

OLD RECTORY **LUDESDOWN ROAD**

LUDESDOWN, GRAVESEND DA13 0XE

SUPPORTING JUSTIFICATION

INCORPORATING PLANNING, DESIGN AND HERITAGE STATEMENT

DEMOLITION OF EXISTING ORANGERY AND ERECTION OF A TWO STOREY SIDE AND REAR INFILL EXTENSION, INSTALLATION OF NEW TIMBER SASH WINDOWS TO REPLACE ALL EXISTING WINDOWS, ERECTION OF LINK STRUCTURE CONNECTING THE MAIN DWELLINGHOUSE WITH THE EXISTING OUTBUILDING AT THE FRONT

RESUBMISSION OF APPLICATION 20231283 WITH ADDITIONAL REVISIONS

REF: PP-13178554 (WINDOWS)
SEPTEMBER 2024

Planning history

1. Planning permission (reference 20231283) was granted in February 2024 for the following householder development:

Demolition of existing orangery and erection of a two-storey side and rear infill extension, erection of link structure connecting the main dwellinghouse with the existing outbuilding at the front.

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2. When the application for planning permission referenced above was initially submitted in December 2023, it included a provision to replace all existing timber-glazed windows with double-glazed equivalents. However, officers did not support the window replacement due to suggestions made during the determination period that the property ought to be considered a non-designated heritage asset (i.e., a locally listed building). To allow progress on the other elements of the proposals (namely the proposed extensions), the applicant reluctantly agreed to omit the window replacement from the application, with the intention of revisiting this issue in the future.

Note: a copy of all previously approved plans has been submitted in support of the current application for reference.

Proposed development

3. The proposals constitute householder development and involve the following building operations:

(A) The demolition of the existing orangery and the erection of a two-storey side and rear infill extension.

The works described above are identical to those approved under extant planning permission ref. 20231283 and could already be carried out without the need for planning permission. Consequently, the planning merits will not be reassessed within this statement, as they have already been deemed in planning terms.

(B) The erection of a 'link structure' connecting the main dwellinghouse with the existing outbuilding at the front.

The works described above are almost identical to those approved under the extant planning permission ref. 20231283, and could largely proceed without the need for further planning permission. While minor alterations are proposed to the fenestration and roof form of the previously approved link structure (primarily to address structural requirements and earlier drawing discrepancies), these changes are considered non-material in the context of the previous permission. Furthermore, it is important to note that planning permission has previously been

granted for the full demolition and reconstruction of the outbuilding (Ref: 20160966). As such, the planning merits will not be reassessed in this statement, as they have already been deemed acceptable by planning officers.

(C) The installation of new timber sash windows (slimline double-glazed) to replace all existing windows (single-glazed) in the dwellinghouse.

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Planning permission for the works described above was initially sought under planning application ref. 20231283, but the window replacements were ultimately omitted from the proposals for the reasons outlined in Section 1 of this document. Following a careful reassessment, the proposals to replace all existing windows have been reincorporated into the current application.

4. The purpose of this statement is therefore to assess the proposed window replacements in greater detail in planning terms, as they constitute the only deviation from the previous planning permission.

Window replacements: implications of TCPA 1990 / GPDO 2015

5. Officers are reminded that planning permission is not required for alterations to a building where such works do not meet the definition of “development” under Section 55 of the Town and Country Planning Act 1990 (TCPA 1990). According to the Act, “the carrying out for the maintenance, improvement or other alteration of any building of works which affect only the interior of the building or do not materially affect the external appearance of the building [...] shall not be taken for the purposes of this Act to involve development of the land”. In other words, such works are outside the scope of planning legislation.

In *Burroughs Day v Bristol City Council* [1 EGLR 167, QBD], the High Court made the following remark in relation to Section 55 of the TCPA 1990:

What must be affected is "the external appearance", not "the exterior". The use of the word "appearance" means that it is not sufficient for the external surface of a building to be affected by the proposed alteration. The alteration must be one which affects the way in which the exterior of the building is or can be seen by an observer outside the building. [...] Whether the effect of an alteration is "material" or not must in my judgment depend in part on the degree of visibility.

