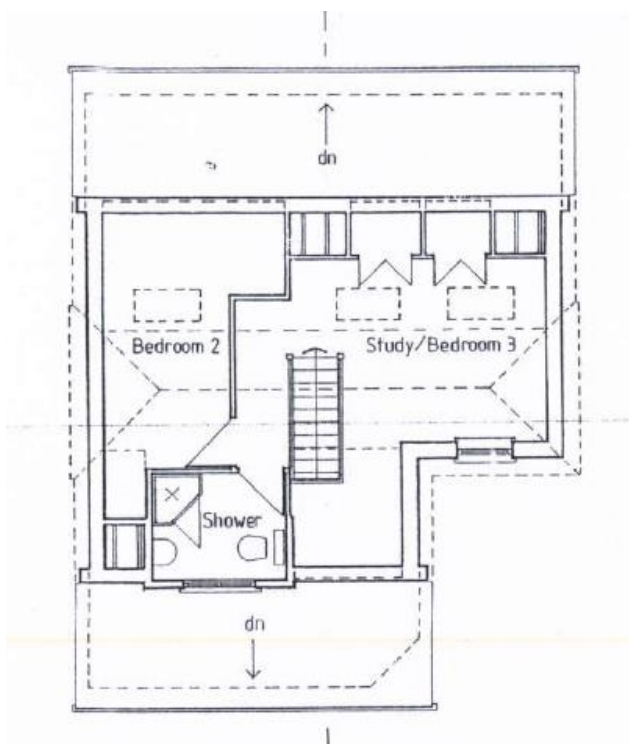
With regards to condition 7, a removal of this condition is sought to allow the front first floor dormer window to be clear glass as opposed to obscure glass, and the middle rear rooflight window to be clear glass as opposed to obscure glass. This is due to the front first floor room now functioning as a bedroom as opposed to a bathroom and the rear rooflight is situated high enough within the roofspace that it is not possible to obtain views in or out of this rooflight.

The LPA considers that the rear solar panels offer no concerns with regards to neighbouring amenity or visual appearance and that the rear rooflight window is sited at a height whereby it is not possible to obtain views in or out with the installation of clear glass, however the LPA is of the opinion that the amenities of the neighbour at Hillgay and the future occupants of the proposed dwelling would not be safeguarded by the introduction of clear glass to the front first floor window.

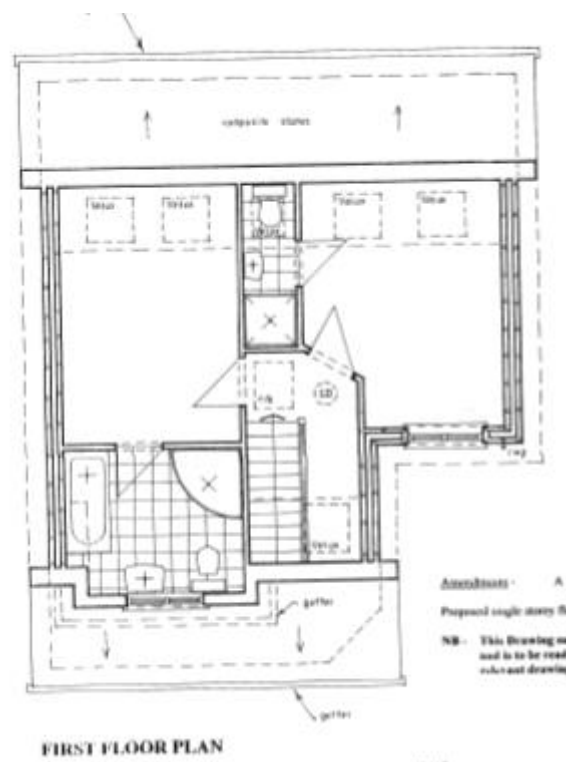
**RECOMMENDATION: That planning permission be refused for the reason set out at the end of the report.**

