
Report of 25 October 2012

Alleged Unauthorised DevelopmentTonbridge
Medway

11/00159/UNAWKS

559665 147195

Location: 65 Hadlow Road Tonbridge Kent TN9 1QB

1. Purpose of Report:

- 1.1 To report breaches of planning control consisting of the construction of a part single storey and part two storey rear extension and roof alterations that are not as approved by planning permission TM/09/02728/FL and are therefore in contravention of conditions 2, 7 and 8 of planning permission TM/09/02728/FL. The relevant conditions require the external materials to accord with the approved plans, that no windows or similar openings shall be constructed other than approved and also require the submission of details of a privacy screen to a sun terrace.

2. The Site:

- 2.1 The site is a detached house situated on the north western side of Hadlow Road, opposite Mill Stream Place. The site is within a residential area and the built confines of Tonbridge. The house is set back about 16m from the highway on ground that is higher than Hadlow Road. There are detached houses on either side of the site.
- 2.2 Planning permission TM/09/02728/FL allows the extension and alteration of the house, which was originally of two storeys under a hipped roof. The permission allows:
- a single storey ground floor extension creating a living area with dining area;
 - a two storey first floor flat roof rear extension incorporating an *en suite* bathroom, sun terrace and dressing room to the existing bedroom 4, and an additional bedroom (bedroom 5) and void above a dining area in the ground floor extension;
 - alterations to the roof which includes increasing the overall height by about 1.5 metres and changing the roof from a hipped roof to a pitched ridged roof with gabled ends with triangular windows in the apex of the gable ends;
 - the installation of two small flat roofed dormer windows on the front roof slope;
 - the provision of second floor accommodation beneath the new roof including a bedroom with plant room and *en suite* bathroom with full length window with external balustrade or safety barrier in the style of a “Juliet balcony” beneath a flat roof dormer on the south western side of the rear roof slope; a further room shown as a play room but used as a bedroom also with a full length window with external balustrade or safety barrier in the style of a “Juliet balcony” beneath a flat

roofed dormer on the north eastern side of the rear roof slope and a landing and staircase with large window beneath a large central flat roofed dormer between the two smaller dormers on the rear roof slope;

- the construction of a garage in the front garden that has not yet been started.

3. History:

- 3.1 TM/09/02728/FL Granted with Conditions 09.03.2010
Proposed two storey rear extension, roof alterations and detached garage.

The conditions attached to planning permission TM/09/02728/FL relevant to this case are:

2. All materials used externally shall accord with the approved plans, unless otherwise agreed in writing by the Local Planning Authority.

Reason: To ensure that the development does not harm the character and appearance of the existing building or visual amenity of the locality.

7. Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) Order 1995 (or any order amending, revoking and re-enacting that Order), no windows or similar openings shall be constructed in any elevation of the building other than as hereby approved, without the prior written consent of the Local Planning Authority.

Reason: To enable the Local Planning Authority to regulate and control any such further development in the interests of amenity and privacy of adjoining property.

8. Prior to the first occupation of the extension, full details of the privacy screen serving the sun terrace shall be submitted to and approved by the Local Planning Authority, and the work shall be carried out in strict accordance with those details.

Reason: In the interests of amenity and privacy of adjoining property.

4. Alleged Unauthorised Development:

- 4.1 To report breaches of planning control consisting of the construction of a part single storey and part two storey rear extension and roof alterations that are not as approved by planning permission TM/09/02728/FL and are therefore in contravention of conditions 2, 7 and 8 of planning permission TM/09/02728/FL. The relevant conditions requiring the external materials to accord with the approved plans, that no windows or similar openings shall be constructed other than approved and also require the submission of details of a privacy screen to a sun terrace.

4.2 The following variations from the approved drawings have been noted:

Front Elevation:

1. The lower pitch of the front roof slope has a slight upward sprocket curve on the front edge of the roof tiles not shown on the approved drawings.
2. The fascia of the front elevation is slightly deeper than shown on the approved drawing.
3. The omission of moulded detailing around the front entrance.

