

Accompanying Mr Worley's second affidavit was a signed (but not sworn) statement from Jacqueline Johnson about activities at the application site.

- 4.3 In addition two letters have been received from Mr & Mrs Newman on 19<sup>th</sup> January 2010 and 9<sup>th</sup> February 2010.
- 4.4 Two letters of support for the application were received on 26<sup>th</sup> January 2010 from Mr & Mrs Webb at 206 and Mr Wornall at 208 Chertsey Lane.
- 4.5 The Council Tax Department has no record of a business use being registered at the application site. The site was however set up for a business use on 1<sup>st</sup> April 2009.

5. Planning Considerations

- 5.1 A Certificate of Existing Lawful Use (CELU) determines whether a specific use, operation or development is lawful. In order for a CELU to be issued it is the applicant's responsibility to provide evidence that the use, operation or development has been lawful for a specified period of time. This evidence is assessed on the 'balance of probability'. The applicants own evidence does not need to be corroborated by independent evidence to be acceptable. If the Planning Authority has no evidence of their own, or from third parties, to contradict or otherwise make the applicants version of events less than probable, there is no good reason to refuse the application provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.
- 5.2 In order to issue a Certificate of Existing Lawfulness the applicant must provide evidence that on land at the rear of 212 Chertsey Lane a commercial yard & buildings comprising the storage and distribution of roofing & building materials (no sales) along with an area for the sale, purchase and display of equestrian related vehicles and equipment has existed for a continuous period of 10 years from the date at which the application was submitted, therefore since at least 17<sup>th</sup> June 1999.
- 5.3 This application was put before the Planning Committee on 16<sup>th</sup> September 2009 with an officer recommendation to part approve and part refuse based upon the evidence submitted at the time. A motion to grant that part of the application failed and the Planning Committee decided that the application be deferred, citing the lack of evidence produced by the applicant as the reason behind this decision particularly between June 1999 to 2005.

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- 5.4 Since the deferral the applicant has submitted further evidence to seek to back their claim of lawfulness at the site. This evidence, as set out in section 3 of this report has been made available to local residents and objectors who have provided their own further evidence.

- 5.5 The applicant has now therefore submitted a total of 9 affidavits to support the contention that the yard has been in use as described for a period of more than 10 years. The contents of each are briefly set out below with comment.

James Harris

The applicant and owner of the site. In his statement it is stated that he purchased No. 212 Chertsey Lane on 29<sup>th</sup> September 1989 at which point all buildings shown on the submitted plans were present. He is a roofer, builder and general dealer and has traded under First Class Roofing from the site since its purchase. He also became director of Surrey Holmes Ltd formed over 10 years ago and has always traded from the site. He states that the equestrian related activities have been operated on a similar basis over the last 10 years.

In his second affidavit Mr Harris sets out that he does not make any further comment about the equestrian side of the application and respects the officer's previously recommendation. He goes onto confirm that he bought the site as it was ideal to continue running his existing business and sets out that he was a sole trader before his official company was formed.

Graham Lewis

Roofer trading under G Lewis roofing, has been a customer of Mr Harris for over 20 years and has visited the application site on average two or three times a month within this period. He has not traded in equestrian related activities but is well aware of these activities. Categorically confirms that the applicant has operated the yard as set out in the application for well over 20 years.

Ben Aldridge

Managing director of Alder Group Ltd whose main trading activity is the storage, supply, distribution and sales of roofing materials. Has supplied Mr Harris who trades under First Class Roofing and Surrey Holmes Ltd with roofing related materials for over 20 years. Has visited the application site periodically over past 20 years to agree quantities and prices for roofing materials and can therefore confirm the sites use.

Norman Peter Stidolph

States that in preparing annual trading and profit and loss accounts for the applicant trading under First Class Roofing and Surrey Holmes Ltd, he has visited the applicant at the site at least three times a year continuously over the last 15 years. Has no hesitation in confirming that the application site has been in continuous use for well over 10 years as set out in the application. He also states that Mr Harris does not have any other place of business and all his commercial activities take place from and within the application site.

Kevin John Turner

Has submitted planning applications on behalf of the applicant dating back to 1995 or 1996 when he first visited the site. States has been back to the application site on average once or twice a year since this time for one reason or another. Confirms the site was in use for the same commercial purposes as at the date of his first visit.

Katie Webb

Police Officer and cousin of applicant. Has visited the site approximately every two months since she was a child. Can categorically state that the applicant has operated three mixed businesses from the site for a period well exceeding 10 years which comprise a mix of roofing, building and general dealership, taking in equestrian related activities.

Anthony Paul Roche

Self employed brick layer who has worked with the applicant and has remained in touch as a friend who visits the applicant approximately twice per week since 1989. Has absolutely no doubt that for the last 20 years the applicant has operated his commercial yard continuously this period.

Colin Futcher

Proprietor of Dicol Effluent Services, first visited the site in July 1991 following contact with the applicant to empty his on-site septic tank, engaged on a permanent basis and has called every 6 months to empty and to cleanse the drainage system at the application site. Has absolutely no doubt that for the last 18 years the applicant has operated his commercial yard.

- 5.6 The applicant, other than his own, has submitted 7 sworn statements most from independent businessmen and professionals. Considerable weight should be given to these statements as they were taken under oath and all confirm that specific uses have existed for a period of more than 10 years at the application site.
- 5.7 The further documents submitted include accounts for First Class Roofing and Surrey Holmes Ltd however these only cover a period from 2002-2003 and 2005-2007 in the case of First Class roofing from 2004-2008 in the case of Surrey Holmes as such on their own do not conclusively prove that either business has operated from the site for the required 10 years period. In addition a certificate from the Guild of Master Craftsmen for First Class Roofing dated 22<sup>nd</sup> September 1994 could be said to prove the company has been in existence from that date however provides little further useful information in helping to determine whether the use of the site has in existence for more than 10 years.