6. Consequently, in the absence of a statutory listing under the Planning (Listed Buildings and Conservation Areas) Act 1990, the removal of all existing windows, and the insertion of new windows identical in appearance, would not have a material impact on the external appearance of the building. Whether or not the existing windows are original is irrelevant in this context. As such, these works would fall outside the legal purview of planning control.

7. Furthermore, even if the replacement windows were to consist of double-glazed units rather than the currently installed single-glazed ones, such differences would not necessarily result in a material impact on the external appearance of the building. While the differences may be noticeable when inspecting the windows up close, as noted in the High Court judgment, it is not the technical impact on the building's exterior that matters, but rather its overall appearance as seen from ordinarily accessible vantage points, rather than isolated or overly specific ones. This must also be considered in the context of a "reasonable observer" – it would not be reasonable for an observer to stop and examine the window details closely or in great detail. Given the separation distance between the building façade and the road, the absence of a pedestrian footway, the lack of adjoining properties (i.e., no other windows for comparison), and the existing mismatch of window styles (which is more noticeable than any change in glazing type), it is not considered that replacing all existing windows with double-glazed slimline equivalents, otherwise identical in appearance, would have a material impact on the external appearance of the property. Any impact would be limited to a detailed or technical level, falling within the de minimis threshold, especially if all windows are replaced simultaneously.
8. If the windows were to be replaced on a like-for-like basis but with double-glazing, it would therefore not necessarily constitute "development". However, planning permission is required in this case, as the proposal involves not only replacing the single-glazed windows with double-glazed units but also addressing the current mismatch of window styles. The aim is to introduce a uniform window style across the property, including for the proposed extensions already approved under application ref. 20231283. While this would have a material impact on the external appearance of the building, it is considered an improvement, not only over the existing varied arrangement but also in comparison to a scenario where all windows were replaced outside the scope of Section 55 of the Act.
9. Officers are also reminded that planning permission has already been granted under Article 3 of the General Permitted Development Order 2015 (GPDO 2015) for various alterations and extensions that constitute "development" under Section 55 of the TCPA 1990, including those that would have a material impact on the external appearance of the building. Such works include, under Part 1, Class A of the Order, the "enlargement, improvement, or other alteration of a dwellinghouse", provided that "the materials used in any exterior work (other than materials used in the construction of a conservatory) must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse."

Note the use of the words "similar" rather than "the same" and "existing" rather than "original" within this legislative passage.

10. Statutory guidance issued by the Ministry of Housing, Communities and Local Government under the *Permitted Development Rights for Householders: Technical Guidance (2019)* confirms that "the materials used should be of similar

visual appearance to those in the existing house, but does not mean that they need to be the same materials.” It also provides the following example regarding the condition on materials (our emphasis underlined):

It may be appropriate to replace existing windows with new uPVC double-glazed windows or include them in an extension even if there are no such windows in the existing house. What is important is that they give a similar visual appearance to those in the existing house, for example in terms of their overall shape, and the colour and size of the frames.

