
Appeal Decision

Site visit made on 21 February 2017

by Susan Wraith Dip URP MRTPI

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

Decision date: 27 April 2017

Appeal Ref: APP/A1910/C/16/3157527

Land at 17 Tannsfield Drive, Hemel Hempstead. Herts, HP2 5LG

- The appeal is made under s174 of the Town and Country Planning Act 1990 [hereafter "the Act"] as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Mubashar Hussain against an enforcement notice issued by Dacorum Borough Council.
 - The notice was issued on 8 August 2016.
 - The breaches of planning control as alleged in the notice are:
 - In respect of the material change of use:
 - Without planning permission the conversion of a single dwelling house into two dwelling houses.
 - In respect of operational development:
 - Without planning permission the raising of the roof eaves and ridge levels (both the original roof and that approved under 4/03703/15/FHA), the construction of a rear dormer window, and the external rendering of the property.
 - The requirements of the notice are:
 - Requirements relating to the material change of use
 1. Cease the use of the property as two separate, independent dwelling houses and return the property to 1 dwelling house.
 2. Return the internal layout to that before the breach of planning control took place, or to that approved in drawing number '03/05' (amended plan) under planning permission 4/03703/15/FHA, ensuring that all resulting waste are permanently removed from the site. A copy of drawing number '03/05' (amended plan) is attached to this Notice.
 - Requirements relating to the operational development
 3. Return the external design and visual appearance of the property to that shown on drawing number '04/05' (amended plan) under planning permission 4/03703/15/FHA. A copy of drawing number '04/05' (amended plan) is attached to this Notice.
 4. Remove the dormer window and all materials used in its construction from the land. The materials used to make good the external surfaces of the property shall match in size, colour and texture those used on the original building, i.e. before the breach of planning control took place.
 5. Reinststate the roof ridge level and eaves height of the original dwelling to its original height. The materials used to make good the external surfaces of the property shall match in size, colour and texture those used on the original building, i.e. before the breach of planning control took place.
 6. Remove the external render to the original dwelling and reinstate the external brickwork.
 7. Remove the external render and any blockwork to the extensions approved under planning permission 4/03703/15/FHA. The extensions should then be constructed with materials that match in size, colour and texture those used on the original building, i.e. before the breach of planning control took place.
 - The period for compliance with the requirements is six months.
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- The appeal is proceeding on the grounds set out in s174(2)(a), (b), (c), (f) and (g) of the Act. Since an appeal has been brought on ground (a) an application for planning permission is deemed to have been made under s177(5) of the Act.
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Decision

1. It is directed that the enforcement notice be corrected by:
 - (i) In paragraph 3 first bullet point, deletion of "conversion" and substitution of "material change of use".
 - (ii) In paragraph 3 second bullet point, after the words "Without planning permission" insertion of "the carrying out of alterations and extensions in a manner materially different from the approved plans including...".
 - (iii) In paragraph 5 sub paragraph 2, deletion of "Return" and substitution of "Alter"; and deletion of "that before the breach of planning control took place or to"; and insertion of "materials" after "waste".
 - (iv) In paragraph 5 sub paragraph 4, deletion of the second sentence beginning "The materials used to make good..." and substitution of "Make good the external surfaces of the property in materials that match in size, colour and texture those of the existing building."

The appeal is allowed insofar as it relates to the carrying out of alterations and extensions in a manner materially different from the approved plans including the raising of the roof eaves and ridge levels (both the original roof and that approved under 4/03703/15/FHA), and the external rendering of the property but not including the construction of a rear dormer window or the internal layout; and planning permission is granted on the application deemed to have been made under s177(5) of the Act for the carrying out of alterations and extensions in a manner materially different from the approved plans including the raising of the roof eaves and ridge levels (both the original roof and that approved under 4/03703/15/FHA), and the external rendering of the property but not including the construction of a rear dormer window or the internal layout subject to the conditions set out in the Schedule of Conditions attached to this decision.

It is directed that the enforcement notice, as corrected, then be varied in paragraph 5 sub paragraph 1 by deletion of "and return the property to 1 dwelling house".

The appeal is dismissed and the enforcement notice is upheld as corrected and varied insofar as it relates to the material change of use of a single dwelling house into two dwelling houses including the internal layout; and to the construction of a rear dormer window. Planning permission is refused in respect of the said material change of use of a single dwelling house into two dwelling houses including the internal layout and in respect of the construction of a rear dormer window on the application deemed to have been made under s177(5) of the Act.

