

Application Number	15/00203/AS
Location	1 Primrose Cottages, Lenham Heath Road, Lenham, Maidstone, Kent, ME17 2BT
Grid Reference	91817 / 49585
Parish Council	Charing
Ward	Weald Central
Application Description	Erection of single storey rear extension (retrospective)
Applicant	Ms M Froud, 1 Primrose Cottages, Lenham Heath Road, Lenham, Maidstone, Kent ME17 2BT.
Agent	N/A
Site Area	0.0079ha

(a) 2/9R, 4S , 1+ (b) S (c) -

Introduction

1. This application is reported to the Planning Committee due to its sensitivity.
2. The application was initially reported to the planning committee in June 2015 with a resolution to permit subject to a number of matters to be resolved prior to the granting of planning permission as follows:
 - a) The serving of the requisite notice on the adjoining neighbour at No.2 Primrose Cottages.
 - b) The receipt of amended plans to the satisfaction of the Head of Development, Strategic Sites and Design and the Joint Development Control Manager showing a parapet design gutter to be built to the satisfaction of the Building Control Officers.
 - c) The receipt of amended plans showing an improved treatment of the side elevation with the neighbouring dwelling at No.2 Primrose Cottages, to improve its visual appearance.

- d) Written agreement from the owners of No.2 Primrose Cottages to the carrying out of the amended plans within their ownership, being submitted to the Council.
 - e) No further material planning objections being received from the immediate neighbour at No.2 Primrose Cottages.
 - f) Matters a-d above being carried out within 3 months of the date of this Planning Committee.
3. The applicant has served the requisite notice and therefore criteria a) has been met. Amended plans have been submitted detailing a gutter design and a change to the side elevation treatment facing the neighbour at 2 Primrose Cottages to the SW. See description and plans in the proposal section below. The details submitted do not show a parapet design gutter as per the Planning Committee resolution above. The solution is therefore an alternative to the agreed resolution requirement.
4. There has been further publicity carried out regarding the amended plan. An agreement from the neighbour as per criteria d) of the resolution regarding access to neighbouring land to execute the works, has not been forthcoming. Given that the amended details are not in accordance with the Committee resolution it has been necessary to report the application back to the Planning Committee for consideration.

Site and Surroundings

5. The application site comprises a semi-detached dwelling within open countryside that falls within the Greensand Ridge Landscape Character Area (LCA), where the guidelines for the area are to conserve and improve the landscape. A public right of way (PROW) runs from the road along the south eastern boundary of the lower part of the garden serving the dwelling.
6. A site location plan is attached as an annex to the report.



Figure 1 Site Location Plan

Proposal

7. The application is for full planning permission in retrospect for the erection of a single storey rear extension, which occupies the footprint of a previous conservatory. Planning permission is required because the depth of the extension exceeds 3m.
8. The extension incorporates the existing openings in the rear of the original dwelling. The application describes the extension as a conservatory/garden room/boot room/dog room. It is not heated.
9. The application also includes amended works to the SW side elevation with an existing brick built cavity wall up to 1.7m in height and then the provision of a new recessed window section with obscure glazed glass. A conventional gutter design is proposed which shows a seamless half round profile gutter that would be installed by a gutter strap to the eaves fascia board above the recessed wall. The window section now proposed would replace the existing block work that currently sits above and is flush with the existing brick built wall and the windows would be recessed back from the edge of the boundary wall. Tiles are proposed to bridge the recess section. The changes proposed would be similar to how the rear addition/conservatory was prior to the rebuild works. Please see photos below.
10. The changes proposed showing a conventional seamless half round gutter design have been considered by the Building Control Department who has confirmed that they are to their satisfaction and that the gutter is appropriately designed to direct surface water away from the neighbouring property.

