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## Appeal Decision

Site visit made on 6 December 2016

by D A Hainsworth LL.B(Hons) FRSA Solicitor

an Inspector appointed by the Secretary of State for Communities and Local Government

**Decision date: 1 February 2017**

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### **Appeal Ref: APP/Y1945/C/16/3152304**

### **20 Cassiobury Park Avenue, Watford WD18 7LB**

- The appeal is made by Ali Hadawi under section 174 of the Town and Country Planning Act 1990 against an enforcement notice (ref: EN15/00141/UD) issued by Watford Borough Council on 17 May 2016.
  - The breach of planning control alleged in the notice is "the erection of ground and first floor rear extension, second floor extension, roof alterations comprising hip to gable conversion and front dormer, and new windows in flank wall".
  - The requirements of the notice are as follows: -
    - “(1) Remove all roof alterations including the hip to gable conversion and front dormer.
    - (2) Remove ground and first floor extensions.
    - (3) Remove second floor extension.
    - (4) Remove from the land all building materials, rubble and waste resulting from compliance with requirements of (1) (2) and (3) above.”
  - The period for compliance with these requirements is six months.
  - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g).
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### **Decision**

1. The appeal is allowed insofar as it relates to the front dormer and the new windows in the flank wall and planning permission is granted on the application deemed to be made by section 177(5) of the Town and Country Planning Act 1990 for the construction of a front dormer and the installation of new windows in the flank wall at 20 Cassiobury Park Avenue, Watford WD18 7LB, subject to the condition that each of the new windows that are above ground-floor level must be obscure-glazed and non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed.
  2. The appeal is dismissed insofar as it relates to the erection of a ground and first-floor rear extension, a second-floor extension and roof alterations comprising a hip-to-gable conversion and planning permission is refused on the application deemed to be made by section 177(5) of the Town and Country Planning Act 1990 for the erection of a ground and first-floor rear extension, a second-floor extension and roof alterations comprising a hip-to-gable conversion at 20 Cassiobury Park Avenue, Watford WD18 7LB.
  3. It is directed that paragraph 5.(1) of the enforcement notice be varied by deleting "all roof alterations including".
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4. It is directed that paragraph 7 of the enforcement notice be varied by replacing "six" by "nine".
5. The appeal is dismissed and the enforcement notice is upheld as varied by the directions.

### **Reasons for the decision**

#### *The validity of the enforcement notice*

6. The appellant claims that the enforcement notice is defective for two reasons. Firstly, because it does not distinguish between those parts of the works that he maintains have planning permission and the parts that do not. Secondly, because it does not identify the "new windows in flank wall" that are referred to in the alleged breach of planning control.
7. As the appellant has pointed out, an enforcement notice must tell its recipients fairly what they are alleged to have done in breach of planning control and what steps they are required to take to remedy the breach or any injury to amenity caused by it. The notice does this. The appellant's first claim is a matter to be dealt with in his grounds of appeal (as he has done). As to the second claim, the notice need not be more detailed, since the appellant must know which windows in the flank wall are the new ones, and the notice does not in fact require these windows to be removed.

#### *Ground (c)*

8. There have been four planning applications since 2012 relating to proposals to extend the house, three of which have resulted in appeals. The first two appeals led to split decisions, with planning permission being granted for parts of the developments proposed, subject to conditions. The appellant maintains under ground (c) that parts of the development enforced against have planning permission as a result of these appeal decisions or because of householder permitted development rights.
9. I have studied the previous approvals and the plans on which they were based. Whilst they relate to proposals with similar descriptions to the development enforced against, none of the development that has actually been carried out matches in detail any of the development that has been approved. I have therefore concluded that no part of the development enforced against has a specific planning permission.
10. If it were possible to consider separately each element of the development enforced against, none of it would be within the limitations in the permitted development order, with the possible exception of the ground-floor rear extension. However, it is not permissible to do this, since the ground and first-floor rear extensions, the second-floor extension and the hip-to-gable conversion have been constructed as a single operational development, which does not benefit from permitted development rights. Only the front dormer and the new windows in the flank wall could be considered to be separate operations and neither of them are permitted development either.
11. I have therefore concluded that none of the development enforced against has planning permission. Accordingly, the appeal on ground (c) has failed.

