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Planning Statement

Application site: 32A Barnsley Road, Brierley, Barnsley, S72 9LD

Proposal: Certificate of existing lawful use for a building and raised terrace as shown on the submitted plans

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1.0 Introduction

- 1.1 Planning application 2017/ 0376 was for the erection of a detached dwelling with integral garage. The application was granted by Barnsley Council on 9th July 2017.
- 1.2 The summary of this case is that the existing building is materially different to the planning permission 2017/0376. Therefore, the consent was not implemented. The building was substantially completed more than four years ago and is therefore immune from enforcement action by the passage of time.
- 1.3 The certificate is for the building as built and shown on the submitted plans BL101, E100, E101, E102. The plans were produced by Precision Plan Drawing Ltd using a laser scanner and are commensurate with the building on site.
- 1.3 The certificate is for the building only i.e the operational development. The use of the building as a dwelling is not proposed by this certificate. This is because whilst the building was completed more than four years ago, the building has not been continuously occupied as a dwelling for more than four years. Following completion of the dwelling, the applicant moved in but then he moved out for family reasons, which broke the continuous occupancy. In the event that this certificate is granted, the intention is to submit a full planning application for the use of the building as a dwelling.

2.0 Planning Application 2017/0376

- 2.1 Planning consent was given by Barnsley Council on 9th July 2017 for the Erection of 1 no. detached dwelling with integral garage. The plans which formed part of the consent and listed in condition 02 of the approval are: Plans & Elevations Rev. B and Site Plan Rev. B

3.0 Differences in the Granted Dwelling and the Dwelling As Built

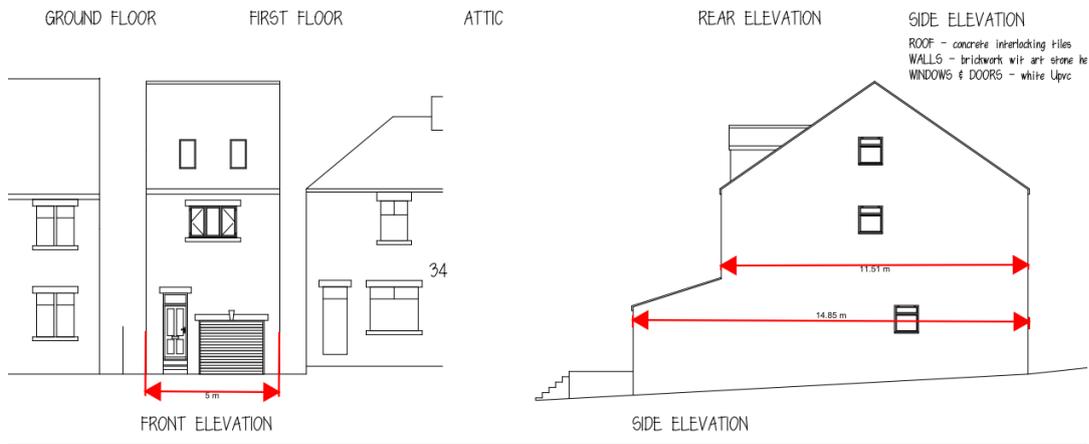
- 3.1 The material differences in the built dwelling and when compared to the approved plans are summarised below:

External Dimensions

- 3.2 The external dimensions of the built dwelling are different to the approved plans. The approved plans show a detached dwelling which is 5m x 11.51m with a 3.34 m single storey projection. The submitted drawings show the dwelling as 4.92m x 11.67m with a 2.5m single storey projection.



Granted



As Built



Height

- 3.3 The approved plans show the height to the eaves to be 6.94m. The building as built has a height to eaves of 6.37m (0.57m difference).
- 3.4 The approved plans show the height to the ridge to be 11m. The building as built is 10.27m (0.73m difference)