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11. Whilst opinions may differ as to whether the proposed window replacements would be near-identical to the existing ones to the extent that they would not materially impact the external appearance of the building (taking into account the judgment in *Burroughs Day v Bristol City Council*), it would be entirely unreasonable to suggest, based on the drawings submitted with the application, that the new windows would not be similar to those in the existing building, which itself displays a variety of window styles.
12. The permitted development rights referred to in the GPDO 2015 are not subject to any conditions or statutory limitations restricting their application to buildings that are locally listed. Even if the building were located within a conservation area (which it is not), planning permission would still be granted for the improvement or alteration of a dwellinghouse, provided that, in accordance with paragraph A.2(a) of Class A, Part 1, Schedule 2 of the Order, such works would not “consist of or include the cladding of any part of the exterior of the dwellinghouse with stone, artificial stone, pebble dash, render, timber, plastic or tiles”. The replacement of the existing windows with double-glazed equivalents of similar appearance would therefore not be contrary to these regulations, including in cases where the property is locally listed.
13. Consequently, if the applicant were to replace all existing single-glazed windows attached to the dwellinghouse with double-glazed equivalents of similar (rather than identical) appearance without express planning permission or prior notification to the local authority, such works would be lawful and could not be enforced against. This remains true whether or not the applicant has applied for a lawful development certificate, provided that the provisions of the GPDO 2015 are met.
14. For clarity, the reasons the applicant is seeking express planning permission from the local authority for the proposed window replacements (together with the extensions previously approved under planning permission 20231283), rather than relying on the consent granted under the GPDO 2015, are as follows:
 - (1) The applicant aims to ensure a uniform appearance across the entire property by matching the windows in the proposed extensions (approved under the previous planning permission) with those being replaced in the main dwellinghouse (approved under the GPDO 2015).

(2) The applicant intends to undertake the window replacements for the existing dwellinghouse concurrently with the other approved works (such as extending the property). This approach would minimise construction times and eliminate the unnecessary complication of differentiating between two types of building operations that could be efficiently completed together.

(3) A strict interpretation of the conditions in paragraph A.3 of Part 1, Schedule 2 of the GPDO 2015 could potentially require certain side-facing windows on the upper floors to be obscured glazed, even though they currently are not. This is a grey area in GPDO legislation (as the windows are not currently obscure-glazed, and do not overlook any adjoining land), and while only a few windows might be affected, it is an issue the applicant would prefer to avoid.

15. When determining an application for planning permission under the TCPA 1990, the local authority must consider the fallback positions provided under the GPDO 2015, as well as whether certain elements of the proposed development do not actually constitute "development" under the Act, as a material planning consideration. This requirement has been established in case law, including *Snowden v Secretary of State for the Environment* [1980] JPL 749, *Brentwood BC v Secretary of State for the Environment* [1995] 72 P&CR 61, *South Buckinghamshire District Council v Secretary of State for the Environment* [1998] CO/184/98, *R (on the application of Zurich Assurance Ltd) v North Lincolnshire* [2012] EWHC 3708 and *Raffaele Gambone v Secretary of State for Communities and Local Government v Wolverhampton City Council* [2014] EWHC 952.
16. In the Gambone case, the High Court reiterated the established principle that "it will amount to a material consideration... where there is a greater than theoretical possibility that the development might take place. It could be development for which there is already planning permission, or it could be development that is already in situ. It can also be development which, by virtue of the operation of legal entitlements, such as the General Permitted Development Order, could take place."
17. The concept of a "greater than theoretical" prospect of a fallback position available under the GPDO was also discussed in the Zurich case, where the courts determined that *"The prospect of the fallback position does not have to be probable or even have a high chance of occurring; it only needs to be more than a merely theoretical prospect. Where the possibility of the fallback position happening is 'very slight indeed,' or merely 'an outside chance,' that is sufficient to make it a material consideration."*
18. In the case of the proposed window replacements sought under the current application for planning permission, it would be an understatement to suggest that the likelihood of the applicant replacing the windows under the GPDO 2015, should the application be refused, is merely a "theoretical prospect." Given that this is the second time the applicant has applied for the replacement windows, the fallback position under the GPDO 2015 is more than just a possibility; it is

clear that the applicant is determined to undertake the proposed works; in other words, there is intent.