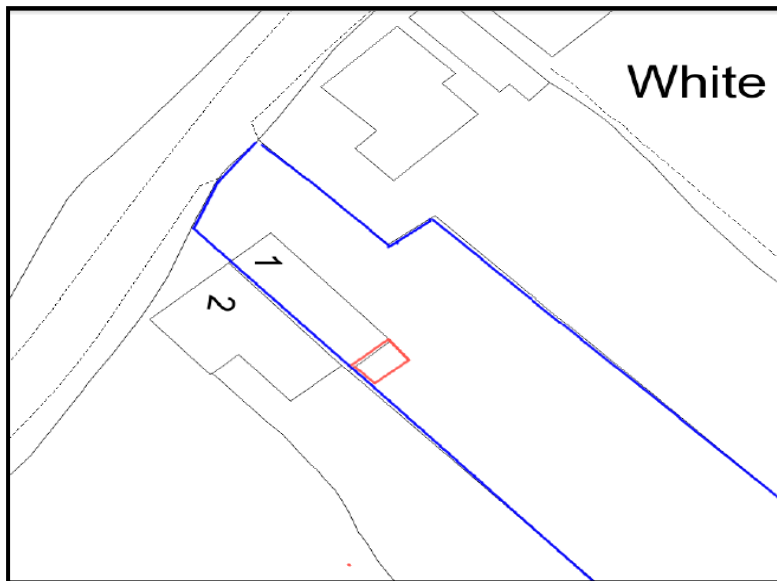


Figure 2 Block Plan



Figure 3 Floor Plan

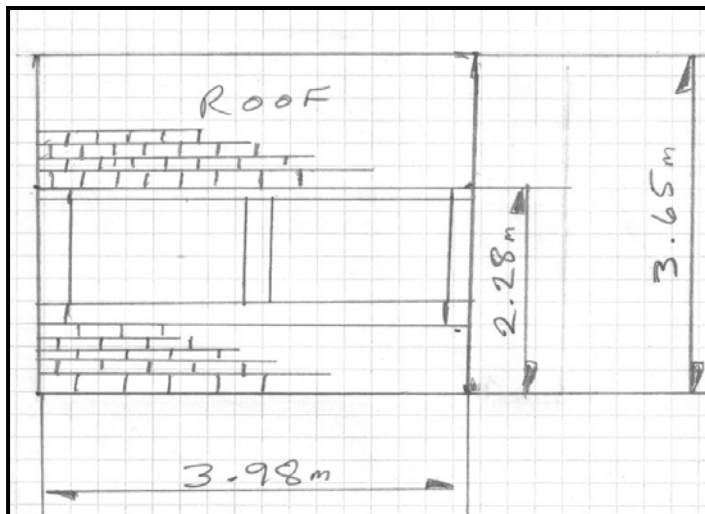


Figure 4 NE (side) Elevation



Figure 5 SE (rear) Elevation

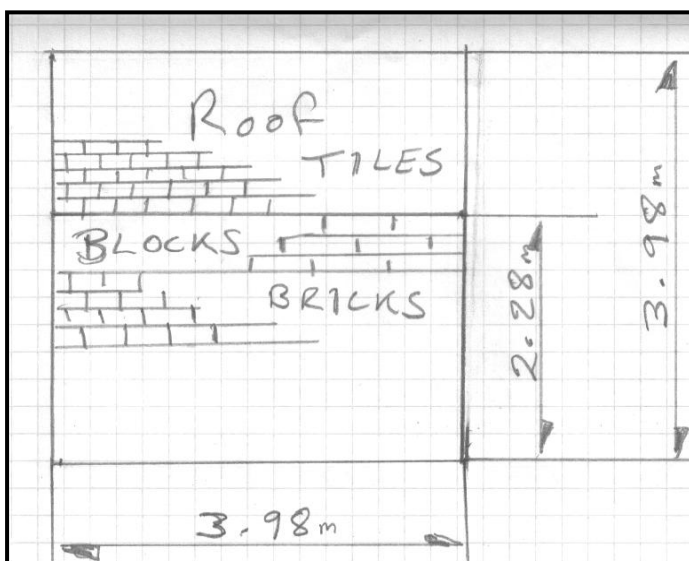


Figure 6 SW Elevation as currently exists – Original proposal now superseded

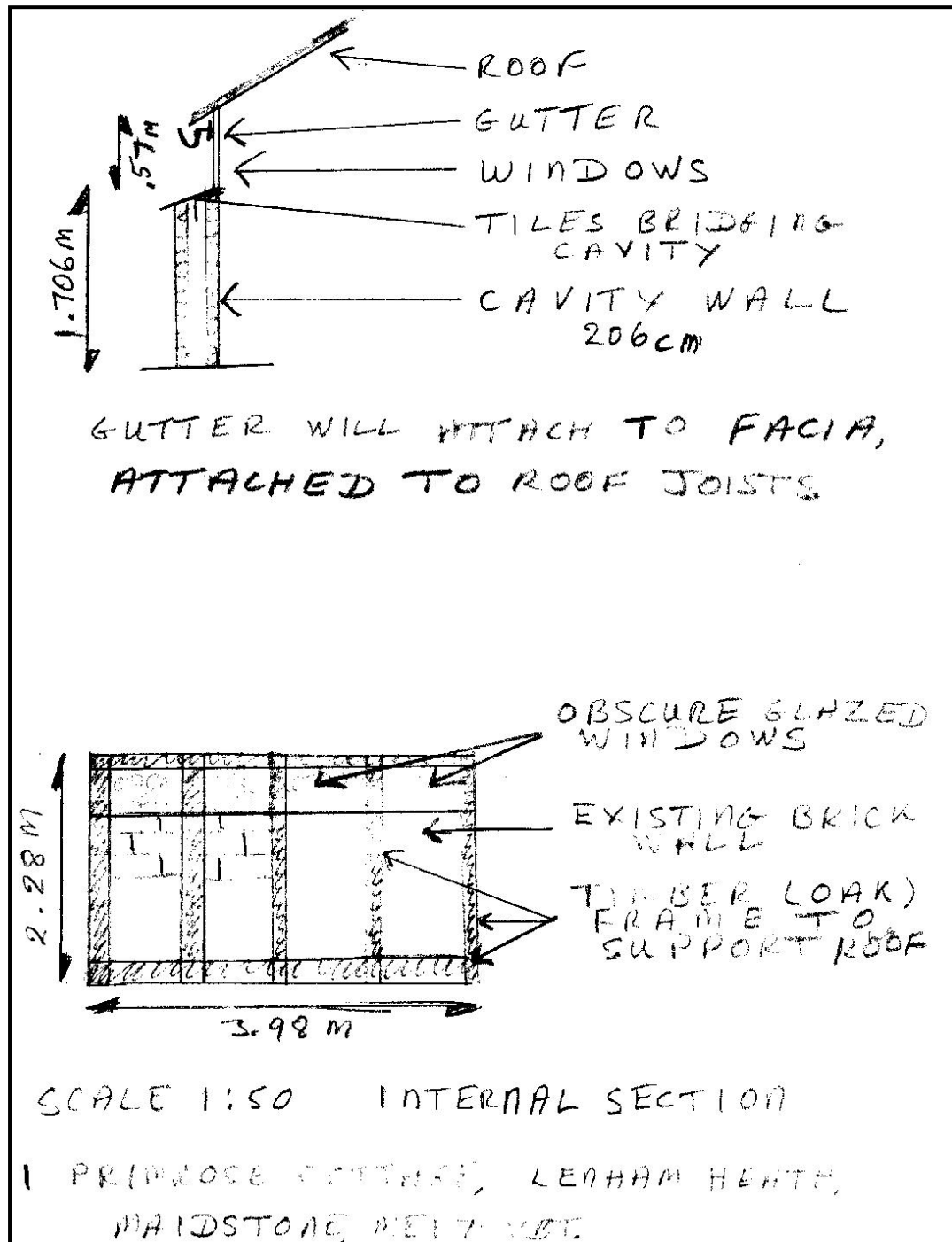


Figure 7. Proposed amended elevation treatment and gutter design on elevation facing the neighbour to the NW. The revised elevation treatment will remove the existing blockwork located above the existing brick built boundary wall and will include windows that will be recessed on the inside of the boundary wall. In turn, this will allow for the proposed gutter to be located above the wall and would not cross over the boundary wall.