## 1.0 INTRODUCTION

- 1.1 At its meeting on 29<sup>th</sup> July 2016 the Planning and Licensing Committee resolved to grant planning permission under reference Y15/0514/SH for the erection of a detached dwelling within the garden of Hillgay. Construction of the dwelling commenced on site but the works were not being carried in accordance with the approved plans.
- 1.2 At a further meeting on 23<sup>rd</sup> July 2019 the Planning and Licensing Committee resolved to grant planning permission under Y19/0272/FH for variation of conditions 2 (approved plans) and 9 (obscure glass) to planning permission Y15/0514/SH. This approval allowed for an increase in ridge height, a change to the finished fenestration, additional fenestration and a change to the obscure glazing locations as a result of internal layout changes.
- 1.3 Under the Y15 application the bathroom was to be located at the ground floor rear elevation and the shower room was to be located at the first floor front elevation. Under the Y19 application it was proposed to relocate the ground floor bathroom to form a first floor shower room and as a result the obscure window at ground floor was no longer required. At first floor a bathroom would still be served by the front dormer window and as a result a new permission was granted which ensured that the relocated shower room and bathroom were both still to be fitted with obscure glazed windows in the interests of future occupiers' and neighbouring amenity being protected.
- 1.4 Finishing materials for Y15/0514/SH were approved under a conditions monitoring application Y18/1469/FH as white render and mixed brindle clay plain tiles with white uPVC fenestration. Changes have been made to the original materials and they are now approved to be a roof tile in natural Spanish slate with grey uPVC fenestration. The Y19 application also proposed white render to the walls, timber horizontal cladding to the front dormer window and white uPVC fascia boarding and rainwater goods. Hard landscaping to the front elevation has been approved Tegula block paving of mixed sizes in 'Autumn Gold'.



Floor plan approved under Y15/0514/SH



Floor plan approved under Y19/0272/FH

**2.0 SITE DESIGNATIONS**

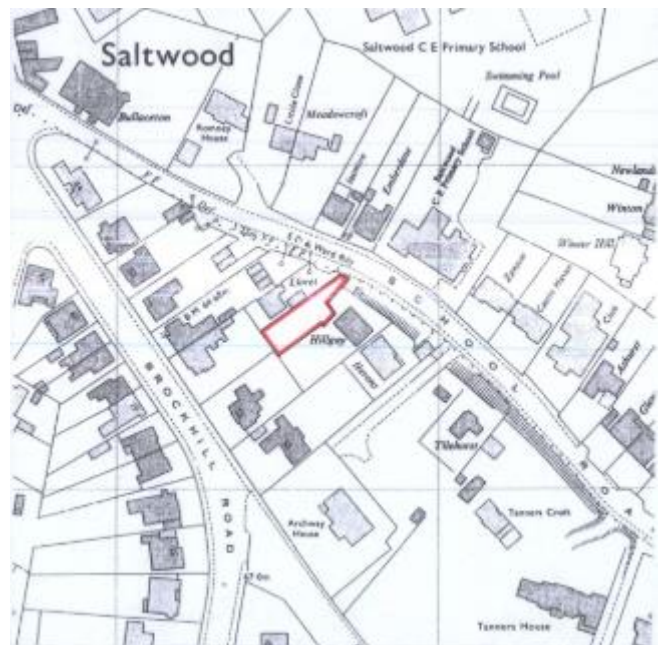
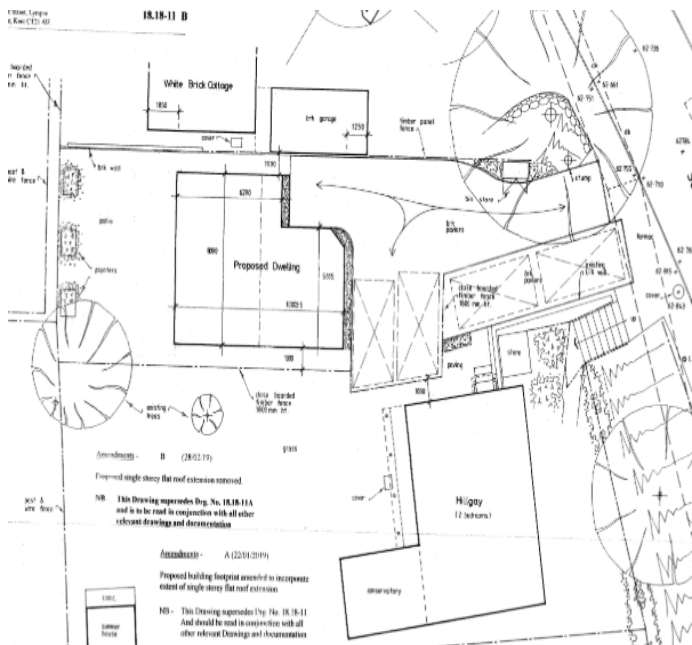
2.1 The following apply to the site:

- Within the settlement boundary

**3.0 LOCATION AND DESCRIPTION OF SITE**

3.1 The site lies on the south western side of School Road (which is a classified road) some 100m south east of the junction with Brockhill Road and opposite the pedestrian access to Saltwood Primary School. School Road appears to have no parking restrictions generally, but there are yellow keep clear markings in front of pedestrian walkway to the school and a sign which prohibits parking within the marked area Mondays to Fridays within the hours of 8am to 5pm.

3.2 The area is predominantly residential in character but with no uniform design or scale of property. Plot sizes also vary along the road, as does the location of the properties with their plots. There are large detached houses within large plots such as Beckley Cottage and 49 School Road, which is a corner plot. There are also other much smaller plots along School Road where the width of the plot is essentially taken up by the dwelling. These include White Brick Cottage, its neighbour Tythe Cottage and several plots on the opposite side of School Road.



3.3 The main part of the application site is roughly rectangular (approximately 16m by 7m) and measures some 135sqm.

3.4 The property subject of this application is near completion. Photos below taken March 2020.



#### 4.0 RELEVANT PLANNING HISTORY

- 4.1 Y03/1489/SH - Outline application for the erection of a detached dwelling.  
Withdrawn 10<sup>th</sup> May 2004.
- Y04/0600/SH - Outline application for the erection of a detached dwelling.  
Refused 1<sup>st</sup> July 2004. Reason for refusal “*The proposed development would result in the intensification of a substandard access with restricted visibility to the south onto a classified road and as such is contrary to policy TR3 of the Shepway District Local Plan and TR11 of the Shepway District Local Plan Review (Revised Deposit Draft), which only permit the intensification of use of an existing use where the access would not be detrimental to highway safety*”.
- Y04/1605/SH - Erection of a detached dwelling. Withdrawn from the statutory register 2<sup>nd</sup> April 2013.  
This application was a resubmission of Y04/0600/SH and sought to overcome the reason for refusal on that application by including visibility splays to the east and west of School Road. The application was considered at Planning Committee on the 31<sup>st</sup> July 2007 Members resolved to grant planning permission subject to a S106 agreement to secure the required sightlines (as part of the splay would be on an adjoining neighbours’ land) in perpetuity. The agreement was never signed and in 2013 the Council wrote to the applicant advising that given the length of time that elapsed since the submission of the original application, the application would be withdrawn from the statutory register.
- Y15/0514/SH - Erection of a detached two storey dwelling.  
Approved with conditions at the Planning and Licensing committee held on 26<sup>th</sup> July 2016. The decision was formally issued on 29<sup>th</sup> July 2016.
- Y18/0051/NMA - Non material amendment for planning application Y15/0514/SH to incorporate a single storey flat roof extension to the rear elevation, revision of the floor layouts and fenestration, and the installation of additional roof lights.

## DC/20/13

Refused on 15<sup>th</sup> October 2018 on the grounds that the proposed changes were 'material considerations' that required the submission of a planning application.