- 5.8 The applicant has also submitted a total of 82 carbon copies of invoices and receipts, both hand written and typed on headed paper for First Class Roofing services, No. 212 Chertsey Lane, Staines covering the period from January 1997 to December 2000. This would appear to show that First Class Roofing was in existence between these periods and was actively carrying out jobs during this time. The address on each of these invoices and receipts is the application site.
- 5.9 In addition to the above the applicant has submitted 14 separate folders each containing various letter, bills, invoices, receipts and bank statements for First Class Roofing and Surrey Holmes Ltd as set out in section 3.6 of this report. Folder 1 contains a letter from the Director of Chertsey Tool hire which states that they have traded with and delivered to First Class Roofing at No. 212 Chertsey Lane for the last 12 years. In addition a letter from Natwest Bank confirming a business account in the name of First Class Roofing was opened in Feb 2003 is included along with invoices from First Class Roofing from 1991. Aerial photos and a vehicle registration document from March 2002 for an HGV tipper kept at 212 Chertsey Lane are also included in this folder along with a photograph allegedly taken in 1991 which shows part of the yard within which a flatbed, horse box, digger and various materials are visible. Folder 2 contains accounts and letters from his accountants in relation to First Class Roofing from 1990-1992, along with receipts for advertisements in the local press and directories over 1991, 93, 94, 95 and 95 along with phone bills for First Class Roofing at 212 Chertsey Lane from 95 and 96.
- 5.10 The evidence in folders 1 and 2 appears to prove that First Class Roofing has been in existence since at least 1991. The letter from Chertsey Tool hire makes a direct link with the alleged activities at the application site, where as the rest of the paper work merely shows the existence of the applicants company during these times and does not specifically link the business activities to the yard at No. 212 Chertsey Lane. This evidence other than the letter from Chertsey Tool Hire is beyond the 10 year period required to prove lawfulness and as such whilst it gives an interesting background to the application cannot be afforded significant weight in determining this application.
- 5.11 Folders 3 to 9 contain numerous bank statements for First Class Roofing, invoices, receipts and phone bills for the period of 2001 to 2007 all of which have the address of First Class Roofing as being at No. 212 Chertsey Lane. This could of course simply mean that the administrative side of the business is run from No. 212 as many sole traders/ companies have a home office and as such this does not conclusively prove that the yard at the rear of the site has been used as described by the applicant. It is worth noting however paragraph 7 of Mr Stidolph's sworn statement in which he states that "Mr Harris does not have any other place of business and all his commercial activities take place from and within the application site."
- 5.12 The further folders numbered 10 to 14 contain bank statements for Surrey Holmes Ltd, invoices, letters, receipts and phone bills all of which have the address as being at No. 212 Chertsey Lane. This again could of course

simply mean that the administrative side of the business is run from No. 212 as many sole traders/ companies have a home office and as such this does not conclusively prove that the yard at the rear of the site has been used as described by the applicant. It does however show that Surrey Holmes Ltd has existed since at least 2001.

- 5.13 It is also interesting to note that in the applicant's first affidavit he states that Surrey Holmes Ltd was formed well over 10 years ago and has always traded from the application site and that he has no other place of business. As set out above in the records submitted it would appear that Surrey Holmes has only been trading since 2001 and in the event of no further evidence in relation to this having been submitted, this appears to contradict the applicant's statement.
- 5.14 A letter from the applicants agent has also been received within which it is stated that when the applicant purchased No. 212 Chertsey Lane in September 1989 he was already an established roofer, builder and general dealer having previously traded at his old address in Hanworth and therefore "came in running" to the application site.
- 5.15 The letter makes reference to the fact that the applicant even carried out repairs to the garage roof of the neighbour at No. 210 Chertsey Lane (Mr Newman) in late 1990 from materials held by the applicant in the commercial yard at the application site. The letter also states that the applicant first approached his company in 2003 to submit for a Certificate of Lawfulness for the use of the site but that this was superseded by the issues over the residential annexe in the rear garden of the site. This letter has is not in the form of a sworn statement, however the contents of it are given some weight.
- 5.16 Taking all the above evidence submitted by the applicant into account it is considered that the evidence more than covers the relevant 10 year period beginning 17<sup>th</sup> June 1999.
- 5.17 In accordance with the contents of Mr Harris' statement and further details submitted by his agent it would appear that the working hours of the yard are Monday to Friday 8am to 6pm with on average 6 vehicle movements per day to and from the yard. There are occasional deliveries between 9am and noon on Saturdays. The two companies which at present operate from the site are First Class Roofing and Surrey Holmes Ltd both of which are made up of James Harris and his son as workers and Mr Harris' wife who is the administrator. Occasionally sub contractors are employed if a certain job requires it. Materials stored at the yard which are not housed within any of the building are generally stored no higher than 2 metres, but occasionally up to 3 metres in height.
- 5.18 Aerial photographs taken in December 1998 which the Council has of the site clearly show hard standing and the buildings as set out on the submitted plans with a number of items visible within the area marked 'Storage Area B' and vehicles present in the area 'Commercial Parking E' as shown on the submitted plans. This appears to confirm that the yard has

been in existence for over 10 years, however it is the actual use of the yard and buildings for commercial purposes comprising the storage and distribution of roofing and building materials (no sales) along with an area for the sale, purchase and display of equestrian related vehicles and equipment which is subject to this application.

- 5.19 Further aerial photographs taken in June 2003 again show the hard standing and buildings along with items and what appears to be vehicles present in 'Storage Area B' and 'Commercial Parking E'. Within the 2003 aerial photograph there also appears to be items located within the yard area adjacent to the rear gates as marked on the plan. The most recent aerial photograph taken in January 2008 again shows the hard standing, buildings and items stored within the yard much the same as the previous aerial photographs. This would appear to some extent to add some weight to the contention that the land at the rear of No. 212 Chertsey Lane has been used as a commercial yard & buildings comprising the storage and distribution of roofing and building materials.
- 5.20 Two letters from other local residents of Nos. 206 and 208 Chertsey Lane have also been received. Mr Wornall of No. 208 states that the applicant has been living and running his business from the address for some 20 years. Mr & Mrs Webb of No. 208 Chertsey Lane state that the commercial yard and buildings were there when they moved to their property 19 years ago. Both of these letters provide useful evidence, however as these were not given in the form of a sworn statement and as such cannot be afforded the same weight as evidence that has been submitted under oath.
- 5.21 There have also been a number of planning applications submitted in relation to the main dwelling and garage at the application site within the last 10 years as set out above in section 2. None of the applications however submitted in 1995 or 2001 mention or contain any useful details of the use of any such yard at the rear of the property and given the nature of these applications it may not have been necessary for the officer at the time to view this part of the site at the time, however the application made in 2004 for a certificate of lawfulness does contain some details about the alleged use.
- 5.22 A Planning Contravention Notice was issued and served upon the applicant Mr Harris by the Council on 20<sup>th</sup> February 2009 following complaints about an unauthorised builders yard at the property, the answers to which are consistent with the evidence provided by the applicant and the evidence provided within the further 7 affidavits submitted. Enforcement Officers visited the application site on several occasions in 2004 in relation to the alleged unauthorised use of the garage at the site, however no record or reference was made of the use of the yard at these times. The Planning Authority has no further evidence other than the fact that a business has not been registered at this address to contradict or otherwise make the applicant's version of events less than probable.

