

## REPORT SUMMARY

<b>REFERENCE NO - 22/02191/FULL</b>		
<b>APPLICATION PROPOSAL</b>		
Removal of parapet of the rear extension by lowering it fully (2 blocks), to the height that the left hand stairwell has already been lowered to. To show gutter detail and downpipe detail. Decrease size of windows on stairwell.		
<b>ADDRESS</b> 23 Church Road Royal Tunbridge Wells Kent TN1 1HT		
<b>RECOMMENDATION</b> to GRANT planning permission subject to conditions (please refer to section 11.0 of the report for full recommendation)		
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b>		
<ul style="list-style-type: none"> <li>• The development is not considered to be significantly harmful to the character or appearance of the property itself or the wider area and the significance of the Conservation Area would be preserved;</li> <li>• The proposal in itself is not considered to cause harm to the listed building. The previous, implemented consent on this site caused a very low level of less than substantial harm through the loss of a window at the rear, and that consent has already been implemented. This scheme does not materially add to the level of harm identified before;</li> <li>• The development would not have a significant adverse impact on the residential amenity of nearby occupiers from the development;</li> <li>• Other issues raised have been assessed and there are not any which would warrant refusal of the application or which cannot be satisfactorily controlled by condition.</li> </ul>		
<b>INFORMATION ABOUT FINANCIAL BENEFITS OF PROPOSAL</b>		
The following are considered to be material to the application:		
<b>Contributions (to be secured through Section 106 legal agreement/unilateral undertaking):</b> N/A		
<b>Net increase in numbers of jobs:</b> N/A		
<b>Estimated average annual workplace salary spend in Borough through net increase in numbers of jobs:</b> N/A		
The following are not considered to be material to the application:		
<b>Estimated annual council tax benefit for Borough:</b> N/A		
<b>Estimated annual council tax benefit total:</b> N/A		
<b>Estimated annual business rates benefits for Borough:</b> N/A		
<b>REASON FOR REFERRAL TO COMMITTEE</b>		
The application has been called into the planning committee by Councillor Rutland for the following reasons:		
<ul style="list-style-type: none"> <li>• to consider the impact of the application on the listed building</li> <li>• to consider the impact of the application on the other listed properties in the terrace and the terrace as a whole; and</li> <li>• to consider the impact of the application on the Tunbridge Wells Conservation Area.</li> </ul>		
<b>WARD</b> Culverden	<b>PARISH/TOWN COUNCIL</b> N/A	<b>APPLICANT</b> Ms Melanie O'Brien

		<b>AGENT</b>	
<b>DECISION DUE DATE</b>	<b>PUBLICITY EXPIRY DATE</b>	<b>OFFICER SITE VISIT DATE</b>	
04/10/22	09/09/22	17/08/22	
<b>RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):</b>			
<b>Reference</b>	<b>Description</b>	<b>Decision</b>	<b>Date</b>
22/02192/LBC	Listed building Consent: Removal of parapet of the rear extension by lowering it fully (2 blocks), to the height that the left hand stairwell has already been lowered to, To show gutter detail and downpipe detail, Decrease size of windows on stairwell, Make the front steps to the property in line with that of neighbours, Reinstatement of iron railings, Addition of gas pipes on front elevation.	Pending consideration	
21/03974/SUB	Submission of Details in relation to Condition 4 (Air Source Heat Pump) of reference 20/03358/LBC.	Pending consideration	
21/03924/SUB	Submission of Details in relation to Condition 4 (Air Source Heat Pump) and 5 (Archaeological Work Specification and Timetable) of reference 20/02933/FULL	Pending consideration	
21/03449/SUB	Submission of Details in Relation to Condition 3b (Type and Finish of Render) and Condition 3c (Glazing Manufacturer's Details) of 20/03358/LBC	Granted	19/11/21
20/03358/LBC	Listed Building Consent: Proposed multi storey rear extension and internal alterations; addition of air source heat pump; external steps	Granted	07/06/21
20/02933/FULL	Proposed multi storey rear extension and internal alterations; addition of air source heat pump; external steps	Granted	07/06/21
19/03442/LBC	Listed Building Consent: Change of Use from Offices to 2 no residential units and alterations	Granted	03/02/20
19/03441/FULL	Change of use from offices to 2 no residential units	Granted	03/02/20
11/00025/LBC	Extension of Time - Listed Building Consent - Change of use from offices to two residential units (TW/08/00062/LBC refers)	Granted	15/02/11
11/00024/FUL	Extension of Time - Change of use from offices to two residential units (TW/08/00060/FUL refers)	Granted	20/05/11
08/00062/LBC	Listed Building Consent: Change of use from offices to two residential units	Granted	04/03/08
08/00060/FUL	Change of use from offices to two residential units	Granted	04/03/08
94/01435/LBC	Listed Building Consent - Alterations to form new ground floor office	Granted	18/01/95
85/00643/LBC	Listed Building - Provision of a period lamp at front entrance	Granted	24/06/85
82/00624/LBC	Listed Building Consent - Installation of multi	Granted	19/07/82