- Y18/1488/FH - Section 73 application for variation of conditions 2 and 9 of planning permission Y15/0514/SH (Erection of a detached two storey dwelling) to enable additional fenestration, revisions to the ground floor layout and the inclusion of a single storey extension to the rear.  
Withdrawn on the advice of the planning officer who indicated that the application would be refused on the grounds that the proposed rear extension would compromise the usability of the rear garden.
- Y19/0292/FH - Section 73 application for variations of conditions 2 and 9 of planning permission Y15/0514/SH (Erection of a detached two storey dwelling) to enable an increase in height, additional fenestration, revisions to the ground floor layout and finished materials.  
Approved with conditions at the Planning and Licensing committee held on 23<sup>rd</sup> July 2019. The decision was formally issued on 30<sup>th</sup> July 2019.

### 5.0 CONSULTATION RESPONSES

5.1 Consultation responses are available on the planning file on the Council's website.

<https://www.folkestone-hythe.gov.uk/view-planning-applications/search>

Responses are set out below.

5.2 Hythe Town Council

Objected on the grounds that conditions should be enforced. Members would like it be noted that they were in support of the objections that have been raised by members of the public.

### 6.0 PUBLICITY

6.1 Neighbours notified by letter. Expiry date 04.03.2020

### 7.0 REPRESENTATIONS

7.1 Representation responses are available in full on the planning file on the Council's website.

<https://searchplanapps.shepway.gov.uk/online-applications/>

Responses are summarised below:

7.2 1 letter/email received objecting on the following grounds:

- Y19/0272/FH was approved with stringent conditions attached, despite the Council's best efforts to in attaching conditions, the developer has continued to breach and flout those conditions and this has now resulted in, but is not limited to, overlooking/loss of privacy.

## DC/20/13

- Considered that condition 1 (approved plans), condition 7 (obscure glazing) and condition 10 (removal of PD rights) are in breach.
- Consider that a breach of human rights has taken place and that if the Council do not enforce the conditions stipulated under Y19/0272/FH then they will be in breach of the Public Sector Equality Duty as set out in the Equality Act 2010.
- To grant planning permission would make a mockery of the whole planning and enforcement process.

### 8.0 RELEVANT POLICY GUIDANCE

- 8.1 The full headings for the policies are attached to the schedule of planning matters at Appendix 1.
- 8.2 The following saved policies of the Shepway District Local Plan Review apply: SD1, HO1, BE1, BE8
- 8.3 The following policies of the Shepway Local Plan Core Strategy apply: DSD, SS1
- 8.4 The Submission draft of the PPLP (February 2018) was published under Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations (2012) for public consultation between February and March 2018. The Plan was submitted to the Secretary of State for independent examination in September 2018. Accordingly, it is a material consideration in the assessment of planning applications in accordance with the NPPF, which confirms that weight may be given to policies in emerging plans following publication (paragraph 48). Based on the current stage of preparation, and given the relative age of the saved policies within the Shepway Local Plan Review (2006), the policies within the Submission Draft Places and Policies Local Plan (2018) may be afforded weight where there has not been significant objection.

The following policies of the Places and Policies Local Plan Submission Draft apply: HB1, HB8, HB10

- 8.5 The Submission draft of the Core Strategy Review was published under Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations (2012) for public consultation between January and March 2019. Accordingly, it is a material consideration in the assessment of planning applications in accordance with the NPPF, which confirms that weight may be given to policies in emerging plans following publication (paragraph 48). Based on the current stage of preparation, the policies within the Core Strategy Review Submission Draft may be afforded weight where there has not been significant objection.

The following policies of the Core Strategy Review Submission Draft 2019 apply: DSD, SS1

- 8.6 The following paragraphs of the National Planning Policy Framework 2019 apply: 11, 12, 38, 39, 47, 48, 54, 58,

### 9.0 APPRAISAL

#### Background

- 9.1 Planning permission has been granted for a single detached dwelling on this site under Y15/0514/SH, therefore the principle of a residential dwelling on the site has been established.

