



WORTHING BOROUGH  
COUNCIL

Worthing Planning Committee  
19 January 2022  
Agenda Item no.7

Ward: Offington

## Enforcement report 68 Downside Avenue, Worthing

### Report by the Director for Economy

#### 1.0 Background

- 1.1 68 Downside Avenue is a semi detached bungalow on the north-east part of an unusually large looped shaped cul-de-sac on the west side of the road.
- 1.2 Planning permission was refused under AWDM/1479/20 for demolition of an existing conservatory and erection of a proposed ground-floor infill extension to west elevation plus a loft conversion including hip to gable enlargement with 1 no. window to north, 1 no. dormer to west and east and 1 no. rooflight to the east elevation. The refused elevations are shown below.



- 1.3 The refusal reasons relate solely to the front and rear dormers as follows:-

*The proposed rear dormer, by reason of its size, bulk, poor design and visibility from the street, would be harmful to the character and appearance of the existing property and the visual amenities of the area. Furthermore, due to the relationship with and close proximity to the rear gardens and windows of Nos.62 and 60 Downside Avenue, the proposed rear dormer would result in an unacceptable degree of overlooking onto these properties and would be an overbearing and oppressive feature that would be harmful to the amenities and privacy of these properties. As such, the proposals conflict with National*

*Planning Policy Framework paragraphs 127 and 130, Core Strategy Policy 16, Saved Local Plan Policies H16 and H18 and Supplementary Planning Guidance 'Extending or Altering Your Home'.*

*The proposed front dormer would be an incongruous feature which would be out of keeping with the predominant character of existing development. As such, it is contrary to Saved Local Plan Policy H16, Core Strategy Policy 16 and National Planning Policy Framework paragraph 127.*

- 1.4 Planning permission was subsequently granted under AWDM/1986/20 for the demolition of a conservatory and erection of proposed rear infill extension to west and loft conversion including hip to gable enlargement with 1 window to north, 3 no. rooflights to east and 2 rooflights to the west elevation. The approved elevations are shown below.

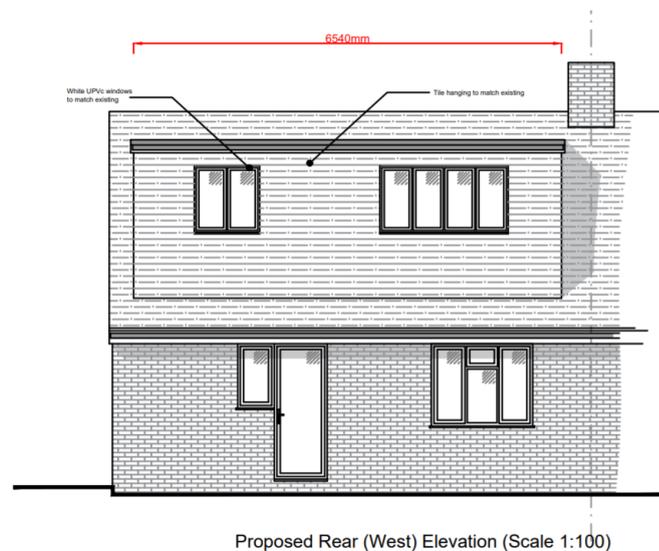


## **2.0 Planning (Enforcement) Assessment**

- 2.1 Complaints were received from several neighbours during mid November 2021 regarding the erection of a large rear dormer. Planning Enforcement Officers visited the site and met with the applicant's agent and it was established that works had not been completed but the ground-floor infill extension had been constructed and roof structures comprising a hip-to-gable roof extension and a rear dormer had been formed. The works being undertaken related to the part implementation of planning permission AWDM/1986/20 but at the same time the implementation of a rear dormer apparently as permitted development.
- 2.2 At the time of the site visit, the applicant's agent advised that the total volume of the roof extensions exceeded the permitted development allowance of 50 cubic metres due to 'builder error' and that it was planned to reduce the size of the rear dormer so that the total roof enlargements did not exceed 50 cubic metres.
- 2.3 As the planning permission previously granted was not substantially completed before starting works on the rear dormer, the Agent was advised that a planning application would need to be submitted to retain the development as

built. In effect planning permission AWDM/1986/20 has not been implemented as the works that have been carried out constitute a single building operation for which planning permission is now required in its entirety. The Agent was also advised that any further works would be carried out at their own risk.

