



Planning Committee  
7 February 2017  
Agenda Item 7

Ward: Offington

ADUR DISTRICT  
COUNCIL

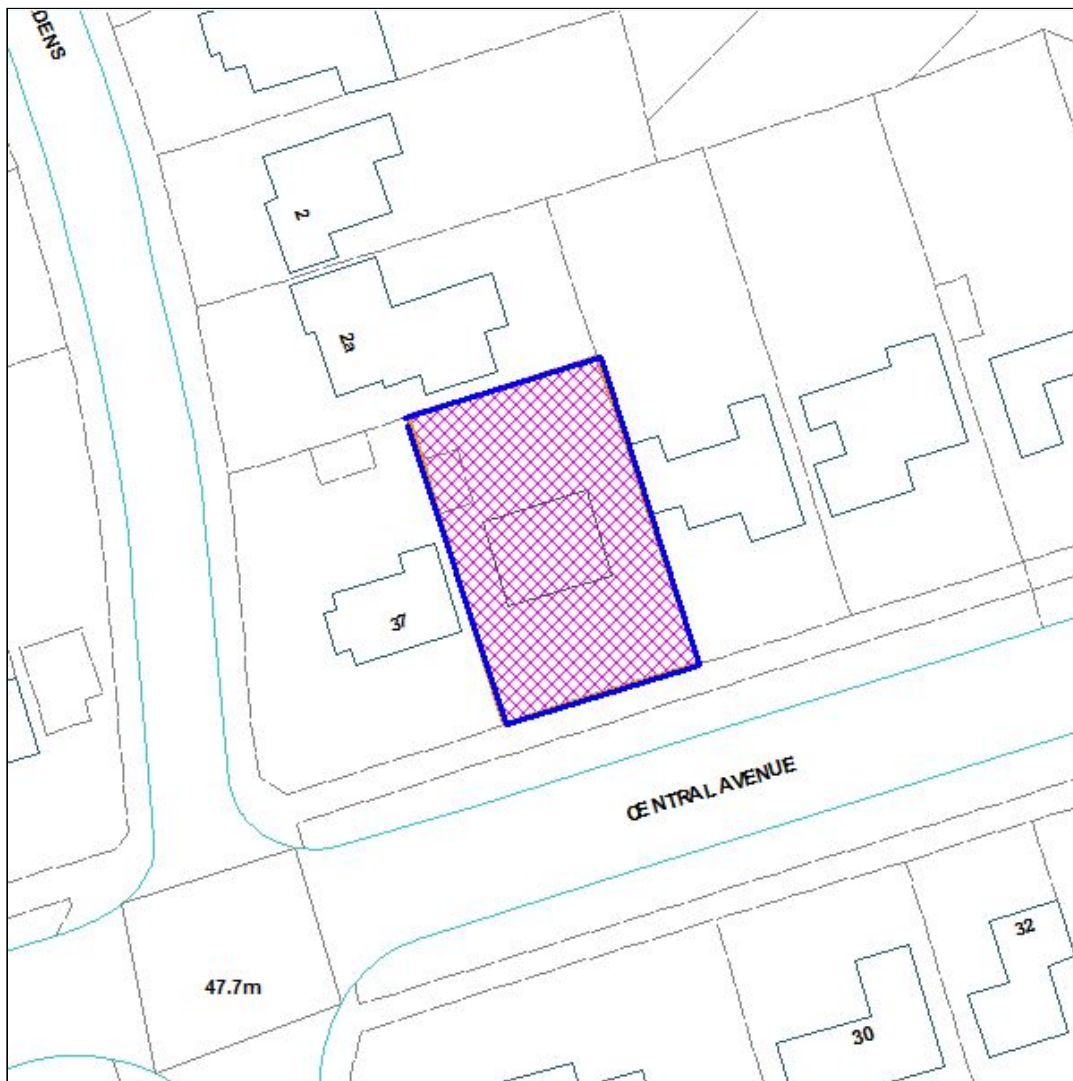
Report by the Director for Economy

ENFORCEMENT REPORT

39 Central Avenue Worthing West Sussex BN14 0EA

Development not carried in accordance with conditions 1, 3 and 4 of  
AWDM/1064/16

Reference Number: AWEN/0029/18



Not to Scale

## 1. BACKGROUND

At the Planning Committee meeting held on 14 December 2016, planning permission was granted for the construction of single storey side and rear extensions and addition of first floor to the existing dwelling at 39 Central Avenue (Application AWDM/1064/16 refers). The planning permission was subject to conditions including those relating to: the development being carried out in accordance with the approved plans (condition 1); external materials to match the existing building (condition 3); and obscure glazing to first floor side and rear windows, except any part above 1.7m from finished floor level of the room it serves (condition 4).