Rear Elevation:

4. The external safety barriers have not been installed to the full length windows in the two smaller second floor dormers on the rear slope of the roof extension and the windows are glazed doors that open outwards with possible access to the flat roof of the two storey extension.
5. A large window to the second floor landing in the large central dormer to the roof extension only has one vertical mullion instead of the three shown on the approved drawings. This is also a sliding opening window/door that could allow access to the flat roof of the two storey extension.
6. On the first floor the large central window to bedroom 5 only has one central mullion instead of the 3 shown on the approved drawings. This is also a sliding opening window/door that could allow access to the flat roof of the single storey extension.
7. On the first floor the privacy screen to the sun terrace has not been provided and details have not been submitted for approval pursuant to condition 8.
8. The new rear window in bedroom 1 in an existing part of the house is taller and narrower than shown on the approved drawing.
9. On the ground floor the single storey living room extension is 0.543 metres narrower and has a deeper fascia than that shown on the approved drawings.
10. The sky light in the roof of this single storey extension is also shorter and narrower than shown on the approved drawings.
11. The new window in the ground floor kitchen in the existing part of the house is narrower than shown on the approved drawings.

South West Side Elevation (facing 63 Hadlow Road):

12. The first floor bathroom window is narrower than shown on the approved drawings.
13. The triangular high level gable window has a substantial central mullion (to support the ridge) in addition to the two narrow mullions to either side of the centre which is not shown on the approved drawings. These windows also have opening casements.
14. There is a finial where the two barge boards meet at the ridge which is not shown on the approved drawings.

North East Side Elevation (facing 67 Hadlow Road):

15. The triangular high level gable window has a substantial central mullion (to support the ridge) in addition to the two narrow mullions to either side of the centre which is not shown on the approved drawings. These windows also have opening casements.
16. There is a finial where the two barge boards meet at the ridge which is not shown on the approved drawings.
17. On the first floor, an existing bedroom window which was shown to be replaced by two narrow windows has been retained and fitted with a new window frame.
18. On the ground floor a flat roof portico formed by an extension of the flat roof of the single storey rear extension above a side door to a utility room has been omitted.
19. Because the single storey rear extension is narrower, the front wall of the side projection of this extension is only 1.250m wide instead of 1.850m. The side wall is therefore farther away from the side boundary.
20. A small narrow window in the front elevation of the side projection of the single storey rear extension has been changed from an opening 0.350m wide x 0.950m high to an opening 0.385m wide x 2.100m high.

5. Determining Issues:

- 5.1 These variations from the approved drawings were drawn to the attention of the owner/applicant in a letter dated 24 April 2012 and a revised planning application invited. However, despite reminders by letter dated 29 May 2012, letter dated 15 June 2012, email dated 16 July 2012, and email dated 13 August 2012 and promises to submit an application in emails dated 30 June 2012, 20 July 2012 and 13 August 2012, no application has been received. It is therefore appropriate to consider whether formal enforcement action is required to remedy the breaches of planning control that have been identified.
- 5.2 A Planning Contravention Notice was served on the owner on 6 September 2012 specifically asking the owner:
 - what action he is taking to rectify the variations from the approved drawings,
 - what action he is taking to comply with the approved drawings in relation to the retention of the existing first floor bedroom window in the north eastern side elevation that is shown to be replaced by two smaller windows,
 - what action he is taking to comply with the approved drawings in relation to the full height windows in the two small dormers on the rear elevation of the roof extension which show external safety barriers to both windows,
 - what action he is taking to comply with condition 8 of planning permission TM/09/02728/FL which required the submission of details of the privacy screen to the sun terrace.

A response to this Notice was required by 28 September 2012. No response had been received at the time of preparing this report and the situation will be updated in a supplementary report.

5.3 Many of the variations listed in paragraph 4.2 above including: -

- the variations to the size and style of the windows contrary to the provisions of condition 7 of planning permission TM/09/02728/FL, numbered 8, 11, 12, and 20 in paragraph 4.2;
- the provision of the sprocket curve on the front roof slope and deeper fascia below this, numbered 1 and 2 in paragraph 4.2;
- the omission of moulded detailing around the front entrance, numbered 3 in paragraph 4.2;
- the reduction in size of the single storey rear extension and sky light, numbered 9, 10 and 19 in paragraph 4.2;
- the variations to the triangular gable windows, numbered 13 and 15 in paragraph 4.2;
- the provision of finials to the ridge at both gables, numbered 14 and 16 in paragraph 4.2;
- the omission of the open sided flat roof above the side door, numbered 18 in paragraph 4.2;

are in themselves comparatively minor in nature and do not materially alter the character or appearance of the development or affect the amenity or privacy of the adjoining properties. These variations are likely to have received a recommendation of approval if a revised application had been submitted. In these circumstances it could not be considered expedient to take any further enforcement action in respect of these particular items.