19. Further indications that the applicant would pursue fallback positions under the GPDO 2015 if planning permission were refused can be summarised as follows:
20. The applicant has already invested a significant amount of money and effort into architectural services and advice related to the proposed window replacements, including the preparation of two planning applications to date.
21. The dwelling currently has an Energy Performance Certificate (EPC) rating of “F,” the second-worst possible score, indicating extremely high energy bills due to the building’s substantial internal volume and the absence of energy-saving measures, such as double-glazed windows. In fact, the rating is so low that, under *The Energy Efficiency (Private Rented Property) (England and Wales) (Amendment) Regulations 2018*, it may not be legal to rent out the property. To achieve the recommended improvements, the windows must be upgraded to double glazing. The cost savings of double-glazed windows are estimated to be at least £857 per annum, equating to £21,425 over 25 years, not accounting for inflation and recent rises in fuel costs.
22. Similarly, the windows proposed within the previously approved extensions would need to be double-glazed to meet building regulation requirements.
23. Many of the existing windows are rotten or beyond repair, resulting in some windows historically being replaced or patched up in a piecemeal manner. Additionally, many windows no longer open, while others pose a risk to children as they could break at any moment.
24. In summary, there is a clear intent, supported by practical, financial, and safety considerations, indicating that the possibility of replacing the windows under the GPDO is more than probable (i.e., it is a likely consequence) should planning permission for the proposed development be refused, even if it means dealing with the inconveniences outlined in paragraph 14 of this statement.

Note: The absence of a lawful development certificate for the replacement of the existing windows under the GPDO 2015 is not a valid reason to discount the fallback position available under the Order as a material planning consideration. This principle was established in R (on the application of Zurich Assurance Ltd) v North Lincolnshire [2012] EWHC 3708.

Window replacements: further considerations

25. Even putting aside the aforementioned material planning considerations, the proposed window replacements would have no detrimental impact on the character, appearance, or historic significance of the building, nor that of the surrounding area.
26. The proposed window replacements will consist of slimline double glazing, closely replicating the external appearance of the existing windows. Detailed drawings of the proposed replacements have been submitted in support of the application, allowing any grant of planning permission to be conditional on the development being carried out in accordance with the submitted plans. This would provide the local authority with a greater degree of control over the appearance and uniformity of the property compared to alternative development undertaken under the GPDO 2015.
27. Consequently, it is unlikely that the proposals would alter the building's appearance to the extent that it would be considered harmful to the character or appearance of the building or the wider area. This is especially true given the building's significant setback from the road (which also lacks a public footway), the presence of numerous trees surrounding the application site, the absence of adjoining properties overlooking any of the building's façades, and the lack of public paths close enough to discern the detailing of the rear façade.
28. Following the grant of planning permission for extensions and other alterations approved under 20231283, the applicant has conducted a closer assessment of the condition and arrangement of the existing fenestration. This re-assessment not only highlighted a mismatch of window styles (which may be exacerbated by the addition of new windows associated with the approved extensions) but also revealed evidence that the building's façades and window openings have been heavily altered in the past - a fact historically concealed by the application of painted render on the front façade.
29. Across the front, side, and rear elevations, there are traditional "Georgian-style" windows (equal grids of six over six), "prairie-style" windows (divided into unequal panes), as well as windows and doors without any subdivisions. There is no consistent or logical arrangement to these styles; instead, the window styles appear random, almost as if they were developed piecemeal over time.
30. Mismatching brickwork, noticeable on the rear elevation, also indicates that the building's exterior has been significantly altered in the past. While this may not be obvious at first glance when viewing the front façade from the road, historic (and previously unnoticed) "Streetview" imagery from Google shows the front façade in 2009, prior to the application of the painted render. These images reveal a substantial mismatch of building materials, suggesting that any historic significance of the front façade has likely been lost over time. This may also explain the rather haphazardly arranged window styles, though not entirely.



Mélange of at least 5 different window styles and at least 2 different brick styles on the rear elevation.



Window variations are also evident on the front façade, shown above in its current, rendered state.



Front façade as seen in Google Street View images from 2009, highlighting the complete degradation of the façade over time.