Preliminary matters

2. The enforcement notice alleges the "conversion" of a single dwelling into two dwellings. The word "conversion" implies that the building which (it is alleged) is now two dwellings was a pre-existing building. Whilst there was a dwelling previously, the alleged change of use has arisen because a two storey extension has been constructed which (the Council considers) is itself a dwelling. Thus the word "conversion" does not entirely cover what the Council has in mind. The

substitution of “material change of use” instead of “conversion” in paragraph 3 (first bullet point) of the notice would give a more accurate description of the alleged breach.

3. The enforcement notice also alleges operational development including the raising of the roof and eaves levels, the construction of a dormer window and external rendering (paragraph 3 second bullet point). These works are elements of a wider development involving extensions and alterations to the property. Through the requirements of the notice the Council is seeking to bring the development in line with the planning permission which was granted. Whilst the notice is attacking only certain elements, the allegation would be clearer and more accurate if framed to encompass the whole development involving the carrying out of extensions and alterations to the property in a manner materially different from what had been approved.¹
4. The appellant takes issue with the Council for arguing that the permission has not been implemented when the notice is not explicit on this point. However, when reading the notice as a whole, I consider it to be sufficiently clear about what the Council considers to be wrong with the development and what must be done to put matters right. The allegation can be corrected without the need to introduce more onerous requirements.
5. It is important that the allegations are correctly framed as it is from the allegations that the terms of the deemed application and all other grounds of appeal flow. I shall, therefore, correct the allegations in the manner described above, under the available powers of s176(1)(a) of the Act. I am satisfied that no injustice will arise to either party in me so doing.

The appeal on ground (b)

6. An appeal on ground (b) is that the matter alleged has not occurred as a matter of fact. Ground (b), together with ground (c) which is also argued, are amongst the legal grounds. In a legal ground of appeal the burden of proof is upon the appellant.
7. There is no dispute that the operational development alleged has occurred as a matter of fact. The appellant’s case on ground (b) concerns the alleged material change of use. The appellant argues that there has not been a material change of use to two separate dwellings because the two storey side extension is to provide ancillary residential accommodation to the main dwelling and is not a separate dwelling.
8. At my site visit I saw that the accommodation in the two storey extension comprised living quarters with a kitchen area, staircase, bathroom and two bedrooms. It contained all the necessary facilities for everyday living. Whilst work was still ongoing to the original dwelling, I was able to see that it too contained everyday living facilities. There were no interconnecting doors or any means of accessing the two storey extension without exiting the main property and entering the extension by its own separate side door. In terms of the

¹ Under s173(11) of the Act, where – (a) an enforcement notice in respect of any breach of planning control could have required any buildings or works to be removed or any activity to cease, but does not do so, and (b) all requirements of the notice have been complied with, then, so far as the notice did not so require, planning permission shall be treated as having been granted by virtue of s73A in respect of development consisting of the construction of buildings or works or, as the case may be, the carrying out of the activities.

physical layout of the development, there appeared to be two separate dwellings in a semi-detached arrangement.

9. Turning to the nature of its use, the extension appeared to be occupied by the appellant and his family at the time of my visit whilst works to the main dwelling were ongoing. I am told that, on completion of the works, it is intended the extension will provide accommodation for the appellant's grandmother who is unwell and the appellant's uncle (himself having a health condition) who will help with her care. The appellant and his family will occupy the main dwelling.
10. There is little evidence of a functional link with the main dwelling such as would arise if, for example, facilities were to be shared and/or the extended family were to live together as a single household. There is no detailed information about the care needs of the intended occupant(s), whether the care needs will be met solely by the appellant's uncle or whether care will also be provided by the occupants of the main dwelling and, if so, to what extent. During construction a considered decision was taken by the appellant not to include any interconnecting door in order to protect the privacy and independence of the intended occupant(s) thus indicating that the nature of the use, at least to an extent, is to be private and independent.
11. Occupation by family members, in itself, would not amount to an ancillary use. It is the way in which the accommodation is to be used, rather than who will occupy it, that is of most relevance to the question of whether or not a material change of use has occurred.
12. I acknowledge that the additional accommodation will have no separate amenity area, parking provision or separate curtilage. It will share the postal address of the main dwelling, no rent will be paid by the occupiers and all services (gas, electric, water and telephone) will be via the supplies of the main dwelling.
13. I consider these matters to be peripheral to how the extension itself is actually to be used. Irrespective of whether or not rent is paid or how service supplies are to be accounted for (for example), the accommodation could in any eventuality be used in a self-contained manner. Neither are these matters conclusive of a use that cannot be severed. It is usually possible (where two separate dwellings have been formed) to provide separately metered services and only minor works would be needed to install a separate letter box. The lack of its own discernible curtilage, with amenity and parking space shared with the main dwelling, does not prevent the extension itself from being a planning unit in its own right.
14. My attention has been drawn to various case law including the case of *Uttlesford DC v SSE & White [1992]* referred to by the appellant. The judge in that case held that, even if the accommodation provided facilities for independent day-to-day living, there was no reason in law why such accommodation should consequently become a separate planning unit from the main dwelling. Instead it would be a matter of fact and degree in each case.
15. The Uttlesford case concerned a pre-existing building, converted to give the occupant the facilities of a self-contained unit although intended to function as an annexe with the occupant sharing her living activity in company with the family in the main dwelling. It differs on its facts from the appeal case which concerns a new operational development, purpose built to contain all the facilities for day to day living and without any clear evidence of an intended functional relationship to the main dwelling which is more than peripheral.