	core cable		
84/00602/FUL	Listed Building Consent - Provision of lift with lobbies. Toilet additions	Granted	19/07/84
84/00601/FUL	Toilet additions at first and second floors. Lift housing on roof	Granted	19/07/84
79/00307/FUL	Extension and alterations to form additional office accommodation	Granted	11/07/79
74/09176/HIST	Fire escape walkway	Granted	28/01/75

## MAIN REPORT

### 1.0 DESCRIPTION OF SITE

- 1.01 This property forms part of a terrace of 10 buildings located on the south side of Church Road, known as Belvedere Terrace. This terrace consists of four storey buildings with a basement and are either in use as offices or dwellinghouses.
- 1.02 These properties are set back from the road and there is an in/out vehicular access that leads to parking to the front of the terrace. Along the front boundary is a tree/hedge screen, which is protected by a Tree Preservation Order.
- 1.03 No.23 is a mid-terrace dwellinghouse and there is a good sized garden to the rear that backs onto the gardens of the properties in Clanricarde Gardens.
- 1.04 The property had previously been in use, along with the adjacent no.21, as offices for C&H Fabrics (the retail business occupies a shop in the Town Centre) and access to no.23 was internally via no.21 as the front entrance to no.23 had been removed. Planning permission and listed building consent was granted for the change of use to two dwellinghouses under applications 19/03441/FULL and 19/03442/LBC respectively and work has commenced to convert both these buildings.
- 1.05 The adjacent properties, 21 and 25 Church Road, are both in residential use as single dwellinghouses.
- 1.06 All the properties within this terrace are Grade II Listed Buildings and the listing description describes them as being a *'Circa 1840. Tudor Gothic range, 4 storeys stuccoed with a shaped gable to each house, some with finials. 1 or 2 casement windows to each with dripstones over. Nos 11 to 29 (odd) form a group'*
- 1.07 Planning permission and listed building consent has been granted for a three-storey rear extension to this property under applications 20/02933/FULL and 20/03358/LBC respectively and work has commenced on this extension.

### 2.0 PROPOSAL

- 2.01 Planning permission 20/02933/FULL and listed building consent 20/03358/LBC granted consent for the construction of a 1<sup>st</sup>/2<sup>nd</sup> floor rear extension above an existing rear single storey extension and a three storey fully glazed rear extension.
- 2.02 Work has commenced on the construction of the rear extensions but this has not been constructed in accordance with the approved plans. This application seeks planning permission for the following alterations to the approved scheme:

- Increase in height of the 1<sup>st</sup>/2<sup>nd</sup> floor rear extension so that it matches the height of the glazed extension;
- Removal of roof lantern within 1<sup>st</sup>/2<sup>nd</sup> floor rear extension;
- Repositioning of door and addition of side window on rear elevation;

2.03 It is noted that a parapet wall has been constructed above the extensions, which has not been granted planning or listed building consent, this does not form part of this application and is to be removed with only the triangular parapet above the glazed extension remaining as previously approved.