## DC/20/13

- 9.2 The internal layout of a property is a material consideration and the LPA has a duty to ensure that any development does not give rise to unacceptable living conditions for the future occupiers or be detrimental to neighbouring amenity. As such, the LPA considered that the condition 7 of Y19/0272/FH (relating to obscure glazing) was necessary in order to make the development acceptable.
- 9.3 Section 70(1)(a) of The Town and Country Planning Act 1990 enables the local planning authority in granting planning permission to impose “such conditions as they think fit”. Government guidance on this says that ‘when used properly, conditions can enhance the quality of development and enable development to proceed where it would otherwise have been necessary to refuse planning permission, by mitigating the adverse effects. The objectives of planning are best served when the power to attach conditions to a planning permission is exercised in a way that is clearly seen to be fair, reasonable and practicable. It is important to ensure that conditions are tailored to tackle specific problems, rather than standardised or used to impose broad unnecessary controls’.
- 9.4 The conditions as set out under Y19/0272/FH were considered to meet the 6 tests of Section 70(1)(a) of the TCPA 1990 and are also compliant with paragraph 54 of the NPPF 2019.

### **Procedural Matters**

- 9.5 The application has been made under Section 73 of the Town and Country Planning Act 1990, which can be used to vary or remove conditions associated with a planning permission. Where an application under Section 73 is granted, the effect is granting of a new planning permission, sitting alongside the original permission, which remains intact and unaltered. The government introduced the minor material amendment procedure under S73 of the Planning Act in order to enable such changes to be made, where the original planning permission includes a condition requiring the development to be built in accordance with the approved plans.
- 9.6 There is no statutory definition of a ‘minor material amendment’ but it is generally taken to mean any amendment where its scale and/or nature results in a development which is not substantially different from the one which has been approved. This has been established in planning case law.
- 9.7 In this case the proposal is still seeking planning permission for a single dwelling, the overall scale, form and design of which is similar to that previously approved. As such it falls within the accepted definition of a S73 application. The only matters for consideration are whether the changes being proposed are acceptable. No other matters, including the principle of the development on the site, can be considered.
- 9.8 It is not unlawful to carry out works not in accordance with a planning permission.

### **Relevant Material Planning Considerations**

- 9.9 Given the above, the relevant issues for consideration with regard to this application are design, visual impact, neighbouring amenity and amenity of future occupants.

### **Design and visual impact**

- 9.10 The only notable external alteration proposed by this application is the inclusion of 4 solar PV panels located upon the rear facing roofslope, sited above the rooflight windows as the opacity levels of the glass windows would not appear as material in terms of visual impact.

## DC/20/13

- 9.11 The solar panels are not considered to have any significant impact upon visual amenity. The panels are sited to the rear elevation, away from public view and solar panels are generally not uncommon features on residential properties. As such this element of the proposal is considered to be acceptable.
- 9.12 Comments from an interested party noted that the installation of the solar panels without permission constituted a breach of condition 10 of Y19/0272/FH. Condition 10 did preclude Schedule 2, Part 1, Class C which refers to 'other alterations to the roof, including the installation, alteration or replacement of solar photovoltaics or solar thermal equipment.
- 9.13 Whilst Schedule 2, Part 1, Class C does state that PV panels cannot be installed, further on within the GPDO 2015 (as amended) Schedule 2, Part 14, Class A sets out that 'the installation, alteration or replacement of microgeneration solar PV or solar thermal equipment on a dwelling house' is permitted development subject to conditions.
- 9.14 In the Y19 case, the removal of Permitted Development (PD) rights for Schedule 2, Part 1, Class C was to prevent further windows being installed that may have given rise to overlooking without prior consent from the LPA, not specifically with the intent to prevent the installation of PV panels. If the LPA had intended to remove PD rights for solar panels they would have also removed PD rights under Part 14. In this current case the solar PV panels could not be considered PD as they were installed before the dwelling was complete and therefore they could not benefit from householder PD rights under Part 14.