Figure 8. Picture of building/conservatory prior to rebuild works showing the high level windows on the side (NW) elevation facing the neighbour.



Figure 9. External view from neighbours side (NW) of rear addition/conservatory prior to rebuild works showing the high level windows recessed from the cavity wall.

Planning History

11. There is no relevant history for this site.

Consultations

Initial consultations for original application

Ward Members: The Ward Member, Gerry Clarkson is an ex officio member of the Planning Committee.

Parish Council: Support the application

Neighbours: 2 neighbours formally notified; 9 objections received raising the following concerns:

- the extension is unattractive, badly designed and not in keeping or in character with the cottages and would unbalance the pair of semi's.
- the extension is overbearing and detrimental to the neighbouring amenity of No. 2.
- the extension appears unsafe and is poorly constructed and does not comply with the building regulations..
- there is no provision for guttering or a soakaway where No. 2 is subjected to rain water and water ingress.
- A violation of human rights as to the peaceful enjoyment of the neighbouring dwelling.

(**DCM comment:** Please see the Human Rights section of the report).

- The extension has encroached over into the neighbouring boundary.
- Notice should have been served on the neighbour as the development has been built on part of their land.

4 support comments received making the following points:

- The builder of this structure has commented that the neighbour refused the opportunity to fit guttering during construction and wanted concrete breeze blocks, we have built as to this requirement.
- The extension is in keeping with the host dwelling and is of a good specification and in favour of the building.
- The extension does not encroach beyond the dimensions of the old conservatory.

1 general comment covering the following:

- From the applicant highlighting that the various objection comments are friends of the neighbours of No. 2 and do not live locally and that the building is the subject of a civil dispute. The neighbour uses a private garden / patio area away from the common boundary.

Re-consultation with neighbours – following revised elevation treatment and gutter design:

6 objections received raising the following concerns:

- The structure is poorly thought out and is poor in design and appearance.
- The guttering and tiles overhang the boundary wall. (**JDCM** response: based on the plans provided the gutter would not overhang the boundary wall).
- The new plans do not address how the building is to be maintained from the south west side and will encourage trespass or easement onto the neighbour's land.
- Without access to the neighbour's land the roof will fall into a dilapidated state
- A parapet guttering was a workable solution to the problem.
- The building abuses the existing party wall between No. 1 and 2 Primrose Cottages.
- The building appears intrusive to the neighbours.
- The immediate neighbour has raised concerns that the proposed changes still do not address how the building will be maintained without trespass. (**JDCM** response: The revised plans show that the gutter would be within the boundary wall area and any such maintenance or access does not fall within planning controls.)
- The adjoining neighbour has raised an issue of trespass and as such access will not be allowed for the necessary works proposed.

2 support comments received making the following points:

- The building replaces an existing (previous) dangerous conservatory
- Some people who have commented are from London and this is not relevant.
- Happy with the scheme.

Planning Policy

12. The Development Plan comprises the saved policies in the adopted Ashford Borough Local Plan 2000, the adopted LDF Core Strategy 2008, the adopted Ashford Town Centre Action Area Plan 2010, the Tenterden & Rural Sites DPD 2010, the Urban Sites and Infrastructure DPD 2012 and the Chilmington

Green AAP 2013. On 9 June 2016 the Council approved a consultation version of the Local Plan to 2030. Consultation commenced on 15 June 2016. At present the policies in this emerging plan can be accorded little or no weight.

13. The relevant policies from the Development Plan relating to this application are as follows:-

Local Development Framework Core Strategy 2008

CS1 – Guiding Principles for Sustainable Development and High Quality Design.

CS9 – Design Quality.

HG9 – Extensions to dwellings in the countryside

Tenterden & Rural Sites DPD 2010

TRS17 – Landscape character and design

14. The following are also material to the determination of this application:-

Supplementary Planning Guidance/Documents

SPG10 – Domestic Extensions in Urban and Rural Areas

Local Plan to 2030

SP1 – Strategic Objectives

SP6 – Promoting High Quality Design

HOU8 – Residential Extensions

Government Advice

National Planning Policy Framework 2012

15. Members should note that the determination must be made in accordance with the Development Plan unless material considerations indicate otherwise. A significant material consideration is the National Planning Policy Framework (NPPF). The NPPF says that less weight should be given to the policies above if they are in conflict with the NPPF.