31. All new windows will be of a traditional style, timber sash painted white, featuring grids of six over six with equally sized panes. The same style will be applied to any proposed or replacement patio doors at the rear. Consequently, the proposed development will represent an improvement over the existing mismatched, poor-quality windows, providing a coherent and uniform style across the building, including any previously approved extensions. High-quality materials will be used to ensure the windows' durability and long-term retention.
32. While conservation officers have recently indicated, during discussions related to planning permission 20231283, that the building may need to be considered for "local listing," the aforementioned considerations—including the altered nature of the building's façades (concealed by render), the mismatched window styles, and the fallback positions discussed earlier in this document (which already permit the complete removal and replacement of all windows without planning permission)—suggest that a local listing designation is unlikely to render the proposed window replacement unacceptable.
33. In fact, while heritage officers indicated in their feedback during the public consultation process for application 20231283 that the building ought to be considered a "non-designated heritage asset" (i.e., locally listed), they did not object to the principle of replacing all windows. Moreover, they did not specifically mention any concerns regarding the windows, despite the proposal at the time still involving their complete replacement.
34. Moreover, not long before the determination of the most recent planning permission (20231283), the applicant submitted an application for an alternative scheme, which included a single-storey side extension and the replacement of all existing single-glazed windows with double-glazed equivalents. This application, processed under reference 20230656, was eventually withdrawn by the applicant due to rising costs associated with the scheme. However, it had already undergone the internal consultation process and was about to be recommended for approval. During this process, neither heritage nor planning officers raised concerns regarding the window replacements, nor was there any indication that the building warranted consideration as a locally listed asset.
35. There are additional reasons why the building may not actually warrant consideration as a non-designated heritage asset, at least not in reference to the proposed window replacements, including:
 - (i) Heritage and planning officers did not indicate that the building should be considered for local listing during the determination of any of the previous planning applications related to the site, including 20231283, 20230656, 20160966, and 20090320.

(ii) Contrary to the provisions of paragraphs 198 and 199 of the National Planning Policy Framework (2023), the Council does not maintain an up-to-date local list of non-designated heritage assets, nor is any such list “publicly accessible [...] as part of policy-making or development management” (para. 119).

(iii) The absence of a clearly defined, plan-led, evidence-based, transparent, and publicly available, properly scrutinised local list also contradicts the recommendations of Historic England Advice Note 7 (Second Edition), Local Heritage Listing: Identifying and Conserving Local Heritage. Paragraphs 9, 12, and 17 state that “the legitimacy and weight within the planning system of local heritage lists is increased when the list has been prepared in accordance with defined selection criteria, and has been subject to public consultation” (para. 17) and that “The more information that can be provided about the significance of the asset and the reasons for its inclusion on the local list, the more effective its identification as a locally listed heritage asset will be” (para. 12). This must be “based on sound evidence” (para. 9).

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36. In light of the above, and taking into account the absence of any Article 4 Direction or conservation area status affecting the application site, the proposed development is considered acceptable in planning terms, even if, for argument's sake, the fallback positions available to the applicant under the GPDO 2015 (which are a material planning consideration, as established by the High Court) are set aside. However, once weight is attributed to all material planning considerations, it is considered that, on balance, it would be unreasonable to refuse planning permission for the proposed development.
37. Additionally, the grant of planning permission would provide the Council with assurances that the proposed window replacements will be carried out in accordance with the approved plans (or it would result in a breach of a planning condition), thereby offering the local authority a greater degree of control over the appearance and uniformity of the property compared to any development undertaken under the GPDO 2015.

- Additional photographs shown overleaf -

Further images are available in the Planning Statement previously submitted for application 20231283



The replacement of the existing windows, even using uPVC, would not be perceivable from the closest public footpath to the rear of the application site.



Side elevation as seen from public road (left) and private yard (right), nothing at least 4 different window styles.



Evidence of window damage and generally poor condition of windows, which will need to be replaced either as part of the current application for planning permission, or under permitted development.



Examples of traditional double-glazed timber sash windows proposed at the application site, provided by the proposed window supplier.