### Neighbouring amenity

- 9.15 With regards to the first floor front dormer window, this window was shown to serve a bathroom during the Y15 and Y19 applications and it was originally conditioned to be non-opening up to a minimum of 1.8m above the internal finished floor level under the Y15 application. It is however accepted that there does need to be suitable fire safety escape measures at first floor and therefore amendments were made under the Y19 application that allowed the window to open. The openable window was specifically hung on the left hand side (as you face the property) so that when the window was open, together with the obscure glazed finish and the placement of bathroom furniture in the window reveal, there would be a combination of elements that would work to reduce the perception of overlooking to the neighbour of Hillgay but still allow egress in line with Building Regulations requirements.
- 9.16 After the Y19 approval, and during the construction of the dwelling, the layout of the bedroom and bathroom have been swapped and the bathroom has now been moved to the back of the property with the front dormer window being inserted with clear glass in order to provide outlook for the inhabitants of the now front facing bedroom. The result of this alteration is that there are now overlooking opportunities from a habitable room (a bedroom) into the most private part of the rear garden to the neighbouring property, Hillgay, the neighbour to the immediate southeast of the application site.
- 9.17 Further, with no bathroom furniture to be proposed in front of the window and with the loss of the obscure glazing it is considered that it is now possible to view parts of the rear conservatory and rear garden area of Hillgay, as well as give rise to perceived overlooking of the side facing bedroom window located at first floor of Hillgay (refer to photograph below).
- 9.18 Whilst it is accepted that in order to see the external private areas any occupants would need to stand in the window reveal, it is considered that there are no mitigation measures that the LPA could put in place in the form of a condition that could successfully restrict the use of the window space or minimise the overlooking that can be obtained from the first floor window.



## DC/20/13

9.19 Should the current first floor layout with a bedroom in the front facing window have been presented to during the Y15 or Y19 application, neither application would likely have been considered acceptable. This is clear from the fact that the Council has consistently placed conditions upon the approvals specifically to minimise instances of overlooking by securing obscure glazing in the windows and specifically designed openers on the impacted windows that would assist to minimise opportunity for overlooking of neighbouring property.



9.20 It is accepted that views in or out of the rear facing bathroom rooflight window would not easily be obtainable due to the height of the cills of the rooflights in comparison to the internal finished floor level, which is set above the minimum 1.7m usually imposed by planning condition. Having visited the property and seen the rooflights Officers are satisfied that there would be no significant increase of overlooking by the use of clear glass and no objections to the rear facing rooflight serving the bathroom being installed with clear glass, in line with the other rear facing rooflights, all from which is it also not possible to obtain any clear views in or out.



### Amenity of Occupants

- 9.21 It is important that new builds aim to achieve a good standard of design and living accommodation, therefore any habitable space in a new dwelling is expected to provide an outlook in order to provide quality housing for future occupiers, not doing so amounts to poor design and is generally not accepted for new builds.
- 9.22 It is noted that the original Y15 application permitted a bedroom without an outlook (labelled as 'bedroom 2 on the floor plans shown at 1.4 above) and this type of layout is now not something that Officers would likely consider to be appropriate. It is for this reason that Officers did not consider it appropriate to object to the rear bedroom proposed under the Y19 application which again was served only by rooflights, as the Y15 application was extant as work had started and could be built-out in accordance with the approved plans.
- 9.23 In terms of layout and design, there is an argument that the first floor layout as proposed under this current application is an improvement on the layout under the Y15 and Y19 applications in terms of living accommodation for the future residents, however this layout change has failed to take account of safeguarding neighbouring amenity and it is for this reason that the scheme as presented is not acceptable.
- 9.24 The proposal still shows 3 usable bedroom spaces as per the original scheme, although it is noted that one of the rooms on the original scheme was labelled as a study/bedroom. Since the Y15 approval policy HB3 of the Places and Policies Local Plan (PPLP) has become a material consideration (see section 8.0) and sets out internal and external space standards. The proposed floor space of the dwelling overall would comply with the policy. Externally the policy sets out that the rear garden should be at least 10m in depth. The proposed rear garden for the dwelling is 7m and so fails to meet the external space standards set out the policy in this regard. Normally this would not be considered to be acceptable but given that planning permission has already been