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- 5.23 However evidence has been received from local residents who are the neighbouring residents at the properties either side of the application site at Nos. 210 and 214 Chertsey Lane. Prior to the first committee meeting on 16<sup>th</sup> September 2009, two sworn statements were received from Mr Newman of 210 Chertsey Lane and Mr Worley of No. 214 Chertsey Lane, both of which are considered below.
- 5.24 The neighbour Rodney Newman of No. 210 Chertsey Lane has submitted a sworn statement in which he states that he has been a neighbour of the applicant for 20 or so years and has noted various events at No. 212 Chertsey Lane with closer attention being paid as a result of intensification of activity on the site starting around 2004. Mr Newman raising a number of issues within his statement, some of which are briefly highlighted and commented upon below.
- 1) The application has not been made correctly as the site shown on the drawings does not include the access from the highway to the site north of the bungalow. Also that the description describing the use within the application is not precise enough.
  - 2) Refers to a sworn statement submitted in 2005 in relation to application RU.04/1384 in which he notes a marked intensification of activity on the site around 2004 and since 2007 intensification levels have further increased. Extracts from his 2005 statement note that 'I am aware the applicant deals with various things including horse related activities, building and such like. I accept the applicant may have engaged in these in these diverse activities on various occasions over the period suggested. However, these activities, including the nature, scope and intensity has been incidental to his use of the property as a residential dwelling. Never in my opinion, have such activities amounted to a material change of use.'
  - 3) Mr Newman points out in his statement that the company Surrey Holmes Ltd was only formed in January 2001 and the activities at the site were according to the applicant's evidence undertaken on behalf of this company.
- 5.25 The other neighbour Anthony Worley of No. 214 Chertsey Lane has also submitted a sworn statement in which he states he has lived there since March 1986 and has noticed that from around 2003/2004 that activity at the application site got busier. He also states that over the last 2-3 years it has got even busier with more vehicles going to and from the site and an unusual amount of materials being delivered. Mr Worley raises a number of issues within his statement some of which are briefly highlighted and commented upon below.
- 1) The red line outline of the site does not include the access road.

- 2) Refers to a sworn statement submitted in 2005 in relation to application RU.04/1384 in which he states that he does not agree that a contractors yard was established in 1989 and states that whilst a nuisance at times as a result of various comings and goings with horns sounding at the entrance gates, considers that this arises from a busy and at times noisy neighbour, rather than any material change of use having taken place. Noted increased levels of activity since beginning of 2004 including the storage of materials and a commercial vehicle in the rear garden.
- 3) The type and quantities of materials claimed to be stored on the application site are no more than an enthusiastic DIY might keep including the workshops, plant and power tools.
- 4) Mr Worley's works as a builder and roofer and uses Alder Roofing himself, but has only ever seen an Alder roofing vehicles once at the application site when building works at 212 Chertsey Lane was being undertaken.
- 5) No horse boxes have been seen at the application site in 20 years other than the two presently on site.

5.26 From reviewing Mr Newman's statement the following main observations can be made. Firstly the Plan KT/01/A clearly shows the red line of the site to include the access from Chertsey Lane. The applicant has also provided clarification on certain points pertaining to the alleged use including hours of operation, number of employees and vehicles movements to the site.

5.27 Secondly it would appear that Mr Newman accepts that some activities related to this application may have taken place within the last 10 years as stated in section 18 of his statement which states that:-

*"My 2005 affidavit agreed various building and horse related activities seemed to have taken place on the premises since the applicant moved to the house in 1989. However these activities were low key in nature. Although sometimes unneighbourly, they were considered to be incidental to the use of the house."*

Indeed Mr Newman's 2005 affidavits states that:-

*"I am aware the applicant deals with various things including horse related activities, building and such like. I accept the applicant may have engaged in these diverse activities on various occasions over the period suggested. However, these activities, including the nature, scope and intensity has been incidental to his use of the property as a residential dwelling. Never, in my opinion, have such activities amounted to a material change of use. Any claim to this effect would be strongly opposed."*

It appears therefore that according to Mr Newman the level of intensity at which these alleged activities have taken place and at what point this constitutes a change of use seems to also be disputed. This issue will be discussed later in section 5.40 of this report.

- 5.28 Finally in his opinion the evidence of the applicant would appear to be contradicted by the registration date of the limited company name and the accounts. It is not inconceivable however that the applicant operated the business without registering it as a Limited company and traded as a builder/roofer without a business name or under the names First Class Roofing as the Certificate from the Guild of Master Craftsman dated 1994 shows, as a sole trader. The application is solely for the use and not for the use of the site by a specific company.
- 5.29 From reviewing Mr Worley's statement, which appears to have been written and worded in much the same way as Mr Newman's, the following main observations can be made. Firstly the Plan KT/01/A clearly shows the red line of the site to include the access from Chertsey Lane. Secondly it would appear activities have been taking place at the application site, however became more noticeable in 2004 when items began to be stored in the garden and in 2007 noted a dramatic increase in the number of vehicles visiting the site. Thirdly that the amount of materials stored at the site would not be conducive to a commercial business being run from the site. Fourthly that as someone in the same trade he does not believe a business of the type alleged is being run from the site.
- 5.30 All of the evidence from Mr Worley is noteworthy and he does make specific reference to the increase in activities beyond 2004 and has made reference to this in his previous affidavit from 2005 but some of his evidence is based upon personal opinions and interpretations related to the activities set out in the evidence submitted to support the application. Again it could be said that some of Mr Worley's evidence lacks significant detail in helping to determine 'on the balance of probabilities whether the yard has been used for storage and distribution of roofing & building materials. However the basic evidence that such a use did not occur from 1989 to at least 2004 must be given weight.
- 5.31 Following the committee meeting on 16<sup>th</sup> September 2009 and the committee's decision to defer the application, the applicant as noted in sections 3.5 to 3.7 of this report provided more evidence which sought to back their claim of lawfulness. Following receipt of this information further evidence was submitted by Mr Newman of 210 Chertsey Lane which will now be considered.
- 5.32 A letter was received on 19<sup>th</sup> January 2010 from Mr Newman this sought an extension of time for which himself and other witnesses to produce further evidence. In addition to this the letter sought confirmation that the further documents submitted dated after 17<sup>th</sup> June 1999 were not relevant and could be put aside. As already set out above the applicant needs to prove, on the balance of probability a continuous period of use amounting to ten years. Therefore any evidence submitted, dated within this ten year period is considered to be wholly relevant to the application and helps to paint a picture of the activity that has allegedly taken place within the relevant ten year period.

- 5.33 A further letter received from Mr & Mrs Newman on 9<sup>th</sup> February 2010 contained a CD which has aerial photographs of the site on 11<sup>th</sup> September 2000 and 14<sup>th</sup> July 2003. Mr Newman states that these photographs show that the north boundary wall of the site is completely clear of scaffolding or horse boxes, carts etc and that this contradicts drawing KT01A and as such also contradicts the applicants witness statements which swear those elements were there continually and for in excess of 10 years. The Council as set out and commented upon in section 5.14-5.15 of this report also has aerial photographs from Dec 1998 and June 2003 which appear to show the site as similar in appearance to those supplied by Mr Newman.
- 5.34 The applicant in his first affidavit lists and as quoted by Mr Newman's in his letter, the items stored at the site and states that these items are "habitually stored at the application site." To be clear this application is for the use of the whole red lined site and not the use of specific areas within the site. The various items stored within the site may have changed locations within the intervening 10 years, this is not however considered to be fatal to this application for a specific use within a specific site. It must be remembered that the buildings on the site are also stated as being used for storage of materials, something aerial photographs cannot show.
- 5.35 Further affidavits were received from Mr Newman on 25<sup>th</sup> February 2010 and Mr Worley on 12<sup>th</sup> March 2010. Much of these statements are a critique of the previous report placed before the committee and sets out their interpretation of how evidence should, in their opinion, have been considered. Both statements also express concern that, in their opinion, there are some very obvious discrepancies between aerial photos, affidavits of the applicant and witness's statements, company accounts, the Council's own records and neighbour sworn evidence have not been identified. Some of the points raised by Mr Newman and Mr Worley in their statements have been commented upon within this report.
- 5.36 In addition to Mr Newman's affidavit a further 3 sworn statements were also received from various members of Mr Newman's family. As these statements were taken under oath, they must be given the same considerable weight as those submitted by and in support of the applicant, the contents of each are briefly set out below:-

David Cleaver

Married to Mr Newman's niece and has visited 210 Chertsey Lane regularly, some were business trips during the week and others along with his wife were for long weekends and on occasions, for several days of holiday. He recalls nothing of note during the 1990's and most certainly any commercial roofing or building business operations. He saw no building or roofing material being stored or distributed from the rear garden or any horse boxes or other horse related vehicles or tack. He recalls the odd van or small lorry parked in the front garden but nothing more. From 2004 onwards he every time he visited Mr Newman he noted there seemed to be much more activity going on.

