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## Appeal Decisions

Site visit made on 12 June 2023

**by V Bond LLB (Hons) Solicitor (Non-Practising)**

**an Inspector appointed by the Secretary of State**

**Decision date: 27 July 2023**

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### **Appeals A and B Refs: APP/P1940/C/22/3305811 and APP/P1940/C/22/3305829**

#### **Land and building at 16 Russell Road, Moor Park HA6 2LL**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr B Patel (Appeal A) and Mrs Patel (Appeal B) against an enforcement notice issued by Three Rivers District Council.
- The enforcement notice was issued on 21 July 2022.
- The breach of planning control as alleged in the notice is Without planning permission, the partial demolition of the existing dwelling including removal of roof, chimney and single storey front projection and the erection of a two-storey rear extension, first floor extension over swimming pool, front infill extension and new roof forms including increase in ridge height and alterations to fenestration detailing including rear rooflight' ('the Works').
- The requirements of the notice are: 1. Remove the existing roofs (as shown coloured in blue on the attached Drawing 1) on the dwellinghouse; 2. Following compliance with Step 1 above, erect new roofs (as shown coloured in blue on the attached Drawing 2) on the dwellinghouse in accordance with the approved plans that form part of the Planning Permission: drawing reference RR/F/127A (Proposed Roof Plan); drawing reference RR/F/300A (Proposed Elevations East and South) and drawing reference RR/F/301A (Proposed Elevations West and North) and in accordance with the attached Material Schedule (RR-1-501) approved via 17/2075/DIS; 3. Erect the single storey front projection (as shown coloured in red on the attached Drawing 2) in accordance with approved plans that form part of the Planning Permission: drawing reference RR/F/127A (Proposed Roof Plan); drawing reference RR/F/300A (Proposed Elevations East and South) and drawing reference RR/F/301A (Proposed Elevations West and North) and in accordance with the attached Material Schedule (RR-1-501) approved via 17/2075/DIS; 4. Erect the flank chimney to the southern elevation (as shown coloured in yellow on the attached Drawing 2) in accordance with the approved plans that form part of the Planning Permission: drawing reference RR/F/127A (Proposed Roof Plan); drawing reference RR/F/300A (Proposed Elevations East and South) and drawing reference RR/F/301A (Proposed Elevations West and North) and in accordance with the attached Material Schedule (RR-1-501) approved via 17/2075/DIS; 5. Following compliance with the above Steps, remove from the Land all debris and waste materials resulting from the above requirements.
- The period for compliance with the requirements is 8 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) (Appeal A only), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal is brought on ground (a), an application for planning permission is deemed to have been made under s177(5) of the Town and Country Planning Act 1990.

**Summary Decisions: The appeals are dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.**

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**Appeal C Ref: APP/P1940/W/22/3300367**  
**16 Russell Road, Moor Park HA6 2LL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr & Mrs B Patel against the decision of Three Rivers District Council.
- The application Ref 21/2553/RSP, dated 3 November 2021, was refused by notice dated 11 March 2022.

The development proposed is 'Part Retrospective: Partial demolition of rear of dwelling including removal of roof, increase in ridge height and the erection of two-storey rear extension, first floor infill extension, front porch including balcony to first floor, rear rooflights, replacement front bay window, rear pergola, new replacement chimney, alterations to fenestration and alterations to hard and soft landscaping, and alterations to front driveway'.

**Summary Decision: The appeal is allowed and planning permission is granted.**

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**Preliminary Matters**

1. During the course of the Appeal C application, the appellant and the Council agreed a revised description of the development which I have used in my banner heading above. The appellant has also confirmed that drawing number 4006-PP-112-1 was revised, and the revised version was accepted by the Council. Accordingly, I have proceeded on the basis of Revision A being the correct version of this plan. Some of the works detailed in the Appeal C application have been carried out on site and so the application is partially retrospective.
2. As the appeal property is in a conservation area, I have had special regard to section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

**Appeal A: The appeal on ground (a) and the deemed planning application (DPA); and Appeal C**

**Background and Main Issues**

3. Planning permission was granted in 2006 and 2007 at appeal<sup>1</sup> for significant alterations/extensions to the appeal property. Neither of these permissions was implemented but in 2014 a further planning permission<sup>2</sup> was granted by the Council, again for extensive alterations and extensions<sup>3</sup>. Development in connection with the 2014 Permission was begun but not built out in accordance with the approved plans. A further, partially retrospective planning application was then submitted but refused in 2022. This refusal is the subject of Appeal C.
4. Following the 2022 refusal, the Appeals A and B enforcement notice was issued, attacking the works as detailed in my banner heading, with the requirements linking to works effectively partially implementing the 2014 Permission.

