

**4/02386/17/ROC - VARIATION OF CONDITION 3 (MATERIALS) ATTACHED TO PLANNING PERMISSION 4/04074/15/FHA (TWO STOREY SIDE EXTENSION, FRONT PORCH AND SINGLE STOREY REAR EXTENSION).
53 HOMEFIELD ROAD, HEMEL HEMPSTEAD, HP2 4BZ.
APPLICANT: MRS NICHOLA ROBERTS.**

[Case Officer - Briony Curtain]

Summary

The application is recommended for approval.

Members have already refused a similar application, however, they were not provided with the full facts or background information regarding the permission and contradictory planning conditions.

Background

Planning permission was originally granted for a two storey side extension, front porch and single storey rear extension in February 2016. The approved plans showed the extension was to be rendered (shown as dots on the plans with brick quoin detail to corner) and this was also set out in the application form.

However, when permission was granted the Case Officer imposed two contradictory conditions;

Condition 2 requires; **The development hereby permitted shall be carried out in accordance with the following approved plans/documents: 2453 - 1, 2, 3, 4 and 5 and site location plan.** The approved plans clearly differentiate between the areas which are to be rendered and those which are to be brick to match the existing property and as such in order to comply with condition 2 the extension would need to be partially rendered.

Condition 3 however requires '**The materials to be used in the construction of the external surfaces of the extension hereby permitted shall match in size, colour and texture those used on the existing building**', there is no render on the existing building and thus in order to comply with condition 3 the extension would need to be constructed of brick.

The two conditions imposed on the planning permission are thus in conflict with each other and cannot both be complied with. This was an error on the part of the LPA not the applicant.

To rectify the error, the applicants subsequently applied for permission for the previously approved extensions but with amended materials (render) under application 4/03352/16/FHA. This was refused by members in April 2017 as the use of render was considered incongruous in the street scene.

The development can not currently be completed without being in breach of one of the conditions imposed.

In order to complete the development, which was approved, and resolve the situation, the applicants now seek to vary condition 3, so that the extension can be rendered, but the roof tiles, windows etc would still match the existing.

Whilst the proposal is essentially the same as previously refused by members, the above was not made clear in reports to Members and instead it was suggested that the applicants had deliberately ignored the condition requiring matching materials. This was not the case.

In addition, since the refusal, additional legal advice has been sought. It is concluded that there

is a clear case of the LPA having imposed contradictory conditions. As such, there is the likelihood that an Enforcement or Breach of Condition Notice would be quashed if challenged in the Courts or an appeal is made to the Planning Inspectorate.

Proposal

It is proposed to vary condition 3 from planning permission 4/04074/15/FHA.

The extension is proposed to be rendered and as such would not be of matching materials to the existing building which is red brick. The roof tiles, windows and all other materials would match (and do match as the development has been constructed). Condition 3 would thus be varied to require that the development be carried out in accordance with the materials specified on the approved plans.

It is also proposed to increase the amount of render when compared to the original plans. The single storey front and rear elements of the extension are now proposed to be render in addition to the first floor gable and side elevation originally proposed.

Referral to Committee

The application is referred to the Development Control Committee as a similar proposal was refused by members in April 2017, having been called in by Councillor Tindall.

Planning History

4/03352/16/FHA TWO STOREY SIDE EXTENSION, FRONT PORCH AND SINGLE STOREY REAR EXTENSION - (AMENDED MATERIALS.)
Refused
18/04/2017

4/02373/16/DRC DETAILS REQUIRED BY CONDITION 3 (MATERIALS) ATTACHED TO PLANNING PERMISSION 4/04074/15/FHA - TWO STOREY SIDE EXTENSION, FRONT PORCH AND SINGLE STOREY REAR EXTENSION
Withdrawn
20/10/2016

4/00820/16/DRC DETAILS REQUIRED BY CONDITION 4 (VEHICULAR ACCESS) AND 5 (VISIBILITY SPLAY) ATTACHED TO PLANNING PERMISSION 4/04074/15/FHA - (TWO STOREY SIDE EXTENSION, FRONT PORCH AND SINGLE STOREY REAR EXTENSION)
Granted
08/11/2016

4/04074/15/FHA TWO STOREY SIDE EXTENSION, FRONT PORCH AND SINGLE STOREY REAR EXTENSION
Granted
23/02/2016

Policies

National Policy Guidance

Adopted Core Strategy

NP1 - Supporting Development
CS4 - The Towns and Large Villages
CS11 - Quality of Neighbourhood Design
CS12 - Quality of Site Design

Summary of Representations

One representation received.

OBJECT.