16. When taking all the above matters into account I conclude, as a matter of fact and degree, that the alleged change of use to two dwellings has occurred as a matter of fact. The appeal on ground (b) fails.

The appeal on ground (c)

17. An appeal on ground (c) is that the matter alleged, if it has occurred, does not amount to a breach of planning control. As with ground (b), ground (c) is argued on the basis that the use of the two storey extension is ancillary to the main dwelling.
18. However I have already found, on the evidence, that there has been a material change of use from one dwelling to two when taking into account the physical configuration of the extension and its intended use. This change of use constituted development, which was not permitted development and, in the absence of planning permission, was a breach of planning control.
19. A further matter for consideration under ground (c) concerns the rendering of the external elevations.² The appellant argues that rendering was shown on the approved plans and, on that basis, does not amount to a breach of planning control. For the following reasons I do not accept that argument.
20. As explained in Preliminary Matters, it seems to me that a materially different set of alterations and extensions has been undertaken from those for which permission was granted. There was no planning permission for the "as built" development including its rendered finish. Even if some works had been carried out in accordance with the permission, and the permission was considered to be implemented to an extent, a condition required that materials for the extension should match in size, colour and texture those of the existing building. This condition, being specific to materials, would (I consider) have taken precedence on the matter of materials over the more general condition that works be carried out in accordance with the approved plans.
21. For all the above reasons the appeal on ground (c) fails.

The appeal on ground (a) and the deemed application

22. The works as built differ from those approved in a number of respects. Apart from the dormer window, raised roof and eaves height, rendering and internal layout and use (which are specifically referred to in the enforcement notice) there are some other differences including the number, position and size of some windows, the location and number of rooflights, solar panels not included in the "as built" scheme, extent of the brick plinth and additional doors. Also comprised in the overall development is a single storey rear extension and front porch.
23. There is an extant planning permission for extensions and alterations to the property which provides a fallback position and which is an appropriate yardstick against which to assess the "as built" development. Whilst the deemed application covers the whole development I shall focus upon the main differences between the approved and "as built" schemes as highlighted in the notice. This is where the main areas of contention between the parties lie.

² The matter of the rendering was also raised under ground (b) but there is no dispute that the rendering has been carried out as a matter of fact. The argument that planning permission has been granted for the rendering is more appropriately considered under ground (c).

Planning policies

24. I have been referred to a number of development plan policies. Policy 21 and Appendices 3 and 7 of the Dacorum Borough Local Plan [LP], taken together with policies CS11 and CS12 of the Dacorum Core Strategy [CS], seek to ensure development integrates well, accords with the character of its surroundings and provides for adequate standards of amenity including in terms of scale, roof form, finishes, garden/amenity space and privacy. Policy 58 and Appendix 5 LP encourage the parking needs of development to be met on site in accordance with the Parking Guidelines. Policy CS35 CS expects contributions to be made towards infrastructure necessary to support development.
25. Planning law requires that planning decisions are made in accordance with the development plan unless material considerations indicate otherwise.³
26. The National Planning Policy Framework [hereafter "the Framework"] is an overarching national policy document which sets out how Government expects planning to be delivered at the local level. Chapter 7 provides advice on Requiring Good Design. A Core Planning Principle (amongst others) is always to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings (paragraph 17). Paragraph 207 advises on a proportionate approach towards enforcement. The Framework is a further material consideration for this appeal.
27. The cited policies of the CS are up to date and post date the Framework. Those of the LP pre-date the Framework but are in general conformity with it and therefore continue to carry substantial weight.