### John Newman

Former Lydney town councillor, runs his own plumbing business and is the brother of Mr Newman. Has visited No. 210 Chertsey Lane since 1981 five or six times a year at weekends and week days. Before 2004/2005 he never witnessed any commercial activity at 212 and firmly believes he would have been aware if it was going on and that if his brother would have known about it then he would have complained to the Council.

### Clifford Naylor

Is Mr Newman's step son. States No. 210 has been like a second home to him and his children over the past 20 years as he stays over regularly to save travelling from his home in Reading to his place of work in Feltham. Also stays outside of working times and has acted as house sitter when Mr & Mrs Newman go on holiday. States that clearly no commercial storage or distribution of building or roofing materials took place from the time the occupants of No. 212 moved into their house in 1989, right up to the present time. Staying over the last 5 years he states that he has become acutely aware it is increasingly more difficult to enjoy time spent in the front and rear gardens due to what appears to be commercial vehicles going in and out of the property both during the week and at weekends.

### Officer's conclusions on use of the yard

- 5.37 Looking at all the affidavits received from all parties it appears that the statements fall into two diametrically opposed categories, those that firmly believe a commercial yard has existed for more than 10 years and those that firmly believe that a commercial yard has not existed for 10 years. Given that all sworn statements are given equal weight part of the basis for a recommendation of this application must examine the precise wording of the statements and the position from which the statements were given.
- 5.38 The 7 sworn statements from those who support the applicant's claims, have all visited and make specific reference to the application site and the uses there. They have all visited on a fairly regular basis over at least the last 10 years. Most have a business relationship with the applicant and as such would more than likely be aware of the business operations of the applicant and from where these businesses operate. These persons therefore are considered to be an ideal position to give statements relating to the alleged use.
- 5.39 The 3 sworn statements from various members of Mr Newman's family all refer to times they have visited 210 Chertsey Lane over the last 20 years. Mr Cleaver states that he "saw no building or roofing material being stored or distributed from the rear garden." In this instance the applicant is not applying for a lawful use of the rear garden, rather the yard beyond the rear garden of 212, which appears, via aerial photography to have been in existence for well over 10 years.

- 5.40 In addition to this Mr Naylor states that "I understand the occupants of 212 are claiming that they have been using the rear garden of their house for the storage and distribution of roofing and building materials since they moved into the property in 1989." He then adds "I can state quite clearly that no commercial storage or distribution of building or roofing materials took place from the time the occupants of 212 moved into their house in 1989, right up to the present time." This statement is slightly confusing given the fact that Mr Newman in his first sworn statement states that, in reference to his 2005 statement that "in that affidavit I noted a marked intensification of activity on the site from 2004. I stand by that statement and add that at the time I did not understand the relevance of 'intensification'. I also make the obvious point this began less than 10 years ago."
- 5.41 This appears to be reaffirmed by Mr J Newman's statement that "before this period (2004/2005) I never witnessed any commercial activity at No. 212 Chertsey Lane." Following on from this statement Mr J Newman's affidavits is however very clear as he states that "I firmly believe I would have been aware if it had been going on. I am also convinced my brother would have known about it and complained to the Council. The observations however made by these individuals from various visits to Mr Newman of No. 210 Chertsey are given weight in determining this application.
- 5.42 A signed statement (not sworn) from Jacqueline Johnson who lived at No. 216 Chertsey Lane from February 1981 to December 2006 states that she did not hear any disturbance that she is sure would have taken place if a commercial enterprise was taking place in the rear garden of 212 Chertsey Lane and that the only significant noise she heard was in 2004 when the residents of No. 212 started to convert the garage. She states that she retired in 2008 and therefore spent much more time at home. Given the proximity of No. 216 to the application site this former resident would not have been able to view the site and this is reflected in her statement. Given the nature of the alleged uses at the site it is debatable whether significant noise and disturbance would have emanated from the yard even if it was being used as is alleged in the application to the extent that it would cause disturbance to this former neighbour who was located a fair distance away from the site. The statement does however carry some weight in helping to determine the application but not as much as the sworn statements submitted.
- 5.43 In conclusion it is considered that it is more likely than not that someone who has business relations with the applicant who regularly visited the site over the 10 years period would be in a slightly better position to make statements about the use of the land as a commercial yard and buildings comprising the storage and distribution of roofing and building materials than the direct neighbours who do not have regular access to the site or a business relationship with the applicant and whose views of the site would be partially blocked given the position and layout of the yard in relation to neighbouring properties. The applicant has also submitted a significant amount of paperwork associated with his companies First Class Roofing

and Surrey Holmes which covers the relevant 10 years period and no evidence has been produced to suggest that the applicant has another yard away from the one which is subject to this application.

5.44 Whilst the neighbours and their family members statements do cast some doubt on the evidence supplied by the applicant, the test is merely on the balance of probabilities and not for example the criminal burden of proof which is 'beyond all reasonable doubt'. Taking all the evidence submitted from all parties collectively together it is concluded that the evidence supplied by the applicant has marginally tipped the balance in his favour and as such is considered to have proved 'on the balance of probabilities' that the uses of the site described as a commercial yard & buildings comprising the storage and distribution of roofing & building materials with no sales have been in existence for a period of more than 10 years and therefore are lawful.

5.45 However one final issue that needs to be considered is that of the alleged intensification in the use of the application site from 2004/05 onwards as referred to in Mr Newman's first affidavits set out in section 5.23 of this report. Planning case law appears to accept that there may be a material change when an existing use intensifies to such a degree that its character and effects are significantly different. In the decision of *Lilo Blum v Secretary of State for the Environment* [1987] it was stated that: -

*"It is well recognised in law that the issue whether or not there had been a material change of use fell to be considered by reference to the character of the use of the land. It is equally well recognised that intensification was capable of being of such a nature and degree as itself to affect the character of the land and its use and thus give rise to a material change of use. Mere intensification, if it fell short of changing the character of the use, would not constitute a materials change."*

5.46 In this instance taking on board evidence from both parties and aerial photographs of the site over time it is considered that there is not enough specific evidence to suggest that a significant intensification in the use of the site has taken place within the ten year period as to change to such a degree the character of the application site.

