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## Appeal Decisions

Site visit made on 14 March 2016

by Mrs H M Higenbottam BA (Hons) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 13 April 2016

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**Appeal A: APP/V2255/C/15/3062068**

**Appeal B: APP/V2255/C/15/3062069**

**1 New Houses, Broom Street, Graveney, Faversham, Kent ME13 9DW**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - Appeal A is made by Mrs Sarah Jefferys and Appeal B by Mr Brian Jefferys against an enforcement notice issued by Swale Borough Council.
  - The notice was issued on 6 May 2015.
  - The breach of planning control as alleged in the notice is 'Without planning permission, the insertion of a rooflight window in extension not shown on plans granted under application SW/12/0987.'
  - The requirements of the notice are:
    - (i) Remove the rooflight window from the extension;
    - (ii) Restore the roof as shown on the original plans on application SW/12/0987;
    - (iii) Remove any materials or debris caused by compliance with (i) above.
  - The period for compliance with the requirements is 3 months.
  - The appeal is proceeding on the grounds set out in section 174(2) (c) and (f) of the Town and Country Planning Act 1990 as amended.
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### Decisions

1. It is directed that the enforcement notice is corrected by
  - The deletion from paragraph 3 of the words 'in extension not shown on plans granted under application SW/12/0987' and the substitution therefore of the words 'on the western roof slope of the rear extension' in paragraph 3;

And varied by

- The deletion in paragraph 4 of the whole of the requirements (i), (ii) and (iii) and the substitution therefor of the following:
    1. The rooflight window shall be obscure glazed; and
    2. The rooflight window shall be non-opening.
2. Subject to these corrections and variations Appeals A and B are dismissed and the enforcement notice is upheld.

### Preliminary Matters

3. The Town and Country Planning (General Permitted Development) (England) Order 1995 as amended (1995 GPDO) has now been replaced by the Town and
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Country Planning (General Permitted Development) (England) Order 2015, which came into force on 15 April 2015. However, it was in force at the time the works in question are said to have taken place and is therefore the relevant Statutory Instrument for the purposes of my decision.

### **The Notice**

4. The appeal property is an end of terrace two storey dwelling with accommodation in the roof space. The other two properties within the terrace are No 2 and Wayside. It is clear from the evidence submitted by both parties that the rooflight window attacked by the Notice is on the west roof slope of the rear extension granted under reference SW/12/0987, facing towards No 2 and Wayside. For the sake of clarity I will correct the allegation to 'Without planning permission, the insertion of a rooflight window on the western roof slope of the rear extension.'

### **Appeal on ground (c)**

5. In appealing on ground (c), the burden of proof is firmly on the appellants to demonstrate on the balance of probabilities that the matters stated in the enforcement notice do not amount to a breach of planning control.
6. Planning permission was granted for a two storey side and rear extension at the appeal property under reference SW/12/0987. There is no rooflight window shown on the approved plans of that permission on the western roof slope of the rear extension. The appellants state that the extension was constructed between April and July 2013 and it was substantially complete in July 2013 pending the manufacture and installation of a bespoke heating system. In August 2013 re-plastering and decorating continued in the existing property. In September 2013 the appellants appointed Mr John Bush to do further work on the internal loft space including the installation of the window. A letter from BJH Bush Estate Management confirms these dates. Assent Building Control have confirmed that the two storey side and rear extensions were substantially complete in July 2013.
7. The Council record in their statement that information was received in the summer of 2014 that a 'velux' window had been inserted into the recently built two storey side and rear extension and the window was clear glazed and capable of opening.
8. The rooflight window the subject of the Notice when inserted into the western roof slope of the rear extension was clear glazed and capable of being opened. It was not shown on the plans granted planning permission under reference SW/12/0987. As such, it did not benefit from an express grant of planning permission.
9. Class C of Part 1 of Schedule 2 to the 1995 GPDO grants deemed planning permission for any other alterations to the roof of a dwellinghouse. The rooflight window is located on a roof slope forming a side elevation of the dwellinghouse and at the time it was inserted it was clear glazed and openable and less than 1.7m above the floor of the room in which the rooflight window was installed. As such, it failed to comply with Conditions C.2 (a) and (b) of Class C.
10. Therefore, whether or not the rooflight window was inserted as a separate building operation after the construction of the extension granted express

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planning permission it failed to comply with the relevant conditions of Class C of Part 1 of Schedule 2 of the 1995 GPDO and thus required planning permission. As such, the appeals on ground (c) fail.

**Appeal on ground (f)**

11. This ground of appeal is that the requirements of the notice are excessive and lesser steps would overcome the objections. The appellants have undertaken works to the rooflight window to fix it shut and have applied a film to the glazing to obscure it. They consider that this addresses the overlooking issue with the adjacent occupiers and with these alterations to the rooflight it would be allowable 'under permitted development' and it is excessive to require its removal.
12. The Council state that if an application to retain the rooflight window had been made it would be likely to be supported subject to conditions being imposed to require obscure glazing and fixed nature of the window. In its view without such conditions the window could become unfixed and clear glazing installed with impunity thus causing demonstrable harm to residential amenity. Local residents have also stated that the rooflight window has resulted in loss of privacy.
13. The purpose of the notice is therefore to remedy any injury to amenity. I consider that a clear glazed and openable rooflight window on the western roof slope results in significant overlooking and loss of privacy to the occupiers of No 2 and Wayside. However, I am satisfied that this loss of privacy can be satisfactorily addressed by varying the requirements to achieve an obscure glazed and non-openable rooflight window.
14. Section 181 of the Act provides that compliance with an enforcement notice does not discharge it. This means that if an enforcement notice is complied with and the development is subsequently resumed there is a contravention of the notice.
15. I will therefore vary the terms of the Notice to require the rooflight window to be obscure glazed and non-opening. The appeals on ground (f) succeed to that extent.

*Hilda Higenbottam*

Inspector