Main issue

28. Having regard to the planning policies, statutory requirement and submissions made by the parties I consider the main issues in ground (a) and the deemed application to be:
- i. Whether the development provides for satisfactory living conditions for the occupiers with particular regard to outdoor amenity space and parking.
 - ii. The effect of the development upon the character and appearance of the area with particular regard to the rear dormer, raised roof and ridge height and rendering.

Whether the development provides for satisfactory living conditions - outdoor amenity space and parking.

29. The appeal site is quite constrained with little space remaining around the extended property. Much of the space to the front is intended for car parking. An area to the rear provides a more private outdoor amenity area accessed from the main dwelling. However, this area is quite small and of awkward shape which limits its usability. Whilst just at the limits of what is acceptable for a single dwelling it falls short of what should reasonably be provided for two dwellings.
30. It appears this area will function as garden for the main property as there is no direct access to it from the side extension accommodation, thus leaving the side extension without any private amenity space. Even if it is intended as shared

³ S38(1) and (6) of the Planning and Compulsory Purchase Act 2004 and s70(2) of the Town and Country Planning Act 1990.

space, there would be practical difficulties for the occupiers of the extension in using it as they would need to traverse around the front of the main dwelling to access it via a side pathway.

31. In terms of car parking, the Council's guidelines indicate a need for 4 or 5 spaces to serve the two dwellings. The proposal for two spaces, therefore, falls considerably short without it being demonstrated that there are special circumstances that would justify a reduction.
32. The limited external space leads to a cramped and dysfunctional development which cannot adequately accommodate the reasonable outdoor domestic activities associated with two dwellings. I therefore find that the development does not provide for satisfactory living conditions for the occupiers in terms of space around the dwellings, private amenity space and car parking.

Effect upon the character and appearance of the area – rear dormer window

33. The rear dormer is seen in views from The Apple Orchard which is a cul de sac of detached properties of notable and uniform design and layout. Because of the linear form of the cul de sac, framed by the angled properties and their pleasantly landscaped front gardens, the eye is drawn towards the cul de sac head where the rear elevation of the appeal property and that of its neighbour (no. 15) form a focal point.
34. The appeal dormer appears as a bulky, boxy and dominant feature in approaching views. It is barely set in from the flank wall and spans a sizable stretch of the rear facing roof making it appear insubordinate to the host dwelling. Whilst slightly set down from the ridge and up from the eaves, the offsets are barely perceptible in views from the street. The main roof form at this part is almost lost giving the appearance of a three storey element accentuated by the raised roofline which is higher than its neighbours.
35. I acknowledge that there are some other dormers in the wider area, including that at number 7 The Apple Orchard which is positioned on its rear elevation and can be seen from Tannsfield Drive. However, in approaching views along The Apple Orchard its properties are seen to have unbroken roof from, their simple and unaltered pitched roofs being a prevailing street scene characteristic. Within this context the appeal dormer appears particularly incongruous.
36. It is argued that the dormer complies with the Council's guidelines. However, the guidance relates to dormers in "existing" roofs whereas, in this case, the roof is of raised height and altered pitch. Additionally the dormer has not been set in a minimum of 1.0 metre from the flank wall.
37. I find, therefore, when taking all these matters into account that the dormer has a harmful effect upon the character and appearance of the area.

Effect upon the character and appearance of the area – raised roof ridge and eaves height

38. Within Tannsfield Drive and the wider surroundings there is a mix of two storey detached and semi-detached dwellings with varied roof styles of hips and gables and variations in roof heights. Whilst the roof of the appeal property, at its raised height, is higher than its neighbour at number 15 I do not find it to be out of place within its wider context.

39. In views from The Apple Orchard to the rear, the roof would be seen as a receding and generally conforming element within the roofscape once the dormer is removed.
40. The roof with raised eaves and ridge height, in itself, in my view has an acceptable effect upon the character and appearance of the area.