5.4 However five of the variations listed require more detailed explanation and assessment.

5.5 The first of these items relates to a bedroom window on the north eastern side elevation facing 67 Hadlow Road (number 17 in paragraph 4.2 above). The approved drawings show that an existing first floor bedroom window opening approximately 1.8m wide x 1.5m high was to be blocked up and replaced by two narrow windows each 0.5m wide x 1.5m high. The existing window opening has been retained and a new window inserted within the existing opening. This would not normally require planning permission from the Local Planning Authority, either because it would not constitute "development" under the Planning Acts or because it would constitute permitted development not requiring a planning application, depending on the circumstances. However, in this instance, condition 7 of planning

permission TM/09/02728/FL has exercised control over this type of alteration and states that no windows or similar openings shall be constructed in any elevation of the building other than as hereby approved, without the prior written consent of the Local Planning Authority. Consent has not been given for this current variation and there is therefore a *prima facie* breach of condition 7. However, looking at the planning permission as a whole, the approved works have been substantially completed and parts are in occupation, and the applicant has stated that he may yet change the window to comply with the approved drawings. Nevertheless, the retention of the existing window has only maintained an existing situation so far as its effect on the appearance of the building and its impact on the amenity or the privacy of the adjoining properties are concerned. The retention of this original window won't make the situation any worse than the pre-existing situation. In these circumstances it could not be considered expedient to take any further action in respect of the retention of the existing window contrary to the terms of condition 7 of planning permission TM/09/02728/FL.

- 5.6 The second and third variations are the large windows to the second floor landing in the large central dormer to the roof extension and the first floor central window to bedroom 5 on the rear elevation (numbers 5 and 6 in paragraph 4.2 above). The approved drawings show these windows with three vertical mullions or divisions within the frame, but the windows as installed have only one central mullion and are sliding windows that open to potentially allow access to the adjacent flat roof to the first floor extension and ground floor extension respectively. Condition 7 of planning permission TM/09/02728/FL requires that no windows or similar openings shall be constructed in any elevation of the building other than approved without prior consent. The condition was imposed to regulate and control any such further development in the interests of amenity and privacy of adjoining property. However the size of the window openings appears to be as approved and the only external difference to the external appearance of the development is the number of vertical mullions or divisions in the frames. The approved drawings do not indicate whether the windows are fixed or opening. However unless a mechanical means of ventilation is intended, it would be expected that the windows would be opening to provide ventilation. The variation in design of windows is not in itself likely to have any material effect on the privacy of adjoining properties. Other than the number of vertical mullions the windows are essentially as approved and it would not be expedient to take action as a breach of condition 7.
- 5.7 The Building Regulations require the provision of protective barriers to opening windows, balconies or a roof to which people have access to protect people from falling. The construction of this development is being supervised by an Approved Independent Building Inspector and it is for the Approved Inspector to ensure compliance with the Building Regulations. There is no specific planning condition or other requirement to prevent access to the flat roof above the ground floor or first floor extensions; nevertheless, development that involves the construction or provision of a veranda, balcony (other than a Juliet balcony) or raised platform (including a roof terrace) would not be "permitted development" in these

circumstances and is therefore subject to planning control in the event that any such development does take place to facilitate the use of any part of the flat roofs as a roof terrace. Access to the roof solely for the purposes of maintenance or repair of the building would not be subject to control under the Planning Acts.