#### **The sale and display of equestrian related equipment**

5.47 In relation to the issue of an area for the sale, purchase and display of equestrian related vehicles and equipment it has been stated that this area has been used as such for 10 years and that on average 1 no. horse related vehicle/box is purchased each month and 1 no. horse related vehicle/box is sold each month with an average of five horse related vehicles/boxes on display each month along with horse related equipment.

5.48 However the evidence from the neighbouring properties is very much more specific as both state that in the last 10 years they have never seen a horse box or horse related vehicle at the site and that any such vehicle would be readily visible over the fence given its size. During a recent site

visit it was noted that 2 no. trotting carts, a traditional gypsy/traveller trailer and various items of rope/tack were present at the site which Mr Harris confirmed were for his personal use only.

- 5.49 Given the evidence available from the supplied affidavits submitted with the application it is apparent that none of the people who supplied them have any business relationship with the applicant in relation to the buying and selling of horse vehicles or equipment, so it is difficult to see how they are in a position to know whether what the horse related vehicles and equipment they saw were in fact for sale. The affidavit from Katie Webb also confirms that she stores equestrian related items at the site, she does also state that she is aware that equestrian related equipment is bought and sold from the site but she does not specifically mention horse related vehicles or boxes.
- 5.50 It is therefore considered when looking at the evidence available that on the balance of probabilities it can be reasonably concluded that the area for the sale, purchase and display of equestrian related vehicles and equipment has not been in existence for a period of 10 years and as such should not be included within the Certificate of Lawfulness for the site. Indeed Mr Harris has already accepted this in his second affidavit in which he states that he does not propose to make further comment regarding the equestrian use of the site.
- 5.51 Consideration has been given to Article 8 and Article 1 of the First Protocol of the European Convention on Human Rights.

Officers' Recommendation

**GRANT CERTIFICATE OF LAWFULNESS** in respect of a commercial yard and buildings comprising the storage and distribution of roofing and building materials (no sales) in the area outlined in red on approved plan KT/01/A at the rear of 212 Chertsey Lane, Staines between 8am and 6pm Monday to Friday with a total of 6 vehicle movements to the yard per day and materials stored outside of the existing buildings at a height no greater than 2 metres at anytime.

**REFUSE CERTIFICATE OF LAWFULNESS** in respect of an area for the sale, purchase and display of equestrian related vehicles and equipment in the area outlined in red on approved plan KT/01/A at the rear of 212 Chertsey Lane, Staines.

Informative:

The applicant is advised that this decision relates to the following drawing numbers received on the dates shown:

Drawing Number:

Date Received:

KT/01/A  
KT/02

17/06/09  
17/06/09

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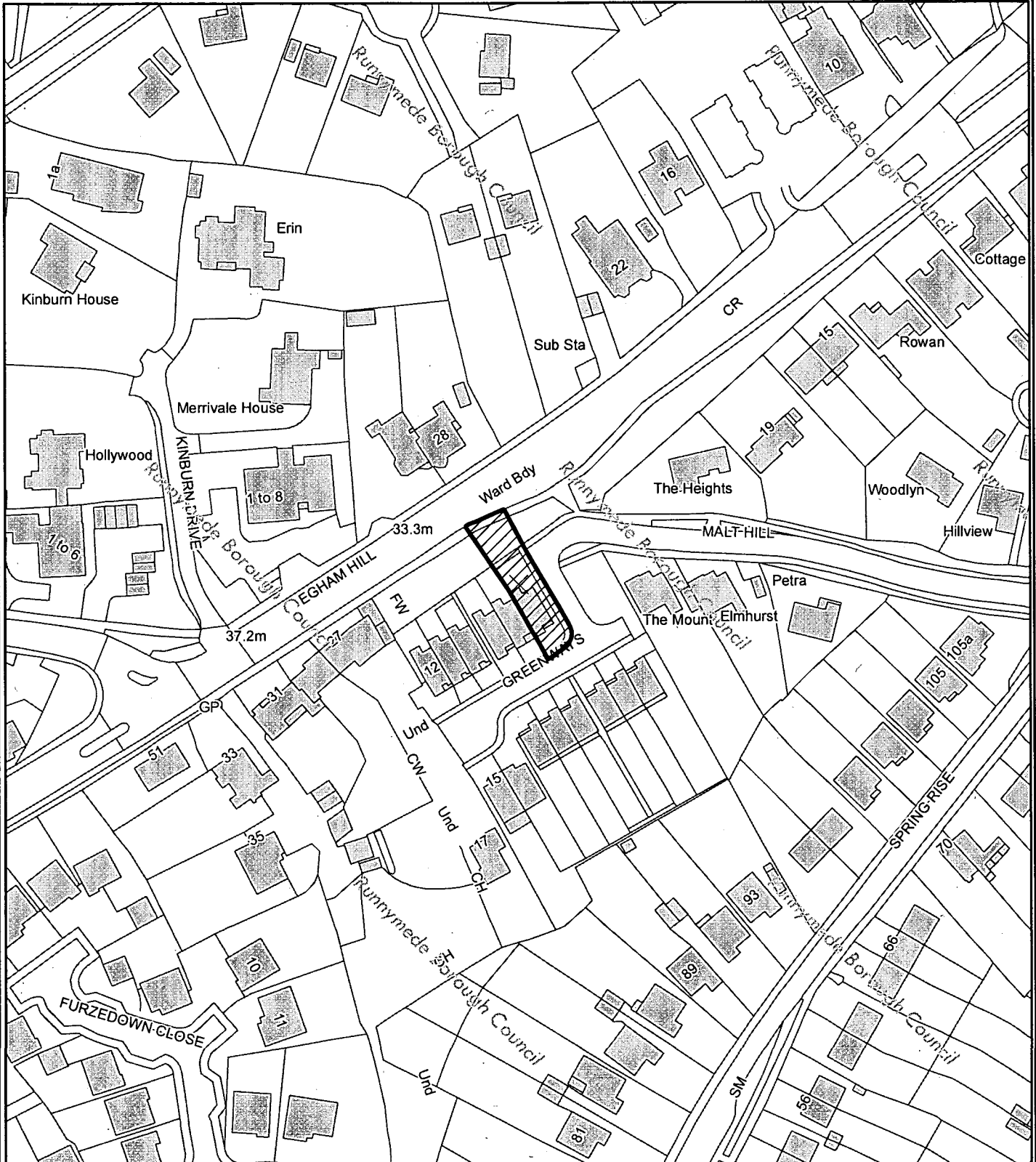


Planning Committee (21/04/2010)

RU.10/0166

2 GREENWAYS, EGHAM

Not to Scale



<b>RU.10/0166</b>	Date Reg: 2/03/2010	Ward: EGHAM
LOCATION:	2 GREENWAYS, EGHAM	
PROPOSAL:	ERECTION OF SINGLE STOREY REAR EXTENSION	
TYPE:	FULL	
APPLICANT:	Mr P Lacey	

Local Plan: Saved policies relevant to the consideration of this application are:

Second Alteration April 2001: BE2, HO9, MV9

1. Site

- 1.1 The site is located in the Urban Area of Egham on the north western side of Greenways and contains a two storey end of terrace dwelling.
- 1.2 The dwellings of Greenways have a uniform appearance being built as part of the same development and being characterised by two storey, flat-roofed dwellings, predominantly in blocks of three.
- 1.3 The majority of properties in the cul-de-sac are observed to benefit from off road parking for at least one car.