Effect upon the character and appearance of the area – rendering

41. There is no unifying character within Tannsfeld Drive and the wider area in terms of external materials. In fact the appearance of the area is one of varied finishes and designs with other occurrences of rendered properties. I do not find the use of render to be unacceptable insofar as Tannsfeld Drive and the wider area is concerned.
42. The Apple Orchard, on the other hand, is distinctly characterised by the uniformity of brick and tiled properties in muted tones. The use of stark, light coloured render to the rear elevation of the appeal property, and in particular to the dormer window, is at odds with and distracts from the more subtle and gentle appearance of the materials of The Apple Orchard properties. The appeal property, however, is of obviously different age and design with no pretence of replicating these properties exactly. When the dormer is removed, the use of render to its rear elevation would not, in my view, be unacceptable in principle in these circumstances, subject to it being painted in a darker and more conforming colour.
43. Therefore, except in respect of its use on the dormer window, I find no harm to the character and appearance of the area arising from the use of render, its colour being a matter that can be dealt with by a planning condition.

Consideration of conditions

44. I have considered whether the development could be made acceptable by the imposition of a condition limiting the use of the two storey extension to purposes ancillary to the main dwelling. However, for the following reasons I do not consider such a condition could be imposed in the circumstances of this case.
45. Firstly, on the evidence, I am not satisfied that the extension will be used in a manner which has sufficient functional linkage to the main property. To impose the suggested condition in these circumstances would give rise to a permission which is different from the use to be undertaken and would raise the question of whether the condition could, in fact, be complied with. Such a condition would be unreasonable in these circumstances.
46. Secondly, even if there was a functional relationship with the main dwelling that was more than peripheral, I have doubts that the use could be considered ancillary in any event. To be “ancillary” a use must be functionally linked to the primary use but, additionally, that linkage must be one that is normally found.⁴ Scale is also a relevant consideration. The use, in this case, occupies purpose built two bedroom self-contained accommodation. Taking into account its scale and nature, to my mind the use is not one ordinarily found associated

⁴ Harrods v SSETR 7 Kensington and Chelsea RBC [2002]

with this type of detached (originally three bedroom⁵) suburban dwelling with constrained curtilage. The use, in these circumstances, could not in my view be ancillary. To impose a condition requiring it to be so would introduce a perversity into the permission.

47. Thirdly, I share the Council's concern about the enforceability of such a condition in the circumstances of this case, even if it were possible to impose it in other respects. The condition could not be monitored by reference to any physical linkages to the main dwelling because there are no meaningful physical linkages and the starting point (in physical terms) is a self-contained residential unit. In functional terms there is no known existing or intended functional link of sufficient substance that can be deduced from the evidence, a family connection in itself being insufficient to demonstrate an ancillary use. Thus there is no clear baseline regarding any functional link. I cannot see how, in these circumstances, the condition could be effectively monitored and any breach could be impossible to detect.
48. I acknowledge that the Council imposed such a condition on an earlier (unimplemented) permission for extensions to the property. However, that proposal showed the extended accommodation accessed via the main dwelling on both floors, with a single staircase, kitchen and living area. That proposal is, thus, distinguishable from the appeal development which comprises self-contained two bedroom accommodation.
49. It has been suggested that the rear dormer could be made acceptable by a condition requiring its cladding in either tiles to match the roof or timber, and the installation Juliette balconies. Whilst cladding in tiles or timber could reduce the starkness of the dormer's appearance, it would not overcome the concerns I have about its bulk, scale and dominance. The installation of Juliette balconies, whilst breaking down the expanse of glazing, would add fussiness and, in my view, draw attention to the dormer rather than having a mitigating effect. These proposed changes would not sufficiently overcome the harm and, for that reason, the suggested condition cannot be justified.
50. The possibility of tree planting has also been suggested in order to screen the dormer. I cannot see that tree planting would provide an adequate screen when taking into account the height of the dormer, at least in the short/medium term. Additionally, the rear garden area of the property is quite small and constrained and is the only area of private amenity space within the property curtilage. The planting of trees in this area would take up needed space and have an oppressive effect, to the detriment of its use as private amenity space.
51. With regard to the roof I am mindful that, on granting permission for its retention, permitted development rights for enlargements or alterations will arise. When bearing in mind its raised height, and in order to protect the character and appearance of the area and living conditions of neighbouring properties including The Apple Orchard properties, I consider it necessary that any future proposed roof alterations or enlargements are subject to full scrutiny through the process of a planning application. I shall impose a condition to restrict permitted development rights for roof enlargements and alterations.