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<sup>1</sup>Refs: APP/P1940/A/05/1195370 ('2006 Appeal') and APP/P1940/A/06/2022988 ('2007 Appeal')

<sup>2</sup> Ref: 14/1126/FUL ('2014 Permission')

<sup>3</sup> For 'Partial demolition of rear of dwelling and erection of two storey rear extension, first floor extension over existing single storey swimming pool, front infill extension and front porch including balcony to first floor, internal alterations, alterations to materials and alterations to fenestration including replacement rooflights to rear'

5. There is considerable overlap between the development attacked by the notice and the Appeal C proposal, albeit that the former as built is incomplete<sup>4</sup>. Accordingly, I shall assess these together, distinguishing between them where appropriate. The main issue then is the effect on the character and appearance of the appeal property and the Moor Park Conservation Area ('CA').

### Reasons

6. The CA was designated in 1995 and is characterised by a variety of designs of detached houses, typically with pitched roofs, set in spacious plots positioned along tree lined avenues. This creates an open, suburban character. Many houses within the CA have retained original features including chimneys and architectural detailing which add visual interest and contribute to the special historic interest of the CA.
7. The appeal property is a dwelling dating from around the 1930s and therefore forms part of the early stage of development of the CA. It is in a spacious plot relative to that of the property immediately to the south, but of a similar size plot to 14 Russell Road to the north. It was extended in the 1970s and 1980s prior to the CA designation such that the plot coverage significantly increased as against the footprint of the original building.
8. There is in this case an agreed fallback position in the form of the 2014 Permission and my consideration is in the context of this being available to the appellant and focuses on the aspects of the development considered objectionable by the Council and/or interested parties.

### *Roof form and raising of the ridge*

9. The existing roof/that proposed under the Appeal C application entail a higher ridge, along with relatively large sections of crown roof across much of the width of the dwelling. This plainly increases massing at roof level and alters the scale of the property as compared to the original dwelling and as against the 2014 Permission.
10. As regards roof forms, the Council's Moor Park Conservation Area Appraisal (2006) ('CAA') states that:

*'Roof forms should be duo pitched as found throughout the conservation area. Deep floor plans are likely to make this difficult to achieve. Eaves and ridge heights of any new development should reflect the scale of neighbouring properties and the street scene. Proposals with a ridge materially taller than those of neighbouring houses are unlikely to be acceptable.'*

*Flat roofs or flat sections to a pitched roof (eg truncating a roof with an artificial ridge surrounding an area of roof) reflect a form not in keeping with the traditional design of houses in Moor Park, and are therefore unacceptable.'*

*Schemes for replacement houses or large extensions with deep floor plans or additional floors entailing large overall bulk, height or more complex roof forms, are unlikely to be sympathetic with the character and appearance of the conservation area and are therefore unacceptable.'*

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<sup>4</sup> Amongst other details, not all windows and doors have been installed and the front porch area is unfinished

11. Whilst I have taken this guidance into consideration, the crown roof design at the appeal property is not readily apparent in important public views from the street. Further, the appeal plot is much larger than the majority of those in the immediate area, being around double the width of those immediately to the south. The development also does not involve any material encroachment towards the side boundaries<sup>5</sup> and the house is significantly set back from the street. In this context, the additional massing is not harmfully dominant, but rather sits comfortably in the street scene alongside the substantial property at No 14. The roof design also retains a noticeable set down from the roof of the original house which serves to indicate the form of the original dwelling.
12. The part of the CA which the appeal property is seen in the context of shows very varied property design, including as regards ridge heights. The very wide appeal plot is visually comparable to that of No 14 to the north and in the context of the ridge height of this imposing property immediately adjacent, the appeal property ridge height is not out of place.
13. I note in this regard that the crown roof at No 14 pre-dated the CAA, along with comments that this is considered to be harmful on its own merit. However, the development at No 14 does not appear as an obviously harmful anomaly in a street of otherwise identical ridge heights and roof forms. Both No 14 and the appeal property are relatively unusual in the immediate Russell Road context in terms of their plot size. Accordingly, the presence of crown roof forms and higher ridge heights on the properties positioned on these substantial plots does not appear visually incongruous.
14. It is clear that planning permissions granted by the 2006 Appeal and 2007 Appeal are not extant and therefore these are not an available fallback for the appellant. I acknowledge also comments in relation to the status of the CAA when these decisions were made, including as regards the weight attributed to this. However, it would appear that both of the previous Inspectors were aware of the guidance against truncated/crown roof forms in forming their assessments, and neither considered the previous appeal proposals to be harmfully dominant in the context of the appeal site. I have in any event determined the present proposal on its merits taking into consideration the 2014 Permission fallback.