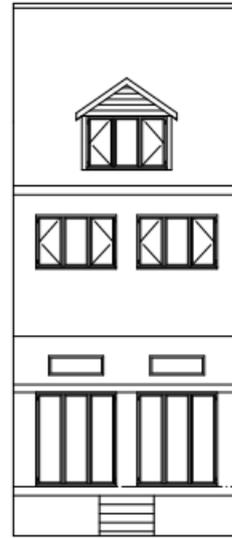
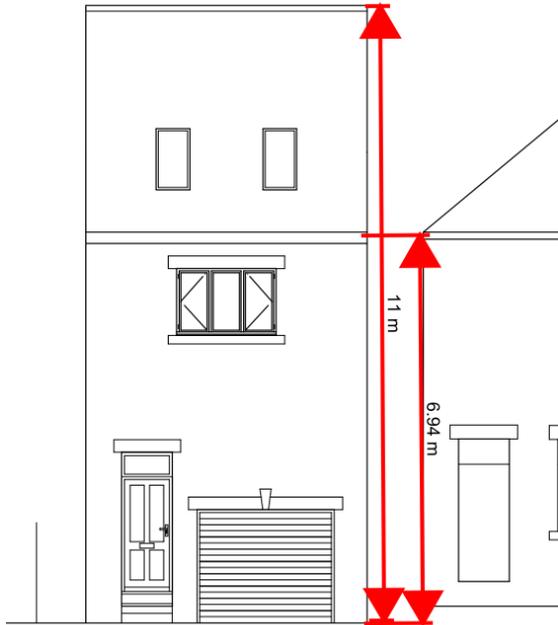
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Elevations

- 3.5 All four elevations are different to the approved drawings. The differences include relocation of the front door to the side, the garage door is not level with the adjacent opening, changes to the position, size and number of windows and alteration to the position of the rear dormer.
- 3.6 In particular, the front elevation which is visible from the street scene has a material number of differences. These differences include the front door being replaced by a window and the first floor window is set several courses lower than the eaves.



Granted



REAR ELEVATION

As Built



1 Front Elevation
1 : 100



2 Rear Elevation



Floor Plans

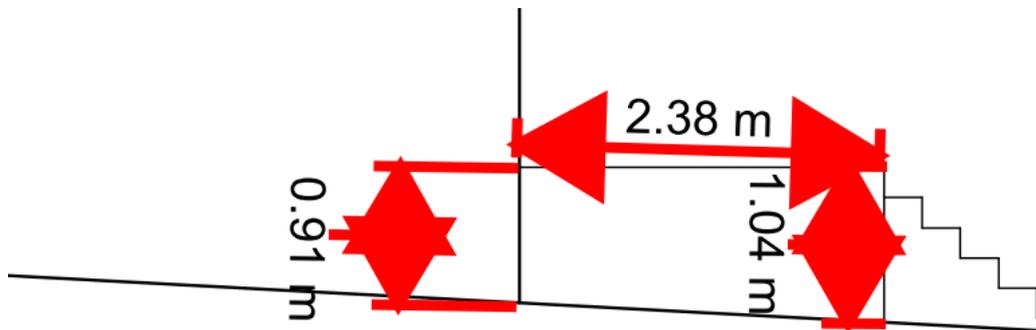
3.7 Various changes to the approved floor plans. Dwelling remains at three bedrooms.

Raised Terrace

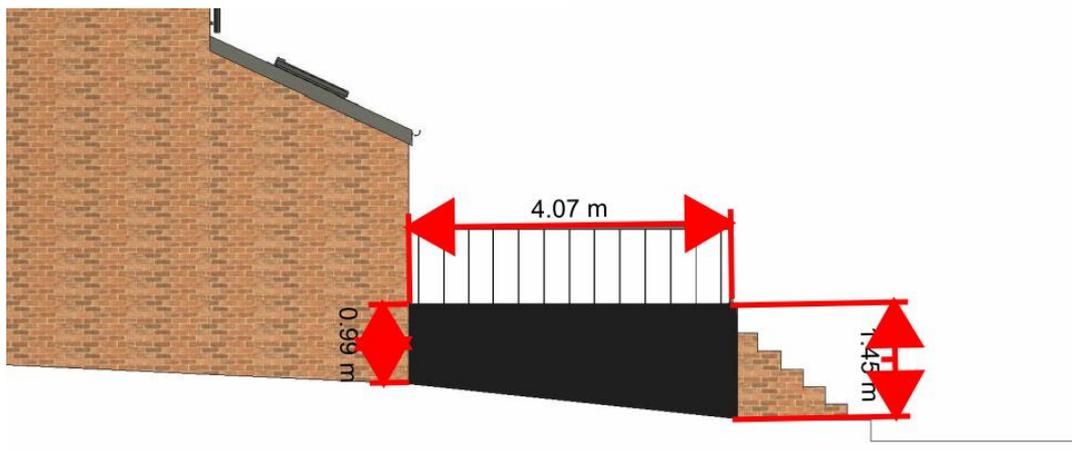
3.8 The 2017 consent included a 2.38m long raised terrace at the rear which was raised off the floor by 0.91m to 1.04m.

