

Application No: CH/16/377

Received: 04-Oct-2016

Location: 24, Watermint Close, Cannock

Parish: Hednesford

Ward: Hednesford South Ward

Description: Variation of conditions 2 Materials and 3 Approved Plans of planning permission CH/15/0472 to allow for use of alternative materials and alterations to roof for first floor side extension

Recommendation: That the report be noted.

In 2015 the Council received an application (reference CH/15/0472) for a first floor extension over the existing garage and utility room and the conversion of the garage at 24, Watermint Close, Cannock which was approved on 28 Jan 2015.

However, it came to the Council's attention that the extension had not been built in accordance with the approved plans. Consequently the applicant was invited to submit an application to seek to regularise the works. A further application (reference CH/16/377) for a variation of condition 2 (Materials) and 3 (Approved Plans) of planning permission CH/15/0472 to allow for use of alternative materials and alterations to roof for first floor side extension was submitted.

The application was considered at Planning Control Committee when it was resolved that it be refused on the following grounds: -

“The variation of Condition 2 of planning permission CH/15/0472 to allow the render and painting of the side gable of the extension would have a detrimental impact on the visual amenity of the adjoining neighbours.

The variation of Condition 3 of planning permission CH/15/0472 to retain the extension as built with a higher ridge height than approved results in a non-subordinate extension, which results in an adverse visual impact on the street scene. As such, the application to vary Conditions 2 and 3 conflicts with Local Plan Policy CP3 and the Design SPD, which seek to secure high quality design in the interests of the amenity of neighbours and the character/appearance of the wider area.”

The applicant subsequently appealed the decision.

The appeal decision has now been received. The appeal has been upheld and an award of costs has been granted against the Council on the grounds of unreasonable behaviour.

The appeal decisions are attached for information.

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Appeal Decision

Site visit made on 30 January 2018

by **Simon Hand MA**

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

Decision date: 23 February 2018

Appeal Ref: APP/X3405/C/17/3183518 24 Watermint Close, Cannock, WS12 2GL

- 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 Richard Edwards against an enforcement notice issued by Cannock Chase District Council.
 - The enforcement notice, numbered JMCG/P113122, was issued on 24 August 2017.
 - The breach of planning control alleged in the notice is failure to comply with conditions Nos 2 and 3 of a planning permission Ref CH/15/0472 granted on 28 January 2016.
 - The development to which the permission relates is first floor extension over existing garage and utility room, conversion of garage into habitable room including a single storey front extension. The conditions in question are Nos 2 and 3 which state that: 2 – the materials to be used for the external surfaces of the development shall be of the same type, colour and texture as those used on the existing building; 3 – the development hereby permitted shall be carried out in accordance with the following approved plans; existing elevations and plan views; proposed upper storey extension to side elevation. The notice alleges that the conditions have not been complied with in that the materials used on the first floor side gable are not of the same type, colour and texture as on the existing dwelling and the roof height of the extension is only 50mm lower than the existing roof height rather than 350mm as shown on the plans.
 - The requirements of the notice are: (i) remove and reconstruct the side gable of the extension using materials which reflect the materials used on the existing dwelling; and (ii) reduce the finished roof height by 0.3m.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is allowed and the enforcement notice is quashed. In accordance with section 177(1)(b) and section 177(4) of the 1990 Act as amended, the conditions Nos 2 and 3 attached to the planning permission dated 28 January 2016, Ref CH/15/0472, granted by the Council are discharged and the following new condition is substituted. *The development hereby permitted shall be carried out in accordance with the following approved plan: Proposed elevations RED-003 REV C.*
2. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for first floor extension over existing garage and utility room, conversion of garage into habitable room including a single storey front extension without complying with the said conditions but subject to the other conditions attached to that permission and to the following new condition:

- 1) The development hereby permitted shall be carried out in accordance with the following approved plan: Proposed elevations RED-003 REV C.

Application for costs

3. An application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

Reasons

4. There is no dispute that the finished version of the extension is not in conformity with the two conditions in question. The gable wall has been finished in render at first floor level and the ridge of the extension roof is not 350mm lower than the ridge of the main house. The appellant however, argues these deviations from the agreed plans do not materially affect the extension or the character and appearance of the area and so planning permission should be granted for them. These then are the main issues.