2.04 A separate listed building consent has been submitted for the above works under application 22/02192/LBC.

### 3.0 SUMMARY INFORMATION

	As Approved under 20/03358/LBC		As Proposed under this application		Change (-/+)	
	1 <sup>st</sup> /2 <sup>nd</sup> Floor Extension	Glazed Extension	1 <sup>st</sup> /2 <sup>nd</sup> Floor Extension	Glazed Extension	1st/2nd Floor Extension	Glazed Extension
No. of storeys	3	3	3	3	No change	No change
Height	9.8m	10.3m (11.2m to parapet)	10.3m	10.3 (10.9m to parapet)*	+ 0.5m	No change (- 0.3m to parapet)
Width	2.7m	3.3m	2.7m	3.3m	No change	No change
Depth	1.9m	1.9m	1.9m	1.9m	No change	No change

*\*this is the height discounting the unlawful parapet currently in place, which is required to be removed by condition below*

### 4.0 PLANNING CONSTRAINTS

- Inside Limits to Built Development
- Tunbridge Wells Conservation Area (*statutory duty to preserve or enhance the significance of heritage assets under the Planning (Listed Buildings & Conservation Areas) Act 1990*)
- Listed Building (1083763) Grade: II – No.23 and Belvedere Terrace
- Tree Preservation Order (004/2001) – Trees on front boundary
- Area of Archaeological Potential
- Air Quality Management Area
- Tunbridge Wells Central Parking Zone (commercial) - TP7
- Tunbridge Wells Central Access Zone (Residential) - TP6
- Potentially Contaminated Land + 50M Buffer - Various Sites
- Section 106 or 52 Agreement - 21 - 23 Church Road (11/00024/FULL)

### 5.0 POLICY AND OTHER CONSIDERATIONS

#### The National Planning Policy Framework (NPPF) National Planning Practice Guidance (NPPG)

#### Tunbridge Wells Borough Core Strategy 2010

- Core Policy 1: Delivery of development
- Core Policy 4: Environment
- Core Policy 5: Sustainable design and construction

- Core Policy 9: Development in Royal Tunbridge Wells

#### **Tunbridge Wells Borough Local Plan 2006**

- Policy EN1: Development control criteria
- Policy EN5: Development within, or affecting the character of, a Conservation Area

#### **Tunbridge Wells Borough Submission Local Plan 2020-2038**

- Policy STR1: The Development Strategy
- Policy STR8: Conserving and Enhancing the Natural, Built, and Historic Environment
- Policy STR/RTW1: The Strategy for Royal Tunbridge Wells
- Policy STR/RTW2: The Strategy for Royal Tunbridge Wells Town Centre
- Policy EN1: Sustainable Design
- Policy EN2: Sustainable Design Standards
- Policy EN4: Historic Environment
- Policy EN5: Heritage Assets
- Policy H11: Residential Extensions, Alterations, Outbuildings, and Annexes

#### Supplementary Planning Documents:

- Alterations & Extensions
- Royal Tunbridge Wells Conservation Area Appraisal

### **6.0 LOCAL REPRESENTATIONS**

6.01 Two site notices were displayed around the site on 17 August 2022, one on the Church Road frontage and one to the rear in Clanricarde Gardens. The application was also advertised in a local newspaper on 19 August 2022.

6.02 No representations were received in support of the proposal and a total of 8 responses have been received raising the following concerns:

- Original objections to application 20/02933/FULL remain unchanged;
- Rear extension exceeds the approved overbearing height;
- Removal of parapet does not reduce height to approved level;
- Object to 'block' like appearance and loss of step up to main extension;
- Loss of symmetry and cohesion with neighbouring extension;
- Not visually pleasing or in keeping with neighbouring properties or this listed terrace;
- Inappropriate design, size and proportion;
- Loss of important historical fabric and design elements;
- Impact on no.25's original design elements and features;
- Adverse impact on no.25 in terms of light, views and overbearing impact from taller, oversized extension;
- Proposal would result in additional overlooking and loss of privacy;
- Loss of gable central element that was key to assimilation with terrace;
- Need for internal height above stairs not a sufficient reason for increased height of extension and original plan of houses has restricted head height to top floor stairs. Building Regulations could be relaxed or alternative designs investigated;
- Extension is discordant in terms of design, size & proportion with no 23 & terrace;
- Height and scale of extension hides the original rear elevation and top floor windows from ground floor/garden level;

- Unauthorised work carried out to a listed building is a criminal offence and enforcement action should be taken to ensure that the extension is built in accordance with the approved plans;
- Proposal shows no regard for the planning process or permissions and approval would set a dangerous precedent;
- Timber fascia and external gutter is not a feature that is found elsewhere on the terrace and is out of keeping with its character;
- Submitted information and statement are misleading and suggests that the proposal will bring construction in line with the planning permission.