*Front porch/rear rooflights/hard and soft landscaping*

15. As regards the front porch proposed in the Appeal C application, I note that the CAA cautions against construction in front of the building line. However, the proposed porch is not in my view of significantly greater depth than that allowed by the 2014 Permission. In view of this, along with its relatively lightweight form by means of the partially pillared design, and in the context of the scale of the property, and degree of set back from the street, there would be no material erosion of the open street vista or harm to the appearance of the street.
16. The rooflights on the rear roof slopes, although fairly numerous, are consistently sized and aligned. As such, and bearing in mind the conservation window style indicated on application plans, these also are appropriate to the character and appearance of the host property and area.

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<sup>5</sup> On the Council's assessment, it would comply with the minima in this regard stated in the CAA

17. As regards the Appeal C alterations to hard and soft landscaping and front driveway, there would be a significant coverage of hard landscaping at the front and sides of the property. Bearing in mind the plot coverage and extent of built development across the width of the plot, there is some sensitivity as to the extent of hard surfacing. In my view, the extent proposed is somewhat excessive and unduly urbanises the property frontage. The use of grasscrete surfacing on the property's flanks is also a contemporary form of landscaping which is at odds with the historic character of the CA. These aspects are though capable of being dealt with by condition.

*Single storey projection and chimney*

18. The proposal per the Appeal C application for reinstatement of the pre-existing single storey projection/front bay window per the 2014 Permission would assist in breaking up the width of the front façade, and adding legibility of the original house. Similarly, the proposed chimney to the southern elevation also would add visual interest as a traditional historic feature. Removal of these features, as alleged in the Appeal A notice was materially harmful to the character of the host property and of the CA.
19. I acknowledge comments that demolition of the single storey front projection was permitted in the 2006 and 2007 Appeal decisions. However, in the context of the existing development, reinstatement of the single storey front projection is important to the legibility of the original dwelling.
20. Since the Appeal A development does not include reinstatement of these important historic features, and relates essentially to an unfinished development, I find that the Appeal A development is harmful to the character and appearance of the host property and area. The works required to overcome this harm are, in my view, too extensive to be properly dealt with by condition.

**Appeal A and the DPA - conclusion on main issue**

21. I have found that the roof form and raised ridge of the appeal development are acceptable, but that nonetheless the development has a harmful effect on the character and appearance of the appeal property and the CA for the reasons explained. There is conflict in this regard with Policy DM1 and Appendix 2 of the Council's Development Management Policies (2013) (DMP) which seek to avoid gradual deterioration in the quality of the built environment. It also conflicts with Policy DM3 of the DMP which requires that development in conservation areas is of a design that preserves or enhances the character or appearance of the area and preserves traditional features.
22. There is a failure to accord also with Policies CP1 and CP12 of the 2011 Core Strategy (CS) which seek to protect the historic environment from inappropriate development and to conserve heritage assets. It is contrary to guidance in the CAA regarding the importance of characteristic original features including chimneys.
23. By reason of the harm identified, it would not preserve or enhance the character of appearance of the CA. The harm would be less than substantial in the terms of the National Planning Policy Framework (2021) as the harm relates only to certain aspects of one property within the CA. However, no substantive public benefits are advanced such as to outweigh this harm.

### **Appeal C - conclusion on main issue**

24. As regards Appeal C, I conclude that subject to appropriate conditions, the proposal would preserve the character and appearance of the appeal property and the CA. It would be in line with the requirements of Policy DM1 and Appendix 2 of the DMP as detailed above. Whilst Appendix 2 'generally' discourages crown roof forms, these can therefore be acceptable in certain circumstances. In the same way, Appendix 2 discourages increases in ridge height where these are of uniform height, which is not the case here. There would be compliance also with Policy DM3 of the DMP and Policies CP1 and CP12 for the reasons explained above. There is not strict compliance with the guidance contained in the CAA as detailed above but this is an acceptable departure for the reasons detailed in my analysis.

### **Other matters**

25. I note concerns from interested parties as to the condition of the appeal site within the CA and visual harm resulting from this, although I saw at my site visit that works were progressing on site. The Council has not expressed any concern as regards the impact on living conditions of neighbouring occupants and bearing in mind the spacious nature of the appeal site and distance from the built form to neighbouring dwellings, I have no reason to disagree with that assessment, subject to appropriate conditions.