- 5.8 There is no evidence of any current or regular use of the roofs of either the ground floor or the first floor extensions, or that these roofs are currently being used as roof terraces that would result in serious harm to the privacy of neighbouring properties. Therefore no enforcement action can be taken at this time but, depending on the circumstances, appropriate enforcement action could be considered in the event of any future unauthorised development taking place to facilitate the use of the roofs as sun terraces.
- 5.9 The fourth item relates to the full height windows in the two dormers at second floor level on the rear elevation of the roof extension (numbered 4 in paragraph 4.2 above). The approved floor plan (Drawing HAD/09 006 Rev: P2) does not show that these were to be opening windows/doors, which are usually indicated graphically on plan by means of 'door swings' or arrows where sliding doors or windows are proposed. On the elevations, opening casements are indicated by two lines; the point or apex of the two lines crossing the opening casement indicates the hinged side. Therefore a clear visual interpretation of the floor plan is that these windows were to be fixed. The approved rear elevation (drawing HAD/09 007 Rev: P2) shows full length glazed double doors/windows to the two smaller dormers on the rear elevation of the second floor or roof extension. There are no graphic symbols to indicate that these were intended to be opening when the application was submitted. However the approved drawing shows an approximately 1m high external balustrade or safety barrier to the lower part of these doors/windows in the style of a Juliet balcony, which by implication would indicate inward opening doors. At the time the application was determined it was considered that the situation shown on the drawings would be satisfactory and would prevent access to the adjacent flat roof and thus avoid unacceptable overlooking of the adjoining properties.
- 5.10 Full length glazed double doors have been installed in both smaller dormers that open outwards and could allow access onto the flat roof of the two storey rear extension. The owner/applicant has claimed that he intends to install internal glass safety barriers to both sets of doors, one of which may be opening to allow access to the roof to clean the windows. The provision of these double doors is contrary to the terms of condition 2 in that the materials used or design of doors frames and external safety barrier do not accord with the approved plans. The provision of these double doors in both smaller dormers is also contrary to the terms of condition 7 which requires that no windows or similar openings shall be constructed in any elevation of the building other than as approved, without prior written consent.
- 5.11 It is considered appropriate to regulate and control this part of the development to prevent, as far as possible, access to the flat roof of the two storey rear extension which would be detrimental to the interest of amenity and privacy of the adjoining

properties. It is therefore considered reasonable to require the replacement of the outward opening doors with inward opening doors or fixed doors/windows and external safety barriers as shown on the approved drawings.

- 5.12 Although this development is subject to inspection by an Independent Building Inspector, the Building Regulations would require the provision of protective barriers of 1.100m high to protect people from falling. If access to the roof is proposed the Regulations would require the provision of protective barriers to the roof to which people have access to protect people from falling, which would be unacceptable in terms of the appearance of the building, amenity and the privacy of the adjoining properties. It is considered reasonable to require the installation of external fixed protective barriers to prevent access to the flat roof to protect the amenity and privacy of adjoining property. It is therefore appropriate to serve an Enforcement Notice requiring the installation of inward opening doors and an external protective barrier.
- 5.13 The fifth item relates to the provision of a sun terrace in a corner of the extension on part of the flat roof of the single storey rear extension (number 7 in paragraph 4.2 above). The approved drawings show a sun terrace on the flat roof of part of the single storey extension adjacent to the north eastern side boundary and condition 8 of planning permission TM/09/02728/FL requires the submission of full details of a privacy screen serving the sun terrace prior to the first occupation of the extension. Although not all works have yet been completed including the fitting out of the adjoining *en suite* bathroom, and the sun terrace has not yet been seen to be used, a substantial portion of the approved extensions is occupied. The door between the *en suite* bathroom and area of roof to be used as the sun terrace is in place and does potentially allow access to the adjacent roof. The details of the privacy screen have not been submitted and there is therefore a clear breach of condition 8. Condition 8 cannot now be complied with because parts of the extension have been occupied before the submission of details of the privacy screen. The lack of a privacy screen will result in detriment to amenity and to the privacy of adjoining properties and in these circumstances it is appropriate to serve an Enforcement Notice to secure the provision of an appropriate privacy screen.

6. Recommendation:

- 6.1 **No further action be taken** in respect of those items specified in paragraphs 5.4-5.12 above.
- 6.2 Two Enforcement Notices **be issued** as set out below and copies **served** on all interested parties.

The Notices to take effect not less than 28 days from the date of service, subject to:

- The concurrence of the Chief Solicitor, he being authorised to amend the wording of the Enforcement Notices as may be necessary.