## 7.0 CONSULTATIONS

### **Conservation Officer (10/10/22)**

- 7.01 Amended drawings have now been submitted which now include a small gable end rising from the eaves of the extension, reinstating the detail that was part of the originally approved scheme. Floor levels have also been revised on the ground and second floor to match the existing. These are acceptable - the floor levels were changed out of necessity in construction. The addition of the gable is considered to be an improvement to the completely flat roof as it provides visual interest to the extension and reflects the gable end on the upper floor.
- 7.02 In terms of harm to heritage significance, it had been identified a very low level of less than substantial harm to the listed building when assessing the approved scheme, largely due to the removal of the oriel window. The level of harm was very low as this is not an original feature and is not uniform with the others on the terrace, but nevertheless is part of the historic development of the house. Of the view that the proposal as is equates to a similar level of less than substantial harm. The left hand extension to the existing rear extension is higher than as approved, as is the new extension, but the gable end will still be visible. Any additional harm could be considered to come from the new height of the left hand extension, as it is no longer the same height as the neighbouring property, but these are not symmetrical properties and so this is not a feature of its architectural character. The harm, therefore, in my view is also on the very low end of less than substantial.
- (15/08/22)**
- 7.03 These planning and listed building consent applications propose amendments to the approved scheme to extend to the rear at the grade II listed 23 Church Road.
- 7.04 The applications also proposed reinstatement of the original step configuration to the front door, and a return of the railings, using part of the existing railings to the front which were repositioned at some point when the front entrance was blocked off (when it and the neighbouring property were combined). The listed building consent application also proposes the installation of a gas pipe to the front, which is a necessity.  
*[Officer Note: These elements of the proposal have been removed from this application. The gas pipes are to be run internally through existing voids and this does not require planning or listed building consent. The entrance arrangements are to remain as existing and the reinstatement of the railings has been approved under applications 19/03441/FULL and 19/03442/LBC. Details of the railings has been secured by a condition attached to the listed building consent and will need to be discharged before the railings are installed]*
- 7.05 This application was required for the rear elevation, as the previously approved extension was not built in accordance with the approved plans, and so was built higher. As the stairs have already been constructed it would be unreasonable to

insist on demolition and full compliance with the approved plans, and so these applications propose a compromise of lowering the height of the parapet as much as possible and creating a timber fascia and external gutter. This is not ideal, but the reduction in height carried so far, and proposed to the glazed extension, will address concerns raised about the scale of the extensions and will allow the top of the building to be visible. For practical reasons, can therefore support this part of the application as the minor amount of harm caused by the change to the top of the extensions is justified by the fact that it would be unreasonable to insist on a complete demolition and rebuild, where this could also have structural implications.

- 7.06 A condition requiring joinery detail for the revised window (also supported as this is as per the approved plans) is requested.

## **8.0 APPLICANT'S SUPPORTING COMMENTS**

- 8.01 An addendum to the originally submitted Design & Access Statement has been submitted and this concludes that:

*The proposal mainly concerns with the removal of the parapet of the rear extension, by removing the block work so that it is level with the left-hand stairwell. It will also ensure that the windows are also brought into line with the previous planning application. This will bring the proposal in accordance with the original proposal and ensure that the character of the proposal is in keeping with the neighbouring properties.*

## **9.0 BACKGROUND PAPERS AND PLANS**

Application form  
Design & Access Statement  
Design & Access Statement Note  
Heritage Statement  
798/08A Site Location Plan  
20/23BT/PL 01 Proposed Site Plan  
20/23BT/PL/A1 03C EXTRACT 1A Section Through Stairs  
20/23BT/PL/A1 03C EXTRACT 2B Rear Elevation (South) As Built  
20/23BT/PL/A1 03C EXTRACT 2C Rear Elevation (South) As Proposed