2. History

- 2.1 There is no recent or relevant planning history relating to the site.

3. Application

- 3.1 The applicant seeks permission to erect a single storey rear extension. According to the plans provided, the extension would have a maximum depth of approximately 4 metres and a width of approximately 5.2 metres. The extension would have a flat roof with a height of approximately 2.75 metres.
- 3.2 The extension would be located approximately 1.5 metres from the north eastern site boundary and there would be no discernible separation distance between the extension and the south western site boundary which is shared with No.4 Greenways.
- 3.3 The plans show that the extension would allow for the enlargement of the existing bedroom at the rear of the property and would also create an additional bedroom.

4. Consultations

- 4.1 The application was advertised on the Council's weekly list and 8 letters of notification were sent to individual properties. Four letters of objection have been received. The concerns raised in these letters are summarised as follows:

- the application would create additional pressure on parking in the cul-de-sac which would have a negative impact on road safety and on the living standards of residents.
- A number of properties on Greenways are now rented to tenants and no longer in family occupation.
- The road and pavement space outside No.2 is already being used for parking by the resident at No.2.
- The application would set a precedent for other absentee landlords to develop into their gardens in the road.
- Many properties in the road have more cars than their provision for off road parking allows.
- Access into Greenways for emergency services, refuse trucks and delivery vehicles is already difficult. There needs to be a limit on additional student accommodation to prevent an increase in cars which would make this situation worse.
- Corner parking has increased the risk of road traffic accidents as there is often only room for one vehicle to negotiate the corner into Greenways and drivers approaching from either direction are unsighted until they meet head on at the corner.
- Parking on the pavement and across vehicles in driveways is unsightly and detrimental to the traditional aspect of this small cul-de-sac.
- Corner parking has caused other large vehicles to drive across the grass covered area opposite No. 2, making ruts and damaging the small tree which grows on the corner of the green area.

4.2 The County Highways Authority raise no objection to this proposal.

## 5. Planning Considerations

5.1 The site lies in the Urban Area and therefore the principle of residential extensions is non-objectionable providing the proposal complies with the Council's relevant policies. Therefore, the main considerations for this application are the impact of the proposal on the street scene and established character of the area, and upon residential amenities. Due regard will be had to the relevant saved policies in the Development Plan, Government Guidance and the Council's Householder Guide, July, 2003.

5.2 In terms of the impact of the proposal on the established streetscene, whilst the extension would be visible as one enters Greenways from Malt Hill due to the end of terrace location of the host property, the extension would have a relatively limited height due to its flat roofed design. Moreover, a flat roof design would be in keeping with the existing dwelling and row. For this reason and due to the existing 1.8 metre fence which forms the north eastern site boundary, the extension would be unlikely to cause significant adverse harm on the streetscene or character of Greenways.

- 5.3 In terms of the impact of the proposal on residential amenities, the neighbour most likely to be affected by the proposal would be at No. 4 Greenways to the south west of the applicant site. However, in this instance, whilst the extension would break the 60° line from the centre point of the nearest rear window of this property, due to the orientation of the properties on this side of the road where the rear gardens face north west, the single storey extension would not cause a significant loss of light for this neighbour. Whilst the resultant extension would extend 2.3m further out than the existing rear wall or some 4 metres past the existing rear elevation of the neighbouring property, No. 4, it is considered that the proposal would not be significantly overbearing or cause a loss of privacy to the detriment of this neighbour due to its height and design. The proposal is therefore considered to not warrant a refusal on these grounds.
- 5.4 As outlined in paragraph 4.1 above, a number of residents have also raised concern about the impact of the proposal on parking in the vicinity due to the fact that the extension is shown to incorporate an additional bedroom and therefore would be likely to increase the number of occupants in the dwelling (which could also potentially increase the number of car owners at the property). When considering this issue, it is observed from the submitted plans that as part of the proposal, an additional off road parking space would be created at the property, increasing the number of spaces to two. The Council's maximum car parking standards (October 2001) for dwellings with 3 or more bedrooms is 2 spaces and therefore, whilst the concerns of residents are noted, the proposal would comply with policy. The County Highway Authority raise no objection to this proposal on highway safety or traffic generation terms stating that on-street car parking on Greenways, an unclassified cul-de-sac, is an existing situation. The accumulative impact of the rear extension (an additional bedroom) is negligible and offset by the additional car parking space.
- 5.5 The County Highways Authority state that whilst they understand the concerns of residents that people are parking on the public footway and partially blocking driveways, the Highways Authority considers this to be an enforcement issue that should be dealt with by the Police.
- 5.6 Consideration has been given to the requirements of Article 8 and Article 1 of the First Protocol of the European Convention on Human Rights.

#### Officers' Recommendation

**GRANT** subject to the following conditions:

1. External Materials – Samples Not Required (C006)
2. Full Application – Standard Time Limit (C015)
3. No Additional Windows (C021) (south western elevation)
4. Balconies (C025)
5. "Granny Annexe" (C026) - (2 Greenways, Egham)

Informatives:

1. The applicant is advised that if this proposal increases the number of unrelated people sharing the basic amenities of this property, then you will require a change of use application from a Use Class C3 (Residential Property) to a Use Class C4 (House in Multiple Occupation for up to 6 Persons) or a sui generis use (for more than 6 persons).
2. Land Ownership (I7)
3. Party Wall Act 1996 (I8)
4. The applicant is advised that as part of the detailed design of the highway works required by the above Condition(s), the County Highway Authority may require necessary accommodation works to street lights, road signs, road markings, highway drainage, surface covers, street trees, highway verges, highway surfaces, surface edge restraints and any other street furniture/equipment.
5. The applicant is advised that whilst the additional car parking space proposed does not cause a highway safety concern, the vehicular crossover will need to be widened. It should be noted that it is a criminal offence to cross the footway without authority (from the Highway Authority). Greenways is an unclassified road and as such planning permission is not required for any alterations to the existing crossover, however a licence will need to be obtained from West Surrey Highways. It should be noted that if the crossover is to be widened it will affect an existing highway gully.
6. The development hereby granted consent has been assessed against the following Development Plan policies – Policies CC6, BE1 and LF5 of the South East Plan 2009 and saved Policies BE2, MV9 and HO9 of the Runnymede Borough Local Plan Second Alteration April 2001 and other material planning considerations including third party representations. It has been concluded that the development would not result in any harm that would justify refusal in the public interest. The Planning Officer's report giving a more detailed assessment of this application is available for inspection at the Technical Services Department and copies can be obtained subject to a photocopying charge.
7. The applicant is advised that this decision relates to the following drawing numbers received on the dates shown:

<u>Drawing Number:</u>	<u>Date Received:</u>
Site location plan	25/02/2010
2013/01 (existing and proposed ground floor plans	25/02/2010
2013/02 (existing and proposed elevations)	25/02/2010

Any permission hereby granted shall not be construed as authority to carry out works on the highway. The applicant is advised that a licence must be obtained from the Highway Authority before any works are carried out on any footway, footpath, carriageway, verge or other land forming part of the highway.

