



Item No.

Walsall Metropolitan Borough Council

DEVELOPMENT CONTROL COMMITTEE **13th December 2005**

REPORT OF HEAD OF PLANNING AND TRANSPORTATION

228 Tyndale Crescent , Pheasey. Reference number 2004/0016/CMP

1.0 PURPOSE OF REPORT

- 1.1 To inform Members regarding the extensions carried out to this house, and to request authority to take planning enforcement action in respect of one of them.

2.0 RECOMMENDATIONS

- 2.1 That authority is given for the issuing of enforcement notices under the 1990 Act to require the removal of the roof extension.
- 2.2 That the decision as to the institution of legal proceedings in the event of non-compliance with the Notice, or the non-return of Requisitions for Information, be delegated to Assistant Director - Legal and Constitutional Services.
- 2.3 That authority be delegated to the Assistant Director – Legal and Constitutional Services, in consultation with the Head of Planning and Transportation, to amend and add to or delete from the wording stating the nature of the breach(es) the reason(s) for taking enforcement action, and the requirement(s) of the Notice or the boundaries of the site.

Details of the Enforcement Notice

The Breach of Planning Control:
The construction of a roof extension

Steps required to remedy the breaches:

Dismantle and remove the roof extension.
Reinstate the roof to its original hipped design, using roof tiles which match those on the adjoining houses, and ensuring that the roof ridge aligns in height with that at the adjoining house, 230 Tyndale Crescent.
Remove all resultant debris to an authorised place of disposal.

Period for compliance
6 months:

The reasons for taking enforcement action:

By reason of its design, and large scale, (incorporating the alteration of the roof from hipped to gabled), the roof extension is harmful to the quality of the street scene, and has an unacceptably dominating and over-bearing impact which is harmful to the level of amenity enjoyed at on adjacent dwellings. The roof extension is therefore contrary to the policies GP2, ENV32, and H10(a) in the Walsall Unitary Development Plan.

3.0 FINANCIAL IMPLICATIONS

For the Council none arising directly from this report.

4.0 POLICY IMPLICATIONS

The report recommends enforcement action in order to seek compliance with planning policies.

5.0 LEGAL IMPLICATIONS

Non-compliance with an Enforcement Notice is an offence and if this occurred it would be open to the Council to instigate legal proceedings.

6.0 EQUAL OPPORTUNITY IMPLICATIONS

None arising directly from this report.

7.0 ENVIRONMENTAL IMPACT

The report seeks enforcement action to remedy adverse impacts.

8.0 WARD(S) AFFECTED

Pheasey Park Farm

9.0 CONSULTEES

None

10.0 CONTACT OFFICERS

Philip Wears – Planning Enforcement Team
Tel; 01922 652411.

11.0 BACKGROUND PAPERS

Planning enforcement file -not published

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228 Tyndale Crescent , Pheasey

12.0 BACKGROUND AND REPORT DETAIL

Introduction and history

- 12.1 No. 228 Tyndale Crescent is an end house (two storey) in a terrace of four. It faces a frontage of 3-storey town houses. At the rear the garden slopes steeply down towards houses and gardens on Beacon Road. A plan showing the location of the house is attached to this report.
- 12.2 The roof of the terrace was hipped at each end. The extension carried out has extended the hip on this house to create a gable end, clad in roof tiles. This has allowed the construction of a very large roof extension on the rear of the house, spanning the width of the house. The front part of the roof has been altered in the process, being clad in new tiles, with two roof lights inserted. It also now has a ridge which appears a little higher than it was.
- 12.3 There were complaints in January 2004 and application 04/0336 was received for retention of the roof extension (it provides a bedroom and en-suite facilities). However this was withdrawn. Three more applications were made for a conservatory, the decking and different parts of the roof extension, but all of them were void.
- 12.4 Application 05/0764 for the retention of the roof extension and the decking was refused in July 2005 because of the appearance of the extension, its dominating and overbearing effect , and because of overlooking from the decking.
- 12.5 It is possible to erect extensions, and decking, without the need for planning permission, as there is an allowance for such works (known as permitted development). The legislation creates groups of works (e.g. works in the garden are one group, works to the house are another), and specific limits e.g. on height, and it is necessary to test the works on this house against those rules. Some rules are simple (e.g. if the works exceed the specified maximum height, planning permission is needed). Others are more complex, setting an allowance on the volume of extensions , for example, and allowing incremental growth over time until that limit is reached.
- 12.6 The history of the previous extensions to the house is therefore crucial to the question of whether permitted development allowances for volume increases were used up, before the roof extension and decking were erected, and therefore whether they needed planning permission.
- 12.7 In discussion with the owners it appears that a front porch was added along-side the front bay window over 15 years ago. Quite recently, a pitched roof has been

added over the porch and bay window. At the rear, the conservatory was added about 10 years ago, and the garden decking about two years ago. (The provision of horizontal decking on this sloping site has created an open fronted space underneath and officers consider this structure is a building.) Finally the roof extension has been added. I have no reason to dispute this sequence of events.