## **10.0 APPRAISAL**

### **Background Information**

- 10.01 Work has progressed on site on the rear three-storey glazed extension and 1<sup>st</sup>/2<sup>nd</sup> floor rear extension approved under planning and listed building consents 20/02933/FULL and 20/03358/LBC. However, this was not constructed in accordance with the approved plans and differed from the approved as follows:
- 1<sup>st</sup>/2<sup>nd</sup> floor extension was built 0.5m higher than approved;
  - A parapet wall of two blocks in height was constructed above both extensions resulting in the loss of the triangular parapet feature;
  - Alteration to the position and size of the rear openings, including a taller third floor window, repositioning of rear door and addition of small ground floor window on rear elevation;
  - Internally, the increased height of these extensions has allowed for the step down into the 2<sup>nd</sup> floor of the extension and the reduced ceiling height of the 1<sup>st</sup> floor to be removed so that these remain level with the existing floor and ceiling heights.

- 10.02 Since this revised planning application has been submitted the parapet wall above the 1<sup>st</sup>/2<sup>nd</sup> floor extension has been removed and the third floor window opening has been reduced in height to more closely match the approved size of the window.
- 10.03 It is noted that the Conservation Officer's comments on this application state that the previous scheme caused 'less than substantial harm' to the listed building (to use NPPF terminology) at the very low end due to the removal of an oriel window, which has now already been removed in line with that earlier consent.

#### **Principle of Development**

- 10.04 This property lies within the Limits of Built Development and as such the extension and alteration of existing buildings in this area can be considered acceptable in principle subject to all material planning considerations being satisfactorily addressed.
- 10.05 Planning permission and listed building consent have been granted for the glazed three-storey extension and the extension above an existing ground floor rear extension and work has commenced on site. As such the principle of this form of development on this site has been established.
- 10.06 The rear extensions have not been constructed in accordance with the approved plans as detailed above and revised drawings have been submitted to rectify the situation. In this instance, the main considerations relate to the alterations proposed to the approved scheme and are:
- the visual impact to the character and appearance of the building itself and the area, particularly taking into account the property's location within a Conservation Area;
  - the impact that these changes have on the character, historic fabric, setting and overall significance of this Grade II Listed Building and the listed terrace and;
  - the impact on residential amenities of nearby dwellings.

#### **Visual Impact including impact on Conservation Area**

- 10.07 Whilst there has been an increase in the height of the glazed extension, this has incorporated the height of the originally proposed parapet so that overall this is no higher than the extant permission. The additional parapet that has been constructed above this extension is to be removed so that a flat roof remains and the applicant has advised that this would have a lead covering. A triangular parapet feature will be constructed of similar proportions to the parapet feature approved and this element of the proposal would have a similar visual appearance to the approved scheme.
- 10.08 The glazed extension is of a more contemporary design and whilst this is not found elsewhere on this building this is effectively an infill extension and would be located between two extensions. The glazed extension has been set down from the existing gable end, which is considered to be an important feature on the rear of this terrace, and this reference has been followed through with the use of a triangular parapet feature.
- 10.09 As assessed as part of the previous planning application (22/02933/FULL) this modern glazed addition would clearly be read as a new addition to this building that would be seen to be 'of its time' and, whilst this would be a prominent addition to the rear of building, overall the form and scale of this extension is considered to be appropriate and has the support of the Conservation Officer. As the scale or design



of this element of the proposal remains largely as approved, Officers' conclusions on this element's impact on the Conservation Area remain unchanged.