National Planning Policy Guidance

16. Provides guidance relating to householder development.

Assessment

17. The main issues for consideration are:

- Impact on visual amenity
- Impact on residential amenity
- Other matters including drainage, poor construction of the extension and encroachment onto private land and the serving of notice.

Impact on visual amenity

18. Central Government advice contained within the NPPF provides concise guidance with the presumption in favour of sustainable development to be seen as a “golden thread running through decision-taking”. The NPPF also states that Local Planning Authorities should recognise the intrinsic character and beauty of the countryside and seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.
19. Given the single storey nature of the extension with its limited size and scale, it does not unbalance the plan form of the cottages. In turn, the extension replaces a previous conservatory addition of the same dimensions.
20. The design and form of the extension, with a pitched roof and gable end, follows the existing design of the dwelling and is therefore sympathetic in visual terms. The use of a brick plinth and weatherboarding is traditional and sits comfortably on the main dwelling. There would be limited views of the development from the PROW to the south east.
21. The amended external elevation treatment includes existing brickwork up to 1.7m and would include oak beams and glazing in between, which would be sympathetic to the host building and acceptable given this rural location. The windows would be well proportioned and acceptable in visual terms. Furthermore the proposed changes would largely represent a return to how the rear addition/conservatory was before the rebuild (see the photo above). I therefore do not consider there to be harm to the character and appearance of the surrounding countryside.

Impact on residential amenity

22. The flank wall of the extension extends above the boundary wall with the neighbour by approximately 28cm. The roof then slopes away. Whilst there is a window in the rear elevation of the neighbour at No. 2 close to the boundary wall and extension, I do not consider that the scale of the development would adversely affect the outlook from this window which serves a utility (non-habitable) room, or be overbearing upon the rear garden area of this dwelling, which has a private garden area across the width of the property.
23. Whilst side windows are proposed, these are set 1.7m high above standard eye level and would be obscure glazed. Given this, the changes proposed would not result in any harmful overlooking to the dwelling or private garden of the neighbouring dwelling and would not therefore result in a loss of privacy to the neighbouring occupiers. Therefore there will be little change to that of the previous situation, as the changes return the development back to its original design prior to the replacement of the conservatory.

Other matters

- Construction of the extension
24. Objectors have raised concerns about the poor construction of the extension. Whilst this is not a material planning consideration I have been advised that the structure is exempt from the building regulations. This is because the existing rear wall, door and window of the original dwelling has remained untouched and the structure is an unheated area under 30 sq.m.
- Drainage
25. There is concern from the neighbour that there is not a suitable method to deal with surface water run-off into the application site resulting in surface run off and water ingress onto the neighbouring property.
 26. The amended plans show a gutter design that is located above the dividing wall attached to the fascia board of the extension that is recessed. The gutter would allow for surface-water to flow towards an area within the applicant's land. Building Control has confirmed that this is a suitable design to address drainage issues.
- Encroachment onto neighbouring land
27. The applicant served the requisite notice on the adjoining neighbour on 23/09/2015. A decision can therefore now be made on the application by the Planning Committee

28. Access onto the neighbouring land is required in order to execute the amended works which are proposed. However, the adjoining neighbour has been very clear that they will not permit access to their land to execute the proposed amended works. This access matter is not a material planning consideration and should not therefore influence the outcome of the planning decision. It is possible that the applicant can execute their rights under The Access to Neighbouring Land Act 1992 to enter neighbouring land to execute approved works.
29. The amended scheme would address the issue of drainage, as previously raised by the adjoining neighbour, by allowing water to be discharged within the developer's own site. The proposed amended treatment to the side elevation would represent an improvement to the current situation, a concern raised by the adjoining neighbour, and would in effect return the appearance of this side elevation back to as it was prior to the structure being rebuilt.