3.9 The built terrace is 4.07m long and raised off the floor 0.99m to 1.45m. Therefore, the proposed terrace is 8 – 41cm higher and 1.69m longer than approved:

Granted



As Built



Siting

- 3.10 With the exception of a change in footprint size, the siting has not changed. The approved siting was in line with the adjacent dwellings. The proposed drawings show the dwelling also in line with the adjacent dwellings.

4.0 Legal Position and Relevant Immunity Period

- 4.1 Section 191B of the TCPA 1990 states

(1) If any person wishes to ascertain whether—

- (a) any existing use of buildings or other land is lawful;
- (b) any operations which have been carried out in, on, over or under land are lawful; or
- (c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,

he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

(2) For the purposes of this Act uses and operations are lawful at any time if—

- (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and
- (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

- 4.2 Section 171B of the TCPA states:



(1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of—

(a) in the case of a breach of planning control in England, ten years beginning with the date on which the operations were substantially completed,

4.3 The 10-year rule is subject to a transitional period. The transitional provisions confirm that operational development is subject to the four-year rule, provided that the operational development was substantially completed before 25th April 2024.

5.0 Case Law and the Considerations of the Certificate

5.1 The first consideration is for the LPA to consider whether the building on site is materially different to the granted consent. If there are material differences between the granted plans and the building, the 2017 permission has not been implemented. Furthermore, the differences should be looked at their entirety rather than looking at each one in isolation. These are principles established by *Commercial Land Limited v Secretary of State for Transport, Local Government and the Regions and another* [2002] EWHC 1264 (Admin). Later case law continues the principles established in this case.

5.2 Given that case law has established that if a building is materially different to the granted plans, permission has not been implemented. However, it is within the remit of the decision maker to consider whether the differences are material or not. Should the changes not be considered material, it may allow the applicant to regulate the differences by the submission of a non-material amendment application under S96 of the TCPA.

5.3 Evidence to Demonstrate Immunity from Enforcement Action.

5.4 In a separate document are dated photographs of the building, provided by the applicant. According to the photos provided, the site was stripped in July 2019, and footings were laid by August 2020. The main part of the dwelling was completed by June 2020 and the raised terrace at the rear was completed by January 2021. Therefore, the building was substantially complete by January 2021. Given that the building was substantially complete before April 2024, immunity from enforcement action is gained after four years. The building has now been substantially complete in excess of five years and is therefore immune from enforcement action.

5.5 In addition to the photographs, Google aerial images correspond with the applicant's photographs and these are included with the submission. According to the dates of the Google aerial images, the site was vacant in May 2019. The dwelling is clearly visible on the aerial photos by April 2021.



6.0 Summary and Conclusion

- 6.1 The submission is for a certificate for the building as built and as shown on the submitted drawings. The building was built and completed over 4 years ago.
- 6.2 When compared to the approved plans, there are a number of differences, but the material differences are considered to be:
- The built dwelling has a lower eaves and ridge height.
 - The single storey rear projection is materially different, being 84cm shorter.
 - The front elevation is materially different to the granted plans. The front elevation differences are a window instead of a door, the garage door is not level with the adjacent window, and the first-floor window is not flush with the eaves. It is several brick courses lower than the eaves.
 - The rear elevation is materially different. The window positions including the dormer are different.
 - The raised patio at the rear is both higher and longer than the granted plans. The proposed terrace is 8 – 41cm higher and 1.69m longer than approved.
- 6.3 When considering all of the differences cumulatively but particularly the material differences as set out above, it is considered that the building as built is materially different to the 2017 permission, thus the permission was never implemented, and the building is now immune from enforcement action by the passage of time.