### **Appeal A – the appeal on ground (a) and DPA Conclusion**

26. As regards Appeal A, s177(1) of the 1990 Act only permits me to grant planning permission for the whole or part of the matters enforced against. I find as a matter of fact and degree that the works required to complete the building, along with reinstatement of the single storey front projection and chimney are too extensive to represent part of the matters enforced against, or to be properly dealt with by condition.

27. As such, whilst I have found the raising of the ridge and existing roof form to be acceptable, it would be harmful to the character and appearance of the CA to grant planning permission for the incomplete building without the single storey projection and chimney. It follows then that planning permission should be refused in respect of the DPA under Appeal A. However, I will be granting planning permission in respect of the Appeal C proposal and s180 of the 1990 Act will therefore operate to override the enforcement notice so far as it is inconsistent with the planning permission granted under Appeal C.

### **Appeal C Overall Conclusion**

28. The appeal proposal would preserve the character and appearance of the appeal property and the CA and would accord with the development plan, read as a whole. No material considerations indicate a decision other than in accordance with the development plan. For the above reasons, and taking into account all other matters raised, Appeal C is allowed.

### **Appeal C – Conditions**

29. The Council has suggested a number of conditions which it considers would be appropriate if I were minded to allow the appeal. I have considered these in the light of the relevant tests and where necessary have amended them.

30. A condition relating to plan numbers is necessary in the interests of certainty. I have imposed a condition relating to external materials in the interests of the appearance of the site and CA.
31. The Council proposed a pre-commencement condition relating to measures to protect trees. The protection of trees is necessary in the interests of the character and appearance of the CA. I have though altered the wording of this condition with a strict timetable for compliance because permission is being granted retrospectively, and so it is not possible to use a negatively-worded condition to secure the approval and implementation of a tree protection scheme. The condition will ensure that the development can be enforced against if the scheme is not submitted for approval within the period given by the condition, or if the details are not approved by the local planning authority or the Secretary of State on appeal, or if the details are approved but not implemented in accordance with an approved timetable.
32. I found above that the landscaping scheme proposed in the Appeal C application was not appropriate to the character of the CA and that it would be appropriate to condition this. I have therefore imposed a condition requiring a scheme to be submitted and implemented. Once again this cannot be a pre-commencement condition since the development has already begun so instead there is a timetable for compliance linked to occupation of the dwelling.
33. I have also imposed conditions specifically requiring construction of the single storey front projection and chimney as it is important to the character of the CA that legibility of the original dwelling is improved, and characterful historic features are reinstated. It is reasonable to require that these are constructed prior to occupation though rather than within a fixed timescale bearing in mind that other construction works are likely to be ongoing for some time.
34. There has been suggestion from interested parties that all permitted development (PD) rights should be removed for the appeal site as part of any planning permission. This would not though in my view be either necessary or reasonable bearing in mind the plot size and the extent to which the appeal property, and others in the area, are built up. I agree though that the removal of PD rights preventing additional openings in the first floor flank elevations or roof slopes is reasonable and necessary to safeguard amenities of neighbouring occupants and of the character and appearance of the CA.
35. As referred to in the Officer's Report in respect of the Appeal C application, it is also necessary to impose a condition requiring obscure glazing in the first floor southern flank window and, in the interests of privacy of neighbouring occupants, that any part below 1.7m high is required to be fixed shut.

### **Appeals A and B - The appeal on ground (f)**

36. This ground of appeal is that the requirements of the notice exceed what is necessary.
37. S.173 of the 1990 Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first is to remedy the breach of planning control which has occurred; the second is to remedy an injury to amenity which has been caused by the breach. The fact that compliance with the notice in this case effectively permits some of the

operational development alleged to remain suggests that its purpose is to remedy an injury to amenity.

38. The appellant has argued that steps related to implementation of the 2014 Permission are not necessary to remedy the injury to amenity save for those requiring reinstatement of the chimney and single storey front projection.
39. Whilst I have indicated in my assessment above that the Appeal C scheme is acceptable, subject to conditions, it is not appropriate as regards the DPA to condition the finishing works and reinstatement and the chimney and single storey front projection and these are too extensive to represent 'part of the matters' enforced against. To delete the requirements requiring implementation of the 2014 Permission other than those related to reinstating the single storey front bay window and chimney would effectively leave in place an unfinished building, albeit with a reinstated front projection and chimney. As outlined above, s180 of the 1990 Act will in any event operate to override the notice so far as it is inconsistent with the Appeal C planning permission.
40. No other lesser steps are suggested which would remedy the injury to amenity and no other obvious alternative exists which would, in my view, have this effect. Consequently, the ground (f) appeal fails.