Human Rights Issues

30. I have also taken into account the human rights issues relevant to this application. In my view, the "Assessment" section above and the Recommendation below represent an appropriate balance between the interests and rights of the applicant (to enjoy his land subject only to reasonable and proportionate controls by a public authority) and the interests and rights of those potentially affected by the proposal (to respect for private life and the home and peaceful enjoyment of their properties).

Working with the applicant

31. In accordance with paragraphs 186 and 187 of the NPPF, Ashford Borough Council (ABC) takes a positive and proactive approach to development proposals focused on solutions. ABC works with applicants/agents in a positive and proactive manner as explained in the note to the applicant included in the recommendation below.

Conclusion

32. The extension replaces a previous conservatory extension and is of a size and design that sits comfortably on the original dwelling and does not result in harm to the character and appearance of the countryside. Furthermore the amended design with the positioning of high level obscure glazing windows is the same design on the side SW elevation facing the adjoining neighbour as it was prior to the structure being replaced. In turn, the residential amenity of the adjoining neighbours would not be adversely affected as a result of being overbearing or result in overlooking into their rear garden or windows.

33. The serving of Notice has now been carried out, which addresses one of the concerns of the adjoining neighbours. The Planning Committee can therefore reach a decision on the development. The amended plans now show the development includes a suitable drainage scheme to the satisfaction of Building Control that will allow water to drain into the application site and away from the adjoining neighbour and an improved external treatment to the side south west elevation facing this neighbour. Given the proposed recessing of the high level windows then no part of the development will encroach on to the neighbouring land, which will overcome this part of their concerns. I therefore consider that the amended scheme has addressed the concerns of the adjoining neighbour.
34. However, the adjoining neighbour objects to the amended plans and continues to say that they will not allow access of any kind on their land in order to facilitate the execution of the works. Whilst this is an unfortunate situation, it is not a matter that should influence the outcome of the planning decision.
35. I therefore recommend that planning permission is granted. Given that the development is built but works are required to make the scheme acceptable, notably the provision of an improved side elevation treatment and a suitable gutter design, then it is necessary to impose a time condition for the completion of the amended works.
36. Should Members be minded to refuse the application, in their deliberations to reach this conclusion consideration should be given to the expediency of pursuing enforcement action given that the development is built and retrospective.

Recommendation

Permit

Subject to the following conditions and notes:

1. The guttering and changes to the west side elevation hereby permitted shall be carried out and completed before the expiration of 3 months from the date of this decision.

Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004. TEST

2. The development shall be carried out in accordance with the plans listed in the section of this decision notice headed Plans/Documents approved by this decision and notwithstanding the provisions of the Town and Country

Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification).

Reason: To ensure the development is carried out in accordance with the approval and to ensure the quality of development indicated on the approved plans is achieved in practice.

Note to Applicant

1. Working with the applicant

In accordance with paragraphs 186 and 187 of the NPPF Ashford Borough Council (ABC) takes a positive and proactive approach to development proposals focused on solutions. ABC works with applicants/agents in a positive and proactive manner by;

- offering a pre-application advice service,
- as appropriate updating applicants/agents of any issues that may arise in the processing of their application
- where possible suggesting solutions to secure a successful outcome,
- informing applicants/agents of any likely recommendation of refusal prior to a decision and,
- by adhering to the requirements of the Development Management Customer Charter.

In this instance:

- the application was acceptable as submitted and no further assistance was required.
- The application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the committee and promote the application.

2. The grant of this permission does not convey any rights of encroachment over the boundary with the adjacent property in terms of foundations or guttering or external cladding, and any persons having implemented this permission should satisfy themselves fully in this respect.

Regard should also be had to the provisions of the Neighbour Encroachment & Party Wall Act 1995 which may apply to the project.

Background Papers

All papers referred to in this report are currently published on the Ashford Borough Council web site (www.ashford.gov.uk). Those papers relating specifically to this application may be found on the [View applications on line](#) pages under planning application reference 15/00203/AS.

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Annex 1



Ashford Borough Council



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