Following the receipt of a complaint and upon an external inspection it was found that development had commenced and was not in accordance with the approved plans and was in breach of conditions 3 and 4.

The following items have been noted:

- (i) First floor windows rear and side (east) windows contain clear glazing
- (ii) Vertical timber cladding has been installed to the first floor and apparent preparation for a render finish to the ground floor.
- (iii) The design of first floor windows to the front elevation and ground and first floor windows and doors to the rear elevation are not in accordance with the approved plans.

The applicant and their agent were contacted in early October 2017 requesting a retrospective planning application in order to consider the impact of the building as built. Although the applicant has stated an intention to submit an application, despite several requests and over a period of more than 3 months, regrettably at the time of writing no application has been received.

This report therefore considers the impact arising from the breach of conditions 3 and 4 and from the changes to the approved plans.

## 2. PLANNING ASSESSMENT

It is regrettable that the applicant has not submitted a planning application within a reasonable timescale but there is no legal requirement for them to do so. The applicant is aware that the failure to submit an application may register on future searches of the property. It therefore falls upon the Council to consider whether, with the amendments, planning permission would have been granted for the extensions as built and whether any further action is necessary.

### Obscure glazing:

When the decision was made to approve the extensions to the first floor, the applicant had offered obscure glazing to attempt to address overlooking concerns raised by neighbouring occupiers at that time and so a condition was included for rear and side windows to be obscure glazed up to 1.7m above finished floor level.

All but one of the windows have been installed with clear glazing, with obscure glazing only installed to the rear bathroom window.

Rooflight windows to the side are at a high level with cill heights exceeding 1.7m and so there would be no significant overlooking to the side towards No.41. Views down the rear garden of No. 41 would be possible from rear windows but privacy to the rear rooms of No.41 has still been retained.

On the west side, there are no side windows overlooking No.37 and views from rear windows are limited to towards the rear of the garden area of No.37 and similar relationships exist elsewhere in the vicinity.

At the rear, a distance of 12.5 metres between the position of first floor windows and the side of No.2a Sullington Gardens to the north existed at the time the application was considered and this situation has not changed. There is a high level window to the side elevation of No.2a facing the rear of No.39, serving a rear bedroom and is sited close to the boundary fence. This bedroom at No.2a has its main outlook from a rear facing window. Views of this high level side window are possible from the new first floor windows but are also possible from the ground floor and rear garden of No.39, as existed before the extensions were built as this window exceeds the height of the boundary fencing. Views back into the rear rooms of No.2a are not possible from the new first floor windows due to the restrictive angle. Similar views into the garden at 2a exist as at No.41 except in that the view is across the width rather than down the length of the garden. Views towards the northern corner patio of the garden at No. 2a would be possible but at a distance of approximately 22 metres, although it is noted that garden area to the south of this is also partially visible from rear first floor windows but is not dissimilar to a relationship that might exist had the applicant constructed a dormer window as permitted development.

**Materials:** The streetscene comprises of a mix of two storey dwellings and single storey bungalows with a variety of designs and with variation to external materials and design details. The extensions as approved would appear, overall, as a more contemporary addition to the streetscene and with a combination of painted render, vertical timber cladding, dark grey windows and surrounds, and grey plain roof tiles.

The use of vertical timber cladding is not a feature of the locality with materials generally comprising of brick, traditional tile hanging, and render but with variety to type and colouring. The use of the vertical timber cladding is the main matter of contention here.

The applicant has clarified verbally that the timber used is Syberian Larch and the intention is for it to weather naturally rather than to apply a protective finish. The overall appearance of the cladding is relatively knotty giving a more rustic

appearance than some other more contemporary cladding boards. It is anticipated that natural weathering to a consistent grey colour would take a number of years but would still retain the knotty appearance. The applicant has stated that they have no intention of painting the timber but your officers feel that a combination of painted render to the ground floor and a light grey painted finish to the cladding would help to immediately blend with surrounding buildings and give a more uniform appearance to the cladding.