The Appeal on Ground (a)

5. No 24 is one of a group of houses around a turning circle at the end of Watermint Close. It stands on the same line as its neighbour to the west but is set back from the neighbour to the east, No 26. This neighbour has a long rear extension in the back garden set on the boundary that runs next to the new extension to No 24. The two extensions are very close at the front, but are slightly further apart at the rear. The new extension to No 24 is at first floor only and the rear wall is level with the rear of the extension to No 26. The first floor side gable, which is the one with the contentious finish, is no closer to No 26 than the ground floor gable wall.
6. Due to the side walls being very close to each other it is virtually impossible to see what materials the gable wall of No 24 is made from. Even if you stand right next to it at the front it is so dark down the narrow gap the materials cannot be made out. The gap is slightly wider at the rear so it might, if one was determined, be possible to see the actual wall and notice what materials were used. However, there is no impact whatsoever on the amenity of the neighbour at No 26, as alleged by the Council. As the materials can hardly be seen from the street there is also no impact on the streetscene or on the extension itself.
7. The ridgeline of the extension is clearly almost the same as that of the main house. It looks lower because flatter ridge tiles have been used and the front plane is set back slightly from the plane of the main roof. The extension therefore does not look subordinate to the main part of the dwelling. However, the houses in Watermint Close are generally quite substantial and set very close together. The set-back of the front plane, clearly denotes the first floor is an extension and it is difficult to see what would be gained aesthetically by setting down the ridgeline. As-built it does not look out of place nor stand out in a harmful way at all. Indeed once the roof tiles have weathered in it will hardly merit a second glance. The extension does appear cramped, but that is because it is so close to the neighbour, not because the ridge is 300mm higher than it should be. Its proximity to the neighbour is a function of the original design of the estate, nothing to do with the roof of the extension.
8. The Council have quoted a number of policies relevant to the appeal, but it is clear from the above that I do not consider any of them are contravened by the

extension as-built, which is consequently in conformity with the Cannock Chase Local Plan and the Design SPD. I shall allow the appeal on ground (a) and, as they are no longer required, discharge the conditions in question, but substitute a new condition requiring the extension to be finished in accordance with the new plan provided showing the new ridge height and the flank wall rendered, which will regularise the situation. There is no need to consider grounds (f) and (g).

Simon Hand

Inspector

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Costs Decision

Site visit made on 30 January 2018

by Simon Hand MA

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

Decision date: 23 February 2018

Costs application in relation to Appeal Ref: APP/X3405/C/17/3183518 24 Watermint Close, Cannock, WS12 2GL

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Richard Edwards for a full award of costs against Cannock Chase District Council.
 - The appeal was against an enforcement notice alleging that two conditions attached to a previous planning permission have not been complied with in that the materials used on the first floor side gable are not of the same type, colour and texture as on the existing dwelling and the roof height of the extension is only 50mm lower than the existing roof height rather than 350mm as shown on the plans.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

The Case for the Parties

2. The appellant argues that the Council acted unreasonably as they disregarded their own officer's advice and photographic evidence provided by the appellant. They failed to take into account his offer to render the upper flank wall and relied almost entirely on local opposition from third parties, particularly the neighbour at No 26 who lobbied Councillors before the council meeting. Finally they failed to identify any harm.
3. The Council argue that the reasons given clearly identify the harm caused. The members are entitled to reach a different decision to their officers, even after viewing the photographs provided by the appellant. The offer to render the wall would not overcome the harm caused. It is entirely conjecture that members were swayed only by local opposition, they visited the site and formed their own opinions.

Reasons

4. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
5. The Council minutes note that members recorded they had been lobbied prior to the meeting, and it is entirely reasonable for local residents who oppose a development to lobby committee members. It is also entirely reasonable for members to reach different conclusions to their officers; otherwise there would

be no point in having a planning committee. However, when doing so they should provide not just reasons but cogent ones.

6. In this case the arguments boil down to a simple disagreement as to whether the as-built extension harmed neighbours' amenities and the character and appearance of the area or not. I disagreed with the arguments put forward by the Council and ordinarily would be very reluctant to award costs when reaching a different subjective judgement to others. However, in this case, the impact of the extension as built is so entirely negligible as to call into serious question the judgment of the planning committee. As I make clear in my decision the flank wall is almost invisible and the impact of the ridge height being some 300mm higher than designed is completely consonant with the buildings that surround it.
7. In particular the Council argued the higher ridge height made the extension seemed cramped but fail to explain how a few centimetres extra height on the ridge has any effect when the entire house has been built right up against the flank wall of No 26. How the amenity of the neighbour is harmed when the flank wall can only be seen with some difficulty was also not explained or why the proposed render finish would be so harmful as to require the entire flank wall to be rebuilt. I can only conclude that this was an enforcement notice that it was not expedient in the public interest to issue and that in doing so the Council acted unreasonably.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

9. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Cannock Chase District Council shall pay to Mr Richard Edwards, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to the Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Simon Hand

Inspector