*Ground (a)*

12. The development enforced against was the subject of the third appeal referred to above. The appeal was dismissed (Appeal Ref: APP/Y1945/D/16/3146076). The following paragraphs in this appeal decision are in my opinion particularly significant in my consideration of the ground (a) appeal: -

"11. Notwithstanding my findings above I do consider that the redesigned dwelling as a single entity, and taken in isolation, is not an unattractive building and the external finishes are largely unobjectionable in themselves. Further, I also consider that the large windows and patio doors installed at the rear are appropriate in size with the extended host property. Similarly, the enlarged front porch integrates satisfactorily. Good design, though, should also have regard to setting and local character and I do not consider that this was properly taken into account when considering the degree of extension and alteration to be undertaken."

"12. Whilst certain elements of the development might, on balance, be acceptable, taken as a whole, together they visually compound and my concerns relate particularly to the extended dwelling's physical relationship with its immediate neighbours and also the effect on the street scene, especially from the gable ends and the consequential expanse of slate clad roof-plane and the sizeable front dormer feature."

"14. The Council considers that the development has affected the amenities of neighbouring occupiers. However, I do not consider that this is necessarily the case, especially given that both main parties have no objections to a condition being imposed, were I to grant planning permission, prohibiting the use of the rear flat roofs for sitting-out purposes. Similarly, a separate condition could be imposed requiring that windows installed in the dwelling's side elevations, where potential loss of privacy from overlooking could be an issue, be obscurely glazed and maintained so thereafter. With such safeguards I thereby conclude that the development would not be harmful to the living conditions of surrounding occupiers...."

13. The appellant does not in the present appeal seek to challenge the outcome of appeal APP/Y1945/D/16/3146076 or to re-run the arguments he put forward in that appeal. Instead, he invites me to consider the "scheme of appropriate remediation measures" that he has put forward in an attempt to address the issues that led to the dismissal of that appeal. The key elements of the scheme consist of carrying out a "clipped-gable alternative", which would re-introduce hips to the main roof, and making alterations to the second-floor extension, which would restore parts of the rear roof plane by dividing the extension into two parts, with a gap between them and wider set-ins at the sides of the roof.
14. The power to grant planning permission in an enforcement appeal is limited by section 177(1)(a) to granting planning permission "in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the notice relates". In my opinion, this means I cannot grant planning permission for alternative proposals, except to the extent that they can be carried out by granting planning permission for the whole or part of the development enforced against. Since the scheme put

forward by the appellant would require planning permission to be granted for development that is not, and is not part of, the development enforced against, I do not consider that I have the power to deal with it.

15. I have no reason to disagree with the conclusions of the inspector in the appeal decision APP/Y1945/D/16/3146076, taken as a whole, and I have therefore decided not to grant planning permission for the whole of the development enforced against. However, there is no indication in that appeal decision that the inspector considered the possibility of making a split decision, in spite of his observations that elements of the development might be acceptable and that neighbours' amenities could be protected by planning conditions.
16. I have therefore considered whether planning permission should be granted for any part or parts of the development enforced against. I have already stated that the ground and first-floor rear extensions, the second-floor extension and the hip-to-gable conversion have been constructed as a single operational development. The planning objections to this part, which are referred to in appeal decision APP/Y1945/D/16/3146076, are in my view sufficiently serious to preclude granting planning permission for it. The remaining parts are the front dormer and the new windows in the flank wall, which I have already indicated could be considered to be separate operations.
17. A front dormer was proposed in the first of the three appeals. Its roof would have been at about the same height as the one that has been built; its cill would have been slightly higher; but its width would have been greater. The inspector dealing with that appeal decided not to give planning permission for it. Although he found that it would be in accordance with planning guidance, he considered that "on one side its height and width would cause it to protrude extensively from the main roof, at a point close to the hip edge. Whilst there is no submitted drawing of that side elevation, in my estimation this would severely disrupt the form of the main roof when viewed obliquely from the street" (Appeal Ref: APP/Y1945/D/13/2199130).
18. A front dormer was proposed again in the second of the three appeals (Appeal Ref: APP/Y1945/D/14/2213205). The inspector dealing with that appeal took into account the decision in the first appeal and stated: "The front dormer window has been reduced in size and would appear proportionate to the front roofslope of the dwelling, with generous spacing around this feature. The Council's report confirms that the proposed front dormer would be modest in size and well-positioned within the roofscape and I agree with this assessment." He concluded that its design and size would comply with planning guidelines and granted planning permission for it, subject to standard conditions. The roof of the approved dormer would have been slightly lower than the one that has been built; its cill would have been slightly higher; and its width would have been less.
19. The context in which the dormer has been built has changed substantially from the first and second appeals, since no other changes to the original front roof were proposed in those appeals. As built, the dormer is not close to a hip edge and it is not out of keeping with the existing size and scale of the front roof slope and roofscape. Although the existing form of the front roof is unauthorised, it seems to me that the appellant has a fall-back position based on householder permitted development rights, which he is likely to implement