- 10.10 The 1<sup>st</sup>/2<sup>nd</sup> floor extension has been increased in height in relation to the previous approval so that this is now the same height as the glazed extension and the lead roof would extend across both extensions. This extension has a more traditional appearance and uses materials to match those used on the existing dwelling and other extensions within this terrace. The form, including the use of a flat roof, of this extension is similar to other extensions to the rear of this terrace and is considered to be in keeping with the character of the terrace. It is acknowledged that the increased height has resulted in a more prominent extension that, in comparison with the existing extension to the rear of the neighbouring property, no.21, loses some symmetry. However, viewing the terrace as a whole there is no uniformity in terms of sizes or design of extensions or the type or position of windows or bay window/balcony details etc. As such it is not considered that the increased height or bulk would have significantly greater adverse impact on the character of this building or the terrace.
- 10.11 There are some changes proposed to the openings within this extension. On site, the upper floor window has now been altered to more closely reflect the approved windows and are considered to be acceptable. As with the previous application these are to be timber framed and joinery details are required to ensure that these match existing windows. The ground floor door has been repositioned so that there are more steps leading to the garden and a small window has been added to the side of this door. As these are mainly at ground floor level and there are a variety of openings on this terrace, including a similar arrangement to the rear of no.21, it is considered that this would have limited impact on the character of this building and terrace.
- 10.12 Whilst concern has been raised that the increase in height of this extension has obscured this original rear elevation and gable features, these are still visible as a whole across this terrace and from the rear gardens.
- 10.13 These extensions are located to the rear of the building and therefore are not in a position that have an impact on the character or appearance of Church Road. There would be views of this extension from Clarence Road that runs to the west of this terrace. However, given the fact that permission already exists for a very similar extension (where the more contemporary part of the extension would also be flush with the rear elevation); and the property is set centrally within the terrace so that it is set back from the Clarence Road, it is not considered that this would result in an overly prominent feature within the wider area. Thus the character and appearance of the Conservation Area would be preserved.

#### **Impact on Listed Building**

- 10.14 An accompanying listed building consent application (22/02192/LBC) has been submitted and the impact that this revised proposal has on the listed building is assessed under this application.
- 10.15 The revisions remove the parapets that have been added to the top of the extensions, which were constructed without planning permission or listed building consent, and a triangular/gable parapet is to be constructed that would reflect the existing rear gables and add interest to this predominantly flat roofed extension, while still maintaining views of the main gables. The glazed extension would be of a similar height and design as approved and whilst the 1<sup>st</sup>/2<sup>nd</sup> floor extension would be higher than approved and match the height of the glazed extension, taking into

account that these properties are not symmetrical at the rear this would not cause harm to the overall character of this rear elevation.

- 10.16 The use of a timber fascia to support the proposed gutter is a necessary feature required to attach the gutter to the rear elevation of the building. It is likely that this would not be highly visible but having discussed this with the Conservation Officer it is considered that a section drawing showing the eaves detail is required to understand the relationship between the gutter, fascia and lead roof. This detail can be secured by condition and is best dealt with as part of the listed building consent application.
- 10.17 NPPF para 202 states '*Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use*'.
- 10.18 Planning legislation requires that, when considering whether to grant planning permission for development which affects the setting of listed buildings, the LPA shall have special regard to the special character of the listed building. These matters should be accorded considerable importance and weight when weighing this factor in the balance with other 'material considerations' which have not been given this special statutory status.
- 10.19 If any proposed development would conflict with that objective, there will be a strong presumption against the grant of planning permission, although, in exceptional cases the presumption may be overridden in favour of development which is desirable on the ground of some other public interest. But if a development would not conflict with that objective, the special regard required to be paid to that objective will no longer stand in its way and the development will be permitted or refused in the application of ordinary planning criteria.
- 10.20 In this case the only harm that arises is from the loss of an oriel window which has already been permitted to be removed in an earlier, implemented permission. The Conservation Officer does not consider that any additional harm arises from this revised scheme. Therefore, on balance, it is considered that there is an absence of harm from this revised proposal to the significance of this grade II listed building or the listed terrace.

#### **Residential Amenity**

- 10.21 No.21, has recently been converted into a dwellinghouse. The glazed extension is attached to a three storey extension to the rear of no.21 but neither this extension nor the 1<sup>st</sup>/2<sup>nd</sup> floor extension are any further rearward than this neighbouring rear extension. The increased height is to the 1<sup>st</sup>/2<sup>nd</sup> floor extension (which is separated from No.21 by the glazed extension); the revised proposal would not have an overbearing or overshadowing impact on this immediate neighbour.
- 10.22 No.25 lies to the west and there is a rear first floor bay window and balcony with metal stairs providing access from this balcony to the garden that runs adjacent to the shared boundary. The 1<sup>st</sup>/2<sup>nd</sup> floor extension to the rear of no.23 is located on the boundary shared with no.25 and adjacent to the rear bay/balcony and a rear facing 2<sup>nd</sup> floor window.
- 10.23 It is not considered that the increase in height of this extension would have an additional impact on the bay window or balcony in terms of appearing overbearing or result in additional loss of light. The increased height of the extension would be more