⁵ Existing ground floor and first floor plans accompanied an earlier application and showed that the property was a three bedroom dwelling.

52. At the time the enforcement notice was issued the extension had its own front door, thus the overall property having two front doors. This was at odds with the prevailing character of the street comprising mainly properties with a single front door. The door has now been replaced with a window which I find to be satisfactory in its character and appearance. However, the deemed application is for the development as it appeared at the time of the breach. I shall, therefore, impose a condition to the effect that the property shall have no more than one front door.
53. The additional side door, whilst providing access to the extension accommodation, is not out of character with other detached dwellings in the area. The requirements of the notice to cease the use as two dwellings and alter the internal layout will be sufficient to give effect to the "change of use" element of the notice. Whilst the parties disagree on whether the side door is needed as a means of escape, I consider it to be acceptable in any event. A condition requiring its removal is unnecessary.
54. The appellant proposes to clad the lower areas of parts of the front and side elevations with brick setts matching the original brick finish, forming the appearance of a (partial) brick plinth. Whilst I would not wish to stand in the way of what the appellant has in mind, I do not find the completely rendered elevations, in themselves, to be unacceptable. A condition requiring the provision of brick setts is unnecessary.
55. However, as stated above, I consider a condition to control the colour of the render is necessary to ensure that the render blends with The Apple Orchard properties. The condition will require details of the colour to be submitted to and approved by the Council. Unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of any outstanding detailed matter because the development has already taken place. Therefore, a timetable will be set to ensure that the development authorised by the grant of planning permission may only remain if the appellant complies with each one of a series of requirements.
56. There are no other conditions which have been suggested and no further conditions which I find necessary. In considering the matter of conditions I have had regard to government advice on the Use of Planning Conditions given in the Planning Practice Guidance.⁶

Other matters

57. I am told that the Council has a Community Infrastructure Levy [CIL] in place for the purposes of funding infrastructure to support growth, but that the necessary payment arising from this additional dwelling has not been paid. However, as I have found the development to be unacceptable in other respects this is not a matter on which I need to comment further.
58. Concerns have been expressed about loss of privacy and noise. Any adverse effect upon privacy will be overcome by the removal of the dormer window. As I do not intend to grant permission for two dwellings I do not consider the effect of noise to be a critical issue.

⁶ The Planning Practice Guidance is a web based resource produced by Government which provides national guidance for planning practitioners on a range of topics including on the Use of Planning Conditions.

59. Apart from the main differences which I have covered in detail above, in all other respects I find the differences between the approved and “as built” development to be acceptable.

Conclusions on ground (a) and the deemed application

60. In respect of the material change of use to two dwellings including the internal layout I find harm to the living conditions of the existing and future occupiers in terms of inadequate parking provision and insufficient outdoor space, including private amenity space. In respect of the dormer window I find harm to the visual amenity of the area. These elements of the development are contrary to the cited policies of the development plan.

61. However, in respect of the raising of the eaves height and roof height, the rendering and the extensions and alterations in other respects I find the development to be acceptable and to not offend the policies of the development plan. I also find that the change of use including the internal layout and the dormer are distinct and severable elements such that a split decision is possible.

62. Therefore, I conclude on ground (a) that the appeal should fail in respect of the material change of use to two dwellings and the construction of a rear dormer window but should succeed in respect of the alterations and extensions in a manner materially different from the approved plans and including the raising of the roof eaves and ridge heights (both original roof and that approved under 4/03703/15/FHA) and rendering but not including the construction of the dormer or the internal layout. The deemed application shall be determined accordingly.

The appeal on ground (f)

63. It is only necessary for me to consider the appeal on ground (f) insofar as the change of use to two dwellings and the dormer are concerned, as I intend to grant planning permission for the remainder.⁷

64. An appeal on ground (f) is that the steps required by the notice exceed what is necessary to remedy the breach or, as the case may be, to remedy any injury to amenity that has been caused by the breach.⁸ The words “as the case may be” indicate that the main purpose of the notice should fall within one or the other category.

65. The subject notice essentially seeks to make the development comply with the terms of the planning permission that has been granted. Under s173(4)(a) of the Act this is one of the ways in which a breach can be remedied. The consideration under ground (f) therefore falls within the first limb i.e. the steps necessary to remedy the breach. However, as I have been able to consider the planning merits fully under ground (a), and because the enforcement regime is intended to be remedial rather than punitive, I shall also consider whether lesser steps could overcome the harm.