#### **Appeals A and B - The appeal on ground (g)**

41. The appeal on ground (g) is that the period for compliance with the notice (8 months) falls short of what is reasonable.
42. The appellant requests a period of 18 months to comply with the notice, citing factors including the availability of materials and labour, along with time to liaise with the Council on any remaining details.
43. I am conscious of comments that the appeal property has been in an unfinished state as a building site for a significant period within an attractive street in the CA. However, equally, the period for compliance should be reasonable in the circumstances. The works to be undertaken are not minor and labour and materials required will not be insignificant. Taking all of these factors into consideration, I consider that a period of 15 months would strike a fair balance. The appeal on ground (g) succeeds to this extent and the notice will be varied.

#### **Appeals A and B - Overall Conclusion**

44. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with a variation and (as regards Appeal A) refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

#### **Appeals A and B - Formal Decision**

45. It is directed that the enforcement notice is varied by: in the sentence 'The period within which these requirements must be complied with is: 8 months from date this Notice takes effect' deletion of the wording '8 months' and substitution of '15 months'.
46. Subject to the variation, the appeals are dismissed, the enforcement notice is upheld and (as regards Appeal A) planning permission is refused on the

application deemed to have been made under section 177(5) of the 1990 Act as amended.

### **Appeal C - Formal Decision**

47. The appeal is allowed and planning permission is granted for 'Part Retrospective: Partial demolition of rear of dwelling including removal of roof, increase in ridge height and the erection of two-storey rear extension, first floor infill extension, front porch including balcony to first floor, rear rooflights, replacement front bay window, rear pergola, new replacement chimney, alterations to fenestration and alterations to hard and soft landscaping, and alterations to front driveway' at 16 Russell Road, Moor Park HA6 2LL in accordance with the terms of the application, Ref 21/2553/RSP, dated 3 November 2021, and the plans submitted with it, subject to the conditions in the attached schedule.

*V Bond*

INSPECTOR

### Appeal C - SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 4006-PP-101-1 ; 4006-PP-102-1; 4006-PP-103-1; 4006-PP-104-1; 4006-PP-105-1; 4006-PP-106-1; 4006-PP-107-1; 4006-PP-108-1; 4006-PP-109-1; 4006-PP-110-1; 4006-PP-109-1 & 4006-PP-112- 1-Rev A
- 2) The development shall not be constructed other than in accordance with the materials as have been approved in writing by the Local Planning Authority as shown on Drawing Numbers 4006-PP-107-1 and 4006-PP-108-1; and no external materials shall be used other than those approved.
- 3) The building operations hereby permitted shall be demolished and all materials resulting from the demolition shall be removed within 6 months of the date of failure to meet any one of the requirements set out in i) to iv) below:
  - i) Within 3 months of the date of this decision a scheme designed in accordance with BS5837:201 for protection from damage during site works of the branch structure, trunks and root systems of all trees shown to be retained and all other trees not indicated as to be removed shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
  - ii) If within 9 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.
  - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

- iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.
  - v) 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 will be suspended until that legal challenge has been finally determined.
- 4) Unless within 3 months of the date of this decision a scheme for hard and soft landscaping, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 9 months of the local planning authority's approval, the occupation of the dwelling shall cease until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within 6 months of the date of this decision, occupation of the dwelling shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

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

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 will be suspended until that legal challenge has been finally determined.

- 5) The development hereby permitted shall not be occupied until the single storey front projection bay window as shown on drawing numbers 4006-PP-103-1 and 4006-PP-107-1 shall have been constructed in accordance with details shown on those drawings and any resultant damage to the front elevation made good in accordance with Condition 2.
- 6) The development hereby permitted shall not be occupied until the chimney on the southern elevation as shown on drawing numbers 4006-PP-107-1 and 4006-PP-108-1 shall have been constructed in accordance with details shown on those drawings and any resultant damage to the southern elevation made good in accordance with Condition 2.
- 7) The building hereby permitted shall not be occupied until the window on the first floor flank southern elevation has been fitted with obscured glazing, and no part of that window that is less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened. Details of the type of obscured glazing shall be submitted to and approved in writing by the local planning authority before the window is installed and once installed the obscured glazing shall be retained thereafter.
- 8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any other revoking and re-enacting that order with or without modification), no windows or similar openings other than those expressly authorised by this permission shall be constructed in the first floor flank elevations or flank roof slopes of the extensions hereby approved.

END OF SCHEDULE