if he has no alternative and which would still result in a substantial increase in the size and scale of the front roof compared to its original form, sufficient to maintain the existing satisfactory appearance of the dormer.

20. In all the circumstances, I have concluded that the front dormer makes a positive contribution, as advised by the Council's amended Residential Design Guide, and achieves the quality of design called for by Policy UD 1 of Watford's Local Plan. I have therefore granted planning permission for it. No planning conditions have been suggested in this event and I do not consider that any are needed. The appeal has succeeded on ground (a) to this extent.
21. I turn now to the new windows in the flank wall. As recorded above, the inspector in appeal decision APP/Y1945/D/16/3146076 did not disapprove of them and observed that a planning condition would protect neighbours' amenities. I agree and I have therefore granted planning permission for them, subject to an appropriate condition. The appeal has succeeded on ground (a) to this extent.
22. Although planning permission has been granted in respect of parts of the development enforced against, the notice has been upheld without varying any requirements relating to them, since this could have given rise to two separate planning permissions, namely the one that has been granted in this appeal decision and the one that would be deemed to be granted by section 173(11) due to under-enforcement. Attention is drawn to the provisions of section 180(1) as to the effect on the notice of the permission that has been granted.

*Ground (f)*

23. The requirements of the notice are in general ones that are normally stipulated where building works have been carried out in breach of planning control. Their purpose is to remedy the breach by restoring the land to its condition before the breach took place. The Council maintain that the requirements do not exceed what is necessary to do this. I agree, except for the reference in the requirements to the removal of "all roof alterations", which I have deleted because it is vague and does not match the words used in the alleged breach of planning control.
24. The appellant's case under ground (f) puts forward considerations which I have already taken into account in detail under grounds (c) and (a). I accept that it will probably be possible to carry out alterations to make the development enforced against acceptable for planning purposes. However, for the reasons I have already given, it is beyond the scope of this appeal to deal with the alterations that are likely to be required. Under ground (g), I have taken into account the possibility of an acceptable solution being found in consultation with the Council.
25. I have therefore upheld the requirements of the notice with the deletion and the appeal under ground (f) has failed in other respects.

*Ground (g)*

26. The appellant seeks an extension of the compliance period from six months to twelve months to allow more time for the required works to take place. The

Council are opposed to any extension of time, because of the continuing impact of the works.

27. I consider that six months would normally be a reasonable period to allow for such works to be carried out. However, in view of the appellant's proposed scheme and my findings in this appeal, I would expect the appellant to approach the Council to explore the possibility of alterations being carried out to make the works acceptable for planning purposes. Additional time should be allowed for this process to take place before works of demolition have to be carried out. A reasonable period to allow overall would be nine months. Accordingly, I have extended the compliance period in the notice and the appeal has succeeded on ground (g) to this extent.

*D.A.Hainsworth*

INSPECTOR