## DC/20/13

granted for a dwelling with a garden of this depth (as the PPLP was not in place at that time), and that planning permission is still extant and could in theory still be implemented by reverted to the approved plans, it is considered that, in this specific case, it would be unreasonable to now refuse planning permission for that reason alone, as the application is considered acceptable in all other respects.

### Highway safety

9.25 The access and parking provision for the dwelling has already been considered and approved under Y15/0514/SH and Y19/0272/FH. The access, site layout and parking provision has not been altered as part of this proposal and remains as previously approved.

### Environmental Impact Assessment

9.26 In accordance with the EIA Regulations 2017, this development has been considered in light of Schedules 1& 2 of the Regulations and it is not considered to fall within either category and as such does not require screening for likely significant environmental effects.

### Local Finance Considerations

9.27 Section 70(2) of the Town and Country Planning Act 1990 (as amended) provides that a local planning authority must have regard to a local finance consideration as far as it is material. Section 70(4) of the Act defines a local finance consideration as a grant or other financial assistance that has been, that will, or that could be provided to a relevant authority by a Minister of the Crown (such as New Homes Bonus payments), or sums that a relevant authority has received, or will or could receive, in payment of the Community Infrastructure Levy.

9.28 In accordance with policy SS5 of the Core Strategy Local Plan the Council has introduced a Community Infrastructure Levy (CIL) scheme, which in part replaces planning obligations for infrastructure improvements in the area. The CIL levy in the application area is charged at £111.15 per square metre for new residential floor space.

### Other Issues

9.29 This application is reported to Committee due to the contentious nature of the site, with the past applications all having local Councillor interest and all having been decided by committee members. This current application also has Councillor interest and a call-in request from Cllr Treloar should the application be recommended for approval. The scheme has also received objection from Hythe Town Council. As the Planning and Licensing Committee have been involved with the decision making process on the previous applications it was considered appropriate that this current application also be deferred to committee members for determination.

### Human Rights

9.30 In reaching a decision on a planning application the European Convention on Human Rights must be considered. The Convention Rights that are relevant are Article 8 and Article 1 of the first protocol. The proposed course of action is in accordance with domestic law. As the rights in these two articles are qualified, the Council needs to balance the rights of the individual against the interests of society and must be satisfied that any interference with an individual's rights is no more than necessary. Having regard to the previous paragraphs of this report, it is not considered that there is any infringement of the relevant Convention rights.

### Public Sector Equality Duty

9.31 In determining this application, regard has been had to the Public Sector Equality Duty (PSED) as set down in section 149 of the Equality Act 2010, in particular with regard to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it. It is considered that the application proposals would not undermine objectives of the Duty.

It is considered that the application proposals would not conflict with objectives of the Duty.

### 10.0 BACKGROUND DOCUMENTS

10.1 The consultation responses set out at Section 5.0 and any representations at Section 7.0 are background documents for the purposes of the Local Government Act 1972 (as amended).

---

### **RECOMMENDATION – That planning permission be refused for the following reason-**

**The proposed first floor front facing bedroom window, by virtue of the installation of plain glass, would give rise to unacceptable levels of overlooking to the nearby neighbouring property and its private garden area known as ‘Hillgay’ resulting in harm to neighbouring amenity, contrary to saved local plan policy SD1 and BE8 of the SDLPR and emerging policy HB8 of the Places and Policies Local Plan.**

Y19/0272/FH  
Hillcroft  
School Road  
Saltwood