- 12.8 It is clear that the porch and conservatory were permitted development when they were constructed.
- 12.9 In relation to the decking, because of the space created under it, it is a building. Its limited volume, and its physical separation from the house mean it is in the same category of the rules as a garden shed. The decking also incorporates fencing up to 2.85 metres high, but because that is part of a building, it is within the height allowance. The decking is considered permitted development, and not open to enforcement action. Its status does not influence the conclusions on extensions to the house, as it is in the garden category.
- 12.10 The subsequent addition of a canopy on the front has taken up some of the volume allowance in the relevant category for extensions to the house. However, it needs planning permission not for this, but because it is further forward than any other part of the original dwelling (another of the triggers). However, this is a modest element on the house. I would not recommend any action in this respect. Choosing not to act against a particular breach of control is a position the Council can properly adopt, in law. The result would be that the canopy would become lawful automatically when it is 4 years old, but without going through any administrative process.
- 12.11 It is clear that about two-thirds of the 'permitted development' allowance of 50 cubic metres for volume increases was used up prior to the construction of the roof extension. When it was constructed, the additional volume of around 35 to 40 cubic metres it added to the house meant that the 50 cubic metres limit was exceeded and it needed planning permission. Even if it had been below the volume limit, it has also resulted in a modest increase in the height of the building (another trigger for the need for planning permission). It has not got the necessary planning permission.

Representations received regarding the roof extension

- 12.12 Following the refusal of permission the applicants and their solicitor have made a number of points, with a request that these be taken into account. They examine the finances of the appellants and conclude that they are unable to finance the removal of the roof extension. They also state that one of the applicants is retired on health grounds and the possibility of enforcement action is exacerbating this.
- 12.13 They also argue that the roof extension would have been permitted development if the other extensions had not been erected first (this is not, in fact, the case, given the increased ridge height). Many neighbouring houses could erect such a roof extension without planning permission. They argue it is therefore very unfair to prevent the applicants from keeping the roof extension. They offer to remove the conservatory and decking so that the total amount of extension remaining,

including the roof extension, is within the permitted development volume allowance. In this way the applicants would re-create the circumstances which would have existed if the roof extension had been erected first using permitted development rights.

- 12.14 There is also reference to the planning problems being caused by 'misrepresentation of the architect on the project'
- 12.15 The applicants have also written to a number of neighbours to ask if they feel overlooked by the roof extension, and this has prompted 10 letters of support, or non-objection from nearby residents. One letter even criticises the Council for refusing the application but not closing off a troublesome alley-way. (A co-ordinated response is in hand)

Observations

- 12.16 The roof extension has recently been refused planning permission, under delegated powers, and the Local Planning Authority has now to choose whether to pursue enforcement action.
- 12.17 In response to the solicitors arguments about the personal circumstances of the applicants, Government guidance is that it is not good practice to allow personal circumstances to influence planning decisions. In the case of built development, scarcely ever can personal circumstances justify such an approach. Furthermore it is relevant in considering the degree of hardship that the applicants advise verbally they may be taking legal action against the architect they say advised them badly. Officers recommend that the personal circumstances do not merit a lot of weight being attached to them.
- 12.18 The solicitor's offer to remove the conservatory and decking in order to keep the roof extension would not make the roof extension permitted development nor lawful. The sequence of extensions, and the ridge height, meant that the roof extension was not permitted development when constructed, and the only means for it to become lawful now are through a retrospective grant of planning permission, or acquiring lawfulness through the passage of 4 years after its completion. The question is therefore whether there are any net environmental benefits stemming from the offer.
- 12.19 The conservatory extends for 3.2 metres from the rear of this and the adjoining house. It complies with the Council's 'Residential Development Standards' in respect of single storey rear extensions, which allows for these to extend up to 3.5 metres beyond affected habitable room windows. As it is acceptable in environmental terms, there is no gain in demolishing it.
- 12.20 The garden decking does not need planning permission. Its removal would not alter the status of the roof extension, so its removal does nothing for the situation. Despite this, it does cause some harm because owing to the steeply sloping garden, the level decking takes the form of an elevated platform, which is visually prominent and gives clear views into adjoining gardens. Its removal would be advantageous. However, the roof extension is visible over a much

wider area including the street, and causes considerably more harm. This is exacerbated by its permanence when compared with the timber decking. Officers consider therefore that there is no environmental case to accept the removal of the decking so that the roof extension could remain.

- 12.21 The solicitor's letter raises the issue of 'fairness'. In creating the Regulations, the government have relaxed controls over house extensions. Some need permission, some do not. Some which do not need permission are very poorly designed. That unfortunate outcome is beyond our control. Extensions that need permission are within our control and we should not approve poor design. Inevitably tensions arise. However the solicitor's letter also goes too far when it sees anomalies as creating unfairness. The rules of planning control apply to everyone and this must be 'fair' by any ordinary definition of the word.
- 12.22 The government have commissioned a study of permitted development. The report considers revisions which would address the issue of extensions to roofs, possibly removing or reducing the allowances, in recognition of the design issues. The question for your Committee is whether the permitted development regime is justification for accepting this roof extension, which is not permitted development. Anomalies arise in planning control because of the complexity and historical dimension of planning law. To accept bad development because of such anomalies would be to gravely weaken planning control and reduce standards to the lowest possible. The argument about anomalies should be rejected.

HEAD OF PLANNING AND TRANSPORTATION

land rear of 232 Lichfield Road, New Invention