Design details: There is variation to the appearance of the surrounds to the windows that break through the eaves that represent the most noticeable change to the windows with a more bulky, box like appearance to those parts, largely due to their simplistic form without detailing to break up the appearance of bulk. However, it is noted that a modern dormer window would have similar width to the sides and roof due to depth of insulation and other materials used in their construction, and examples of such can be seen in the locality. Although the design is not ideal in terms of its simple form exacerbating the appearance of bulk, an alternative design would not offer any actual reduction in bulk. In terms of the overall changes that relate to the configuration and appearance of windows and doors, these changes have not resulted in any significant harm to visual amenity or to the amenities of neighbouring occupiers and with ground floor windows to the frontage replaced to follow the alignment and general design of first floor windows for uniformity.

### 3. LEGAL SECTION

Section 172(1) Town and Country Planning Act 1990 (as amended) states that a Local Planning Authority may issue an enforcement notice where it appears to them:

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

Section 72(1) Planning (Listed Buildings and Conservation Areas) Act 1990 states in exercising any functions under the Town and Country Planning Act 1990, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.

Paragraph 207 National Planning Policy Framework reiterates that enforcement action is discretionary, and local planning authorities should act proportionately in responding to breaches of planning control.

Paragraph: 003 Reference ID: 17b00320140306 Planning Practice Guidance states "The provisions of the European Convention on Human Rights such as Article 1 of the First Protocol, Article 8 and Article 14 are relevant when considering enforcement action. There is a clear public interest in enforcing planning law and planning regulation in a proportionate way. In deciding whether enforcement action is taken, local planning authorities should, where relevant, have regard to the potential impact on the health, housing needs and welfare of those affected by the proposed action, and those who are affected by a breach of planning control."

Paragraph: 005 Reference ID: 17b00520140306 Planning Practice Guidance states:

“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 decisionmaking process;help ensure that public acceptance of the decisionmaking process is maintained.”

#### 4. OTHER IMPLICATIONS

- 4.1 There are no significant direct race relations, equal opportunity, environmental or community safety implications arising in this report.

#### 5. CONCLUSION AND RECOMMENDATION

- 5.1 It is considered that the inclusion of clear glazing to side and rear windows has not caused any significant threat to residential amenity in terms of loss of privacy and so no further action is required in respect of installing obscure glazing.
- 5.2 It is considered that the amendments to the appearance and design of the building, namely the changes to the configuration of windows and doors, and amended design of the first floor window surround as outlined above, are acceptable and cause no significant harm to the visual amenities of the site or surrounding area and so no further action is required in respect of these design changes.
- 5.3 In relation to the timber cladding, it is recommended that an enforcement notice be issued to ensure a painted finish to the cladding within a specified timescale to give a more uniform appearance to the cladding and to blend better with the surrounding streetscene.

7<sup>th</sup> February 2018

## **Schedule of other matters**

### **1.0 Council Priority**

1.1 To support and contribute to the health, safety and well-being of the area

### **2.0 Specific Action Plans**

2.1 Matter considered and no issues identified.

### **3.0 Sustainability Issues**

3.1 The location at this level in a flood zone is unsustainable.

### **4.0 Equality Issues**

4.1 Matter considered and no issues identified.

### **5.0 Community Safety Issues (Section 17)**

5.1 None in this context.

### **6.0 Human Rights Issues**

6.1 Article 8 of the European Convention safeguards respect for family life and home, whilst Article 1 of the First Protocol concerns non-interference with peaceful enjoyment of private property. Both rights are not absolute and interference may be permitted if the need to do so is proportionate, having regard to public interests. The interests of those affected by proposed developments and the relevant considerations which may justify interference with human rights have been considered in the planning assessment.

### **7.0 Reputation**

7.1 Decisions are required to be made in accordance with the Town & Country Planning Act 1990 and associated legislation and subordinate legislation taking into account Government policy and guidance (and see 6.1 above and 14.1 below).

### **8.0 Consultations**

8.1 As referred to in the above report.

### **9.0 Risk Assessment**

9.1 As referred to in the above report.

## **10.0 Health & Safety Issues**

10.1 As referred to in the above report.

## **11.0 Procurement Strategy**

11.1 Matter considered and no issues identified.

## **12.0 Partnership Working**

12.1 Matter considered and no issues identified.

## **13.0 Legal**

13.1 Powers and duties contained in the Town and Country Planning Act 1990 (as amended) and associated legislation and statutory instruments.

## **14.0 Financial implications**

14.1 Decisions made which cannot be substantiated or which are otherwise unreasonable having regard to valid planning considerations can result in an award of costs against the Council if the land owner is aggrieved and lodges an appeal. Decisions made which fail to take into account relevant planning considerations or which are partly based on irrelevant considerations can be subject to judicial review in the High Court with resultant costs implications.