noticeable from the 2<sup>nd</sup> floor rear window. However, taking into account the orientation of this building (the rear is south facing), that there are similar relationships between properties within this terrace (for example no. 17 extends further rearward than no.19 at full height) and that the extension has a depth of just 1.9m it is not considered that this revised proposal has a significant overbearing impact, nor results in overshadowing to justify refusal of this application.

- 10.24 In terms of overlooking, the amount of glazing and the number and size of the new openings within the rear elevation is similar to the approved scheme. The windows within the 1<sup>st</sup>/2<sup>nd</sup> floor extension mainly serve small secondary areas of the main room and given the amount of mutual overlooking between the terraces, with balconies and upper floor bay windows, it is not considered that this proposal would result in significantly more overlooking or loss of privacy to justify refusal of the application.

#### **Enforcement and non-compliance with approved plans**

- 10.25 Work has progressed on site with the construction of these extensions and this has result in unauthorised works being carried out that do not comply with the approved proposals. An enforcement investigation has been carried out resulting in the submission of this current application to rectify the situation.
- 10.26 Paragraph 59 of the NPPF states that '*Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should **act proportionately** in responding to suspected breaches of planning control*'. (Officer emphasis)
- 10.27 Some of the submitted comments suggest that the application should be refused on the basis that it is retrospective and because the proposals differ from those originally approved. This is not a reason in itself to refuse planning permission or listed building consent; mechanisms exist within planning legislation to allow an applicant or landowner to attempt to regularise unlawful development. Any decision to refuse solely because the development has already been carried out is contrary to NPPF and PPG guidance and would be likely indefensible at appeal or in the face of a costs claim against the LPA.
- 10.28 Whilst it is a criminal offence to undertake works to a listed building without listed building consent (and listed building consent cannot be retrospectively granted, as a grant only takes effect from the day the decision is issued), it is likely to be disproportionate to seek prosecution in the courts. This is particularly the case where in the professional opinion of the Council's Conservation Officers the harm ultimately arising from that breach is limited (especially when considering that the limited harm that does arise is from works that have already been permitted).
- 10.29 The key aim of enforcement measures is to prevent/reverse development that the LPA deems unacceptable and for which it cannot grant consent/permission, rather than taking punitive action against landowners regardless of the level of actual harm to the heritage asset. The Principal Conservation Officer considers that to require the applicant to demolish the upper floor so that the floor/ceiling levels can revert to their approved levels (consequently reducing the height of the extension) would be unreasonable. This is consistent with the requirements of the NPPF that enforcement is discretionary and proportionate (and also that permission/consent is only refused where the harmful impacts of the development are so great that the application must be refused).

#### **Conclusion**

10.30 Whilst it is likely that the extensions have been constructed at a greater height to provide a more desirable internal layout, based on the above assessments it is not considered that the increased height would cause such harm to the character or appearance of the listed building or the residential amenities of the neighbouring properties that refusal is warranted

10.31 Based on the above it is recommended that this application be approved.

**11.0 RECOMMENDATION – GRANT** Subject to the following conditions

(1) The development hereby permitted shall not be carried out except in complete accordance with the details shown on the following submitted plans:

20/23BT/PL/A1 03C EXTRACT 1A Section Through Stairs  
20/23BT/PL/A1 03C EXTRACT 2C Rear Elevation (South) As Proposed

Reason: To clarify which plans have been approved.

(2) The development shall be carried out in accordance with the details of external materials specified in the application which shall not be varied, unless otherwise approved in writing by the local planning authority.

Reason: In the interests of visual amenity.

(3) Within three months of the date of this decision any part of the parapet wall that extends above the extension hereby approved shall be removed and replaced with the triangular parapet as shown on drawing 20/23BT/PL/A1 03C EXTRACT 2C.

Reason: In the interests of visual amenity.

**INFORMATIVES**

N/A

Case Officer: Kirsty Minney

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

The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.