- In the event of an appeal against the Notice the Secretary of State and the appellant to be advised that the Local Planning Authority is not prepared to grant planning permission for the development the subject of the Enforcement Notices.

Notice 1.

Breach of Planning Control Alleged

The construction of a part single storey and part two storey rear extension and roof alterations that are not as approved by planning permission TM/09/02728/FL (for proposed two storey rear extension, roof alterations and detached garage) and are therefore in contravention of conditions 2 and 7 of planning permission TM/09/02728/FL requiring the external materials to accord with the approved plans and that no windows or similar openings shall be constructed other than approved.

Reasons for Issuing the Notice

It appears to the Council that this development has been built within the last four years and the breach of the conditions has therefore occurred within the last ten years. Planning permission TM/09/02728/FL allowed a proposed two storey rear extension, roof alterations and detached garage. The permission was granted subject to, among others, the following conditions: -

2. All materials used externally shall accord with the approved plans, unless otherwise agreed in writing by the Local Planning Authority.

Reason: to ensure that the development does not harm the character and appearance of the existing building or visual amenity of the locality.

7. Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) Order 1995 (or any order amending, revoking and re-enacting that Order), no windows or similar openings shall be constructed in any elevation of the building other than as hereby approved, without the prior written consent of the Local Planning Authority.

Reason: To enable the Local Planning Authority to regulate and control any such further development in the interests of amenity and privacy of adjoining property.

The development as built does not entirely accord with the approved drawings. In particular unauthorised variations to the windows/doors in the two small dormers on the second floor rear elevation are contrary to conditions 2 and 7 that were imposed to mitigate demonstrable and potentially significant harm to the appearance and character of the building and to amenity and the privacy of adjoining properties. Saved Policy P4/12 of the Tonbridge and Malling Borough Local Plan states that extensions to properties will not be permitted if they would result in an adverse impact on either the character of the building or the street scene in terms of form, scale, design, materials and existing trees, or residential amenity of neighbouring properties in terms of light and privacy and overlooking of garden areas. Policy CP24 of the Tonbridge and Malling Borough Core Strategy also requires that all development must be well designed and of a high quality in terms of detailing and

use of appropriate materials, and must through its scale, layout, character and appearance be designed to respect its site and surroundings. Development which by virtue of its design would be detrimental to the built environment, amenity or functioning and character of a settlement will not be permitted. The provision of two sets of double outward opening doors in the two small dormers on the rear elevation of the second floor roof extension without fixed external safety barriers would result in detriment to the privacy of adjoining properties because they would allow access to the flat roof of the first floor extension to the severe detriment of the amenity and privacy of the adjoining properties. An application to retain the unauthorised second floor windows/doors that open outwards and allow access to the flat roof of the flat roof of the first floor extension could not be supported because of the implications for the amenity and privacy of the adjoining properties. The Enforcement Notice is necessary to alleviate the nuisance and detriment to amenity resulting from the unauthorised variations from the development as approved and the failure to comply with conditions imposed to protect amenity and privacy of adjoining properties.

Requirement

Remove the existing window/door frames and outward opening doors to each window opening in the small dormers on the second floor rear elevation of the roof extension that serve the en suite bathroom to bedroom 6 and the playroom/bedroom on the second floor. Replace with new frames with inward opening doors and fit permanently fixed external protective barriers at least 1.100 metres high above sill level to the window openings in both the small dormers. The protective barriers to be as shown on the approved drawing HAD/09 007 Rev: P2 or made of dark grey smoked toughened laminated glass panels at least 1.100 metres high cut to fit and fixed to the external frame of the dormers by at least four metal glass fixing brackets to each protective barrier. All works to be carried out in accordance with the current Building Regulations where appropriate.

Period for Compliance

Three calendar months from the date when the Notice takes effect.

Notice 2.

Breach of Planning Control Alleged

The failure to comply with condition 8 of planning permission TM/09/02728/FL for proposed two storey rear extension, roof alterations and detached garage, which required the submission of full details of a privacy screen serving the sun terrace prior to the first occupation of the extension.