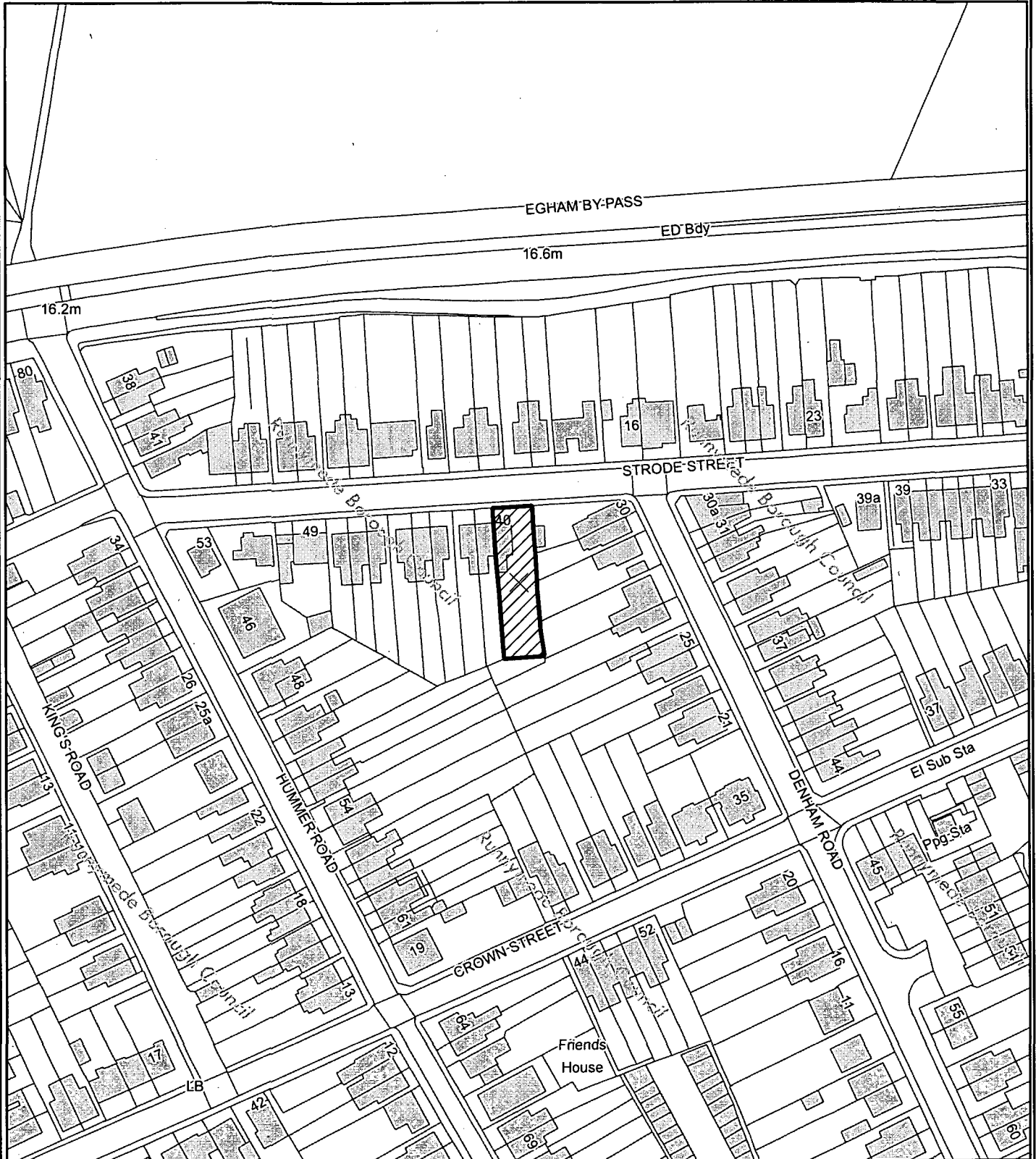


Planning Committee (21/04/2010)

RU.10/0172

40 STRODE STREET, EGHAM

Not to Scale



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Runnymede Borough Council 100006086 2010

<b>RU.10/0172</b>	Date reg: 4/03/10	Ward EGHAM TOWN
LOCATION:	40 STRODE STREET, EGHAM	
PROPOSAL:	ERECTION OF TWO STOREY SIDE EXTENSION	
TYPE:	FULL PLANNING PERMISSION	
APPLICANT:	P Wise	

Local Plan: Saved Policies relevant to the consideration of this application are:

Second Alteration April 2001: H09, BE2, SV2

1. Site

- 1.1 No 40 Strode Street is a two storey end of terrace dwelling on the southern side of Strode Street some 30m west of its junction with Denham Road. The area is characterised by a mix of detached, semi-detached and terrace dwellings. There is an existing dormer window with Juliette balcony on the rear elevation providing accommodation in the roofspace.
- 1.2 The site lies within the urban area and in flood Zone 3a (High Rise) as identified by Environment Agency Mapping (March 2010).

2. History

- 2.1 There is no previous planning history.
- 2.2 A dormer window has recently been erected in the rear elevation as permitted development.

3. Application

- 3.1 This is an application for full planning permission for the erection of a two storey side extension. The extension would be located on the western side of the dwelling extending into the side garden.
- 3.2 The proposed two storey extension would have a depth of 11.1m, increasing to 11.6m on the ground floor including the bay window on the ground floor. It would have a frontage width of 4.2m and would be 4.5m at the rear including the external wall. The resultant distance from the eastern side boundary would be approximately 1.1 metres. It would project 3.2m beyond the rear main wall of the original dwelling. It would be 5m in height to eaves level with a maximum ridge height of 8.1m.

4. Consultations

- 4.1 The application has been advertised on the weekly list and 8 neighbouring properties were individually notified by letter. Three letters of objection have been received on the following grounds:

- The loss of the existing garage and on street parking space would aggravate the on-street parking problems in the area.
- The dwelling on completion of the extension would be used as student accommodation with the ground floor study utilised as a bedroom, making 6 bedrooms in total which would aggravate the existing parking problems during term time in Strode Street.
- The proposed extension does not comply with Supplementary Planning Guidance, 'Householder Guide'
- The loft conversion, shown on the plans as existing, was started approximately 5 weeks ago and does not have planning permission.
- The proposed extension would be visually overbearing and cause loss of light to the front of No 14 Strode Street.
- The flank wall of the proposed extension reduces the separation distance to the rear of properties in Denham Road by some 35 to 40%.
- The size of the extension will further enclose the garden of No 30 Denham Road.
- The proposed extension would have an overbearing presence and cause a significant loss of light to No 30 Denham Road.
- Windows in the flank wall of the proposed extension would result in overlooking and loss of privacy to No 30 Denham Road.
- The proposed extension would be incongruous with the character of the street. The owners of no. 30 have advised that their application for a car port over their driveway was refused on these grounds some 5 years ago.
- Adequate sound proofing should be installed to ensure no disturbance from students lining in the property.