- this application to vary materials to my neighbour's property would be harmful to the character and appearance of the street scene and as such should be refused. The original planning officers report for this development (Planning Ref: 4/04074/15/FHA) stated that the size of the extension was significant (more than doubling the footprint of the property) and would only be acceptable if it was constructed from matching materials to the existing. As such condition 3 was applied which required the extension to be constructed from brickwork to match the original house and neighbouring properties. This was a specific condition imposed by the local planning authority to ensure this development was acceptable to the local area. There has been no material change in circumstance since this condition was imposed. My neighbours were fully aware of the condition for matching brickwork however they decided to construct their extension from blockwork with the intent of rendering the building. Their decision was made without any recourse to the Local Planning Authority and I am aware that in at an early stage of construction (July 2016) that they were advised by the Enforcement Team (Cora Watson) that the development taking place was contrary to the approved plans and that they proceeded at their own risk.
- In January 2017 my neighbours made a new planning application for rendering both the extension and their dwelling. This was refused by Planning Committee on 6 April 2017 for the following reason "The proposed use of render for the extensions is not widespread in the local area and will appear discordant and incongruous in the streetscene. **The proposal will therefore fail to integrate with the streetscape character of the area and will conflict with Policy CS 12 of the Core Strategy 2013**".
- The current proposal to vary the original condition is effectively the same scheme as that refused by Planning Committee in April 2017. There has been no change in the planning policy, the character of the area or the streetscene since Members refused the previous planning application. As such this application to vary the original condition for matching brickwork won't overcome Members previous concerns and won't move this matter forward.

Considerations

This application seeks permission to vary condition 3 (materials) only.

The principle of the extensions has already been established by way of the recently approved planning permission and the development has largely been constructed. However, it can not be completed due to the contradictory conditions imposed (see summary section above).

Members have previously refused the use of render and as such the next step would be for the LPA to serve an enforcement notice (development not built in accordance with the plans) or a breach of condition notice. Whilst the serving of an enforcement notice could be appealed to

the Planning Inspectorate, there is no right of appeal to PINS for a breach of condition notice, but they are challengeable in court. For an enforcement notice to be served the LPA would need to be satisfied that the development has not been built in accordance with the approved plans and for the Breach of condition notice the LPA would need to be satisfied that there is a clear breach of condition and that there is no contradiction in the conditions imposed.

Legal advice has been sought on these and it is concluded that;

'there is a clear case of the LPA having imposed contradictory conditions:

On the one hand, the development must be in matching materials.

On the other, it must be in accordance with approved plans, which (whilst not mentioning the words "render") are clearly not to be built in matching materials – this is evident from the colour difference.

Of interest, the plan does indicate that it is to be viewed in the context of all submitted documents (or words to that effect) – this is important because, when reading the application itself, it is clear that the intention was to render in part.

The applicant cannot comply with both conditions. Their original intention to render the extension was clear and it appears at no point did the Case Officer contact the applicant or their agent to suggest the use of render was unacceptable.

There thus exists the likelihood that the serving of either notices may be quashed if challenged in the Courts or an appeal to the Planning Inspectorate was made.

Adopted Core Strategy CS12 : Quality of Site Design does encourage site development to respect adjoining properties in terms of materials, however, this is not prescriptive and it is common for extensions to be built in varying materials. Using a differing façade material on an extension allows a clear definition between the existing dwelling and the extension. Although it is accepted that the predominant material in the immediate area is brick there are a number of examples in the area where properties have been extended/alterd using render.

In assessing the current proposal, however, it is important to consider the above legal advice regarding the contradictory conditions. In addition it should also be noted that under Class A Permitted Development Rights the existing brick work of No. 53 Homefield Road and that of any other property in the street scene could be painted without the need for planning permission. The painting of the external brick work would also undoubtedly result in the dwelling appearing more prominent in the street scene. This, however, would not be in breach of planning control. It is considered that the painting of the existing brick work would have the same overall visual impact on the street scene, in terms of its prominence as painted render. This is material consideration that should be afforded weight in the current considerations.

Finally, turning to the increase in the amount of render now proposed, this is not subject to the contradictory conditions, however, the increased prominence of the house in the street scene would be as a result of the part rendering of the extension. The full rendering of the extension would have no significant additional impact. The existing first floor of the front elevation of the original property would remain brick and the render of the extension would be broken up by the garage door, front door and side light. It is therefore considered that the additional areas of render are also acceptable.

Bearing all the above in mind, it is concluded that a refusal could not be sustained. It is therefore recommended that the application be supported.

RECOMMENDATION - That planning permission be **GRANTED** for the reasons referred to above and subject to the following conditions:

- 1 **The development hereby permitted shall be begun before the expiration of three years from the date of this permission.**

Reason: To comply with the requirements of Section 91 (1) of the Town and Country Planning Act 1990 as amended by Section 51 (1) of the Planning and Compulsory Purchase Act 2004.

- 2 **The development hereby permitted shall be constructed in accordance with the materials specified on the approved drawings 2453-4 (annotated).**

Reason: To ensure a satisfactory appearance to the development.