Reasons for Issuing the Notice

It appears to the Council that this development has been built within the last four years and the breach of the conditions has therefore occurred within the last ten years. Planning permission TM/09/02728/FL allowed a proposed two storey rear extension, roof alterations and detached garage. The permission was granted subject to, among others, the following conditions: -

8. Prior to the first occupation of the extension, full details of the privacy screen serving the sun terrace shall be submitted to and approved by the Local Planning Authority, and the work shall be carried out in strict accordance with those details.

Reason: In the interests of amenity and privacy of adjoining property.

The development as built does not entirely accord with the approved drawings. In particular the failure to submit details of the privacy screen to the first floor sun terrace is contrary to condition 8 that was imposed to mitigate demonstrable and potentially significant harm to the amenity and the privacy of adjoining property. Condition 8 cannot now be complied with because parts of the extension have been occupied before the submission of details of the privacy screen. Saved Policy P4/12 of the Tonbridge and Malling Borough Local Plan states that extensions to properties will not be permitted if they would result in an adverse impact on either the character of the building or the street scene in terms of form, scale, design, materials and existing trees, or residential amenity of neighbouring properties in terms of light and privacy and overlooking of garden areas. Policy CP24 of the Tonbridge and Malling Borough Core Strategy also requires that all development must be well designed and of a high quality in terms of detailing and use of appropriate materials, and must through its scale, layout, character and appearance be designed to respect its site and surroundings. Development which by virtue of its design would be detrimental to the built environment, amenity or functioning and character of a settlement will not be permitted. The use of the sun terrace without an appropriate privacy screen would result in overlooking of the adjoining properties to the severe detriment of the amenity and privacy of the adjoining properties. An application to allow the use of the sun terrace without an adequate privacy screen could not be supported because of the implications for the amenity and privacy of the adjoining properties. The Enforcement Notice is necessary to rectify the failure to comply with condition 8 of planning permission TM/09/02728/FL imposed to protect amenity and privacy of adjoining properties and to alleviate the nuisance and detriment to amenity and privacy resulting from this failure.

Requirement

Install on the raised plinth around the first floor sun terrace shown on drawing HAD/09 006 Rev: P2 a privacy screen consisting of two panels of frosted dark grey tinted toughened and obscured glass at least 1.800 metres high and cut to fit fixed within an aluminium frame or secured with appropriate metal glass fixing brackets as shown on the details attached to the Notice. All works to be carried out in accordance with the current Building Regulations where appropriate.

Period for Compliance

Three calendar months from the date when the Notice takes effect

Contact: Gordon Hogben

SUPPLEMENTARY REPORTS

AREA 1 PLANNING COMMITTEE

DATED 25 October 2012

Alleged Unauthorised Development**Tonbridge 11/00159/UNAWKS
Medway****65 Hadlow Road Tonbridge Kent TN9 1QB**

DPTL: The owner has not responded to either the Planning Contravention Notice referred to in Paragraph 5.2 of the main report or to a Requisition for Information seeking details of ownership in preparation for the service of the Enforcement Notices. The failure to respond to either of these documents is an offence. Whilst there is evidence that the Requisition for Information has been satisfactorily served, it is not clear that the Planning Contravention Notice was received by the owner, and this will be re-issued. In the event of no response, appropriate legal proceedings will be considered.

On further consideration and to ensure that an adequate privacy screen is provided to the sun terrace I recommend an amended Requirement in respect of Notice 2 to provide a solid privacy screen to the side elevation of the sun terrace.

AMENDED RECOMMENDATION:**Amended Requirement in respect of Notice 2:**

Install around the first floor sun terrace shown on the extracts from the approved drawing HAD/09 006 Rev: P2 attached to the Enforcement Notice, a privacy screen consisting of:

on the side elevation a solid panel formed from external quality ply wood at least 1.8 metres high cut to fit and fixed within an aluminium frame or secured to the wall, roof and rear panel with appropriate metal brackets, sealed against the weather and painted white to match the colour of the walls of the house, and;

on the rear elevation one panel of dark tinted toughened obscured glass at least 1.8 metres high and cut to fit and fixed to the wall, side screen and roof within an aluminium frame or secured with appropriate metal glass fixing brackets.

All works to be carried out in accordance with the current Building Regulations where appropriate.
