

CONTRAVENTION MATTERS		
<b>20210008C</b>	<b>11 Franche Road</b>	
Description:	<b>Dormers not constructed in accordance with Planning Permission 20201727</b>	
JS1	TEAM: PE	WARD: Fosse



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## Summary

- This Enforcement Report is at committee at officer's discretion given that the planning application was approved by Committee
- Reports received from a local resident and Councillor Waddington that the rear dormer is not in accordance with the approved plan. Another local resident has expressed concerns about building issues.
- Main issues are the appearance of the rear dormer as built and neighbouring residential amenity.
- Recommended for no action given an assessment of the harm caused and the likelihood of permission being granted.

## Introduction

The property is a two storey mid-terrace house located within a predominantly residential area opposite Fosse Recreation Ground.

## **Background**

Planning permission 20201727 for Change of use from house (Class C3) to house in multiple occupation for more than 6 persons (7 bedrooms) including construction of dormer at front and rear; was given conditional approval by Planning Committee on 9th December 2020.

## **Report of suspected planning breach**

Reports were received that the rear dormer extension was not being constructed in accordance with the approved plans under planning permission 20201727.

## **Identified Breach**

Section 172(1) of the Town and Country Planning Act 1990 states that;

The local planning authority may issue a notice (in this Act referred to as an “enforcement notice”) where it appears to them—

- (a) that there has been a breach of planning control; and
- (b) that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations.”

A site visit undertaken on 12th January 2021 found that the rear dormer extension was larger than on the approved plans. It was measured to be approximately 2.7m high whereas the approved plans show it to be 1.8m high. Accordingly, a breach of planning control was established.

## **Policy**

In deciding on enforcement action consideration must first be given to whether planning permission would have been given for the development as carried out as well as considering any harm from the breach.

The National Planning Policy Framework (NPPF) 2019 sets out the Government’s planning policies for England and how these are expected to be applied.

Paragraph 2 states that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The NPPF is a material consideration in planning decisions

Paragraph 11 contains a presumption in favour of sustainable development.

Paragraph 58 states that effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control.

Paragraph 124 describes good design as a key aspect of sustainable development.

Paragraph 127 sets out criteria for assessing planning applications which includes issues such as the long term functionality of development proposals; visual impacts; the ability of development to relate to local character; creation of a sense of place using various design tools such as building types and materials; optimising the potential of development sites; and, designing safe, secure and inclusive developments with a high standard of amenity for existing and future users.

Paragraph 130 states that permission should be refused for development of poor design that fails to take opportunities available for improving the character and quality of an area and the way it functions.

The National Planning Practice Guidance states the following:

Effective enforcement is important to:

- Tackle breaches of planning control which would otherwise have unacceptable impact on the amenity of the area;
- Maintain the integrity of the decision-making process;
- Help ensure that public acceptance of the decision-making process is maintained [Paragraph: 005 Reference ID: 17b-005-20140306]

Enforcement action should, however, be proportionate to the breach of planning control to which it relates and taken when it is expedient to do so. Where the balance of public interest lies will vary from case to case.

In deciding, in each case, what is the most appropriate way forward, local planning authorities should usually avoid taking formal enforcement action where:

- there is a trivial or technical breach of control which causes no material harm or adverse impact on the amenity of the site or the surrounding area;
- development is acceptable on its planning merits and formal enforcement action would solely be to regularise the development;
- in their assessment, the local planning authority consider that an application is the appropriate way forward to regularise the situation, for example, where planning conditions may need to be imposed. [Paragraph: 011 Reference ID:17b-011-20140306].

## **Development Plan policies**

### Core Strategy Policy

CS03 The Council will require high quality, well designed developments that contribute positively to the character and appearance of the local natural and built environment. The policy sets out design objectives for urban form, connections and access, public spaces, the historic environment, and 'Building for Life'.

### City of Leicester Local Plan policy

PS10 Criteria will be used to assess planning applications which concern the amenity of existing or proposed residents

## **Supplementary Planning Documents (SPD)**

## Residential Amenity SPD

Planning Enforcement Policy & Procedure sets out the City Council's approach to the enforcement of planning legislation, which is in line with the national guidance stated above.

### **Consideration**

The principle of a dormer extension has already been accepted by the planning permission granted.

The front and rear dormers facilitate construction of two bedrooms and a bathroom in the roof space of the main building providing light, outlook and useable space within the bedrooms.

Regarding the front dormer, the approved plans show the ridge of its hipped roof to be sited at approximately the same level as or lower than the visible part of the chimney stack (on the side with Number 9 (right-hand side)). It has been constructed further back from the eaves than shown on the plans, which means it has been installed slightly higher up the roof plane. It has been covered in tiles to match the existing roof and the architect states that a window the same as stated in the plans has been ordered.

While the slight re-siting of the front dormer window is a technical breach of planning control, I do not consider it so significant as to justify taking formal enforcement action, as the overall size, location and effect of the dormer remains the same if not less on the streetscene than in the approved plan. I consider that planning permission would have been given for the version built.

Regarding the rear dormer extension, the approved plan shows it to be sited lower than the chimney stack (on the side with Number 9 (left-hand side)) and span almost the entire roof width, with a narrow margin at each end. However, it has been constructed abutting the chimney stack almost up to the ridge line of the main roof, at a height of 2.7m, rather than the approved height of 1.8m, and spans up to the right-hand boundary (with Number 13). Accordingly, a breach of planning control has been established.

The architect states that the rear dormer has been constructed at 0.3m from the eaves rather than 0.5m due to constraints of the fabric of the building. I accept that structural constraints can require adjustments and the 0.2m enlargement of the extension still allows for a reasonable setback from the eaves.

The rear dormer extension is of similar design to the approved plan but moved slightly to the right and taller. The grey roof tiles with which it has been covered match well with both the host building and the two-storey rear projection.

It is visible from the end of the terrace on Franche Road (Number 13 end); however, it is not an incongruous feature on the streetscene and fits in well with the roofscape. It is also visible from St Dunstons Road and is not an incongruous feature on the streetscene as it is can only be seen at a distance through currently bare trees and would be shielded from view when trees are in full leaf. A dormer of this type would be permitted if the house remained as a dwelling-house.

The larger size of the rear dormer extension does create more of an impact on the rear roofscape than shown in the approved plan, however, I do not consider it inappropriate or overbearing on the host building, as it sits well within the rooves of the host building and the two storey rear projection.

I also consider that it would not significantly impact on light, outlook or privacy for neighbouring houses. Such a dormer could be installed without planning permission if the property had remained in dwelling-house use.

A site visit on 23rd February 2021 showed that the front and rear dormers have been covered with grey roof slate to match the existing host and two storey projection roofs.

Consideration needs to be given to whether planning permission would be granted for the development carried out. If it would have been given, there is no justification for taking action. The owner has been invited to submit a revised planning application and if this were submitted, I consider it would be likely to be recommended for approval due to the above reasons.

Matters relating to building issues are not something over which the local planning authority has direct jurisdiction.

Enforcement action is discretionary and must be proportionate to the breach. It should only be taken if the harm is so significant as to justify formal remedy and should usually be avoided where there is a trivial or technical breach of control which causes no material harm or adverse impact on the amenity of the site or the surrounding area

In this case, the remedy would be to alter the constructions to meet the approved plan, however, I do not consider the harm to amenity from the development significant enough to justify formal enforcement action.

I do not consider it proportionate or expedient to take enforcement action in this case.

I recommend that NO ACTION be taken.