- 2.4 The applicant's agent contends that the work on the rear dormer did not commence until the development granted planning permission under AWDM/1986/20 was substantially complete. In this respect the hip-to-gable was felted and battened but not externally finished in roof tiles. Your Officers are firmly of the opinion that this does not constitute substantial completion and indeed the approved development incorporated rear rooflights which have not been installed.
- 2.5 The applicant's agent has suggested that if the oversized rear dormer structure were to be removed and the hip to gable roof extension finished (i.e. the planning permission AWDM/1986/20 implemented and completed) at that point the householder could utilise the remaining permitted development rights to construct a rear dormer (with the volume of the total roof enlargements not exceeding 50 cubic metre) and the Local Planning Authority would have no control over the glazing within the windows of the rear dormer.
- 2.6 An application for a Certificate of Lawfulness for a proposed rear dormer (AWDM/2044/21) was validated on 12.11.2021. The application seeks to establish what size of dormer could be erected to the rear of the property under permitted development rights. A plan for a slightly smaller dormer has been submitted with the CLUED as shown below.



- 2.7 Following legal advice it may be difficult to grant the CLUED application given that works have been undertaken and it is not possible to retrospectively alter development to ensure that it complies with the requirements of permitted

development rights. In any event there is still some doubt that what has been indicated would be below the cubic content for roof alterations and this is being discussed with the applicant's agent.

- 2.8 A recent site visit has revealed that the rear dormer has been reduced in size and the measurements are being checked to determine whether it would be permitted development (if it had been built after the planning permission had been substantially completed).

### 3.0 Planning Assessment

- 3.1 A number of complaints have been received from local residents about the size of the rear dormer and the resulting overlooking to adjoining gardens. In this instance the level of overlooking is greater than one would normally expect due to the relationship of the property with adjoining properties as the block plan highlights below.



- 3.2 Whilst, the development, as built, requires planning permission, this in itself does not justify enforcement action and it is important to consider the expediency of any enforcement action.
- 3.3 An important consideration in this case is the 'fall back' position for the applicant and this is an important and material planning consideration in deciding whether to take any enforcement action. In view of the public interest in this case your Officers felt that it was appropriate for the Planning Committee to consider the matter.

- 3.4 Whilst, neighbouring residents are concerned about overlooking permitted development rights do allow for rear dormers with clear glazing upto 50 cubic metres. In this instance, whilst an Enforcement Notice could require the removal of the rear dormer and the necessary works to fully implement the planning permission granted under AWDM/1986/20, the applicant could then still subsequently install a dormer under permitted development rights.
- 3.5 In these circumstances, it is considered reasonable to allow the applicant to alter the dormer to a size that would not require planning permission if the current sequence of building works had been followed (notwithstanding the concerns of adjoining residents). At the present time the Agent is seeking to clarify that the dimensions of the recently altered dormer would have represented permitted development and Members will be updated at the meeting on this point. Nevertheless, the principle of the 'fall back' position is accepted and it is recommended that enforcement action is only taken if the dormer is not altered within the next two months to fall within 'permitted development rights.'

#### **4.0 Recommendation**

- 4.1 The Committee is recommended that, provided the dormer window is altered to fall within what would have been permitted development rights within two months of this Committee, no further action should be taken in connection with this matter.**

## **Schedule of Other Matters**

### **1.0 Council Priority**

1.1 Compliance with planning policies as set out in the adopted Local Plan

### **2.0 Specific Action Plans**

2.1 Planning Enforcement and Policy Guidance

### **3.0 Sustainability Issues**

3.1 Matter considered and no issues identified

### **4.0 Equality Issues**

4.1 Matter considered and no issues identified

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

5.1 Matter considered and no issues identified

### **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 noninterference 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 who have carried out unauthorised developments as well as those affected by them and the relevant considerations which may justify interference with human rights has formed part of the assessment process in deciding whether enforcement action is expedient.

### **7.0 Reputation**

7.1 Residents and Members would expect that effective enforcement action is taken when it is expedient to do so having regard to all material planning considerations.

## **8.0 Consultations**

8.1 Consultation with Legal Services

## **9.0 Risk Assessment**

9.1 Enforcement action is a discretionary activity which should only be taken where there is clear evidence to do so.

## **10.0 Health & Safety Issues**

10.1 Matter considered and no issues identified

## **11.0 Procurement Strategy**

11.1 Matter considered and no issues identified

## **12.0 Partnership Working**

12.1 Matter considered and no issues identified