⁷ Under s180 of the Act, where after the service of a copy of an enforcement notice planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission.

⁸ These provisions are set out in s174(1)(f) of the Act. They reflect the purposes of an enforcement notice that are set out s173(4).

66. The appellant has argued that the requirement to alter the internal layout to accord with the approved layout is excessive as the accommodation is not two dwellings. I have already concluded under ground (b) that the development is two dwellings. The requirement to bring the internal layout in line with the planning permission is not excessive as, under the provisions of the Act, this is explicitly one of the ways in which the breach can be remedied.
67. I do not rule out the possibility that there may be other alternative internal layouts that could overcome the harm. However, the alternative that is before me in this appeal (as submitted with the retrospective application) simply shows the insertion of an internal door between the original dwelling and the side extension at ground floor level. In all other respects the internal layout remains the same and the extension could still function as a self-contained unit. I acknowledge the Council's concern that the doorway, even if provided, could remain unused. In itself, I do not consider this lesser step of providing the doorway would sufficiently overcome the harm that arises from the additional dwelling.
68. I am told a lintel has been put in place elsewhere between the extension and the main dwelling so that an opening can be made. However, there are no details (including details of how this would affect the layout) and I am unable, therefore, to consider the matter further.
69. In respect of the dormer I have already considered, and found to be insufficient, proposed alterations including cladding and installation of Juliette balconies and tree planting. There is nothing further on that matter to be added here.
70. Of the requirements of the notice that will remain effective, I have some further concerns. Firstly, step 1 includes a requirement to return the property to 1 dwelling house. However, the breach will be remedied by compliance with the first part of step 1 i.e. the requirement to "Cease the use" together with step 2. The second part of step 1 is excessive.⁹ I shall vary the notice by deleting it.
71. Secondly, the requirement, in step 2, to return the internal layout to that before the breach took place cannot be fully complied with because, before the breach took place, the two storey extension did not exist and, in any event, it did not have a pre-existing internal layout. I shall correct the notice by deleting this part of the requirement and by substituting the word "Alter" in place of "Return". Additionally, in step 2, the word "materials" appears to be missing after "waste".
72. Thirdly, in step 4, the second sentence should be framed as an absolute requirement i.e. "Make good the external surfaces ...", so that the recipient is in no doubt about what is required and because legal culpability arises from any failure to comply. I shall correct the notice accordingly.
73. I can make these further corrections and variation without injustice to either party under the available powers of s176(1)(a) and (b) of the Act.
74. The appeal on ground (f) succeeds only to the limited extent of the variation I have set out in paragraph 70 above.

⁹ Under s57(4) of the Act, where an enforcement notice has been issued in respect of any development of land, planning permission is not required for its use for the purpose for which (in accordance with the provisions of this Part of the Act) it could lawfully have been used if that development had not been carried out.

The appeal on ground (g)

75. On ground (g) it is argued that a period of 12 months for compliance would be more appropriate having regard to the costs of the works required and the time needed to organise the works.
76. I acknowledge that a longer time period would be helpful to the appellant in these respects. On the other hand I must also have regard to the wider public interests of remedying the identified harm in a timely manner. Additionally, I take into account that the effective requirements of the notice will concern only the material change of use and the dormer window as permission is to be granted for the remainder. In all these circumstances I consider that the period of six months specified strikes a reasonable balance between the conflicting public and private interests without placing a disproportionate burden upon the appellant and his family.
77. I find that a variation of the time period is unjustified. The appeal on ground (g) fails.

Conclusion

78. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for one part of the matter the subject of the enforcement notice, but otherwise I will uphold the notice with corrections and variation and refuse to grant planning permission on the other part. The requirements of the upheld notice will cease to have effect so far as inconsistent with the permission which I will grant by virtue of s180 of the Act.

Susan Wraith

Inspector

Schedule of Conditions

1. The building operations hereby permitted shall be removed within 28 days of the date of failure to meet any one of the requirements set out in a. to d. below:
 - a. Within one month of the date of this decision a scheme for the painting of the render, including a specification for its colour, shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - b. If within four months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - c. If an appeal is made in pursuance of b. above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - d. The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition shall be suspended until that legal challenge has been finally determined.

2. The front elevation of the property shall have no more than one door.
3. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) or any order revoking and re-enacting that Order with or without modification, no alterations or enlargements to the roof of the property shall be undertaken without express planning permission.