4.2 The County Highways Authority has no objections to the proposal and comments that whilst the application involves the removal of a garage they are satisfied that there is sufficient space for a vehicle to parallel park in front of the property. The level of car parking does not cause a highway safety concern.

## 5. Planning Considerations

5.1 The site is located within the urban area where new development is considered to be acceptable in principle subject to meeting the criteria of the relevant policies in the Development Plan. The main considerations of this application are the design of the proposed extensions, the affect on the character and visual amenities of the surrounding area and affect on the residential amenities of neighbouring properties.

- 5.2 The Council's Householder Guide (July 2003) requires that extensions should not dominate the original building and should be smaller and lower in order to respect its scale and form. It also states that two storey extensions should in most cases be designed to provide a gap of at least 1 metre to any boundary and should be set back by 300mm to make a visually acceptable break between old and new materials and to preserve the integrity of the existing building.
- 5.3 The proposed extension is not subservient to the original dwelling being approximately the same width and the same height as the existing. However, the dwelling forms part of a small terrace of 3 properties and the size of the proposed extension when viewed against the terrace is subservient to the terrace. The proposed extension matches the design and appearance of the existing dwelling and this terrace as a whole.
- 5.4 The proposed extension would be sited some 1.1m from the boundary. It would not be set back from the front wall of the original dwelling, however in this instance it is considered that a set back is not necessary and would unbalance the symmetry of the terrace.
- 5.5 The two storey side extension would be clearly visible from the adjacent public highway. The surrounding area is characterised by a mix of two storey detached, semi-detached and terraced dwellings. Its design is considered to be in keeping with the original dwelling house and terrace and it would not adversely affect the visual amenities of the streetscene.
- 5.6 The proposed extension would be a minimum of 10m from neighbouring properties to the east, Nos 29 and 30 Denham Road. A garage is sited in the rear garden of No 30 which separates the proposed extension from the rear of that property. Given the separation distance it is considered that the proposed extension would not have an overbearing or overshadowing effect on neighbouring properties. Two windows are proposed in the flank elevation of the extension on the ground floor and one serving a bathroom on the first floor. The ground floor windows would look directly onto the existing 1.8m high boundary fence and the garage of No 30 Denham Road, and therefore should not result in any overlooking or loss of privacy. A condition should be attached to any approval requiring the first floor window serving the bathroom to be obscure glazed to ensure the proposal would not result in overlooking and loss of privacy to neighbouring properties.
- 5.7 Building control records indicate that the dormer window was erected in January/February 2010 prior to the submission of the application. The dormer window was erected as permitted development and therefore planning permission was not required.
- 5.8 The proposed dwelling as extended would have 5 bedrooms and a bathroom on the first and second floors together with 3 habitable rooms, a kitchen, utility room and two bathrooms on the ground floor. The adjoining neighbour has expressed concern that the property would be used as

student accommodation and considers that the study could be converted to provide a sixth bedroom. Under the terms of the Town and Country Planning Use Classes (Amendment) Order 2010, a Class C3 use as a dwelling house constitutes a property occupied by a family or up to six people living together as a single household. Class C4 has however been introduced which enables small scale houses in multiple occupation up to six people to be used as a dwelling house so that permission is not required. The proposal is for a dwelling house which could be occupied by either a family or single people living together. Communal facilities are provided including a kitchen, living and dining areas, 3 bathrooms and a utility room. The Council has no evidence other than a letter from a neighbour to suggest that it would not be used as a single family dwelling. However, there is potential for the property to be used by more than 6 unrelated people as the living room could also readily be converted into a bedroom. An informative should be attached to any permission advising that the property should be used as a single family dwelling or by no more than 6 people living together as a single household and a condition attached to ensure that no part of the dwelling is subdivided to create a separate flat(s).

- 5.9 The proposed side extension is of a size which could be used as an independent dwelling separate from No 40 Strode Street. The erection of a new dwelling would however require the submission of a Flood Risk Assessment and a planning obligations unilateral undertaking. As these have not been submitted for consideration a condition should be attached to ensure that the extension is only used as accommodation ancillary to No 40 Strode Street.
- 5.10 It is a material consideration that the County Highways Authority has no highway objection to the proposal. Strode Street is located in a sustainable location within close proximity to services and alternative modes of travel in Egham town centre.
- 5.11 Consideration has been given to Article 1 and Article 8 of the First Protocol of the European Convention of Human Rights. The proposal also complies with the relevant Plan policies.

#### Officers' Recommendation

**GRANT** subject to the following conditions:

1. Full Application – Standard Time Limit (C015)
2. External Materials – Samples Required (C005)
3. No Additional Windows (C021) - \* eastern elevation
4. Obscure Glazing (C022) - \* first floor window eastern elevation

5. The extension hereby approved shall be occupied only as residential accommodation ancillary to the use of the dwelling currently known as 40 Strode Street and shall not be used as an independent residential unit.

**Reason:** To ensure that the dwelling remains in single family accommodation and does not become a separate residential unit and to comply with saved Policies H09, BE2 and SV2 of the Runnymede Borough Local Plan Second Alteration 2001.

6. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any other revoking and re-enacting that Order with or without modification) no doors shall be formed in the development hereby approved (other than those expressly authorised on the drawings) without the consent in writing of the Local Planning Authority.

**Reason:** To ensure that the dwelling remains in single family accommodation and does not become a separate residential unit and to comply with policies H09, BE2 and SV2 of the Runnymede Borough Local Plan Second Alteration 2001.

Informative:

1. The applicant is advised that this decision relates to the following drawing numbers received on the dates shown :-

<u>Drawing Number:</u>	<u>Date Received:</u>
HP2673 Issue A:	3/03/10
Existing and Proposed Ground Floor and First Floor Plans and Elevations	3/03/10

Any permission hereby granted shall not be construed as authority to carry out works on the highway. The applicant is advised that a licence must be obtained from the Highway Authority before any works are carried out on any footway, footpath, carriageway, verge or other land forming part of the highway.

2. The development hereby granted consent has been assessed against the following Development Plan policies – saved Policies BE2, SV2 and HO9 of the Runnymede Borough Local Plan Second Alteration April 2001 and other material planning considerations including third party representations. It has been concluded that the development would not result in any harm that would justify refusal in the public interest. The Planning Officer's report giving a more detailed assessment of this application is available for inspection at the Technical Services Department and copies can be obtained subject to a photocopying charge.

3. The applicant is advised that if this proposal increases the number of unrelated people sharing the basic amenities of this property, then you will require a change of use application from a Use Class C3 (Residential Property) to a Use Class C4 (House in Multiple Occupation for up to 6 Persons) or a sui generis use (for more than 6 unrelated people sharing the property).