
Appeal Decision

Site visit made on 5 September 2016

by Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)

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

Decision date: 21 September 2016

Appeal Ref: APP/K3605/C/15/3140225

Norfolk Cottage, Downside Common Road, Downside, Cobham, Surrey, KT11 3NN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Ms Laura Robinson against an enforcement notice issued by Elmbridge Borough Council.
- The enforcement notice, numbered INV/2014/0389, was issued on 9 November 2015.
- The breach of planning control as alleged in the notice is within the last four years and without planning permission, the unauthorised erection of a single storey rear/side extension.
- The requirements of the notice are to:
 1. Permanently demolish the portion of the extension shown hatched on the plan attached to the notice and
 2. Permanently remove all resulting materials from the land.
- The period for compliance with the requirements is two months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld.

Preliminary Matter

1. The Appellant states in her appeal statement¹ that there is an appeal on ground (c). However, this ground was not 'ticked' on the appeal form and no submissions have been made in respect of it. There are however, some matters in the ground (a) appeal that could be considered to be a ground (c) appeal and I will take these into account in my determination of the ground (a) appeal and in the deemed planning application.

The appeal on ground (a) and the deemed planning application

2. In an appeal on ground (a) and the deemed planning application the Appellant is seeking planning permission for what is alleged in the notice, that is, the single storey rear/side extension that has been built. Government guidance in the National Planning Policy Framework (the Framework) advises that inappropriate development in the Green Belt is harmful to the Green Belt by definition and should not be approved except in very special circumstances². I therefore consider the main issues in this appeal are: whether the extension represents inappropriate development in the Green Belt for the purposes of the

¹ Paragraph 1.5

² Paragraph 87 of the Framework

Framework and the Development Plan; if the extension is inappropriate (a) its effect on the openness of the Green Belt; (b) its effect on the character and appearance of the Downside Village Conservation Area; and (c) whether any harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the extension to the dwellinghouse.

Whether the proposed extension represents inappropriate development

3. The Framework advises that the extension or alteration of a building, provided that it does not result in disproportionate additions over and above the size of the original building is not inappropriate development³. The Framework does not elaborate on the meaning of 'disproportionate' but the Council, in Policy DM18 of the Local Plan⁴, says that support will be given to proposals for extensions and alterations provided they do not result in an increase beyond 25% in volume and 25% in footprint over and above the size of the original building, either individually or cumulatively.
4. The appeal site lies within the Metropolitan Green Belt, the Downside Village Cobham Conservation Area and outside a defined settlement boundary. It comprises the Cottage which is an extended semi-detached house dating from the Victorian period built of brick under a slate roof. The adjoining property has been extended as apparently have many of the other cottages in the row of original estate workers' dwellings. The area is mixed in character with a variety of buildings dating from Victorian to the 20th Century.
5. In 2013 a Lawful Development Certificate (LDC) was granted for a proposed single storey rear extension⁵ because it would have been permitted development⁶ and in 2014 another LDC was granted for a proposed front porch and a detached garage at rear⁷ on the same basis. Planning permission was granted for a two storey side extension following demolition of the existing detached garage⁸ and planning permission was refused for what has been built⁹.
6. Whilst I accept that the scale, mass and bulk of the developments proposed in the LDCs are similar in some respects to the ground floor extensions that have been built, the LDCs refer to two separate and distinct elements which appear to be shown on drawing no.13/0837 rev A¹⁰. However, that plan does not reflect what has been built because the extensions that have been built result in one combined and extended element which increases the floor area of the dwellinghouse. A LDC is not a grant of planning permission and there is no grant of permission for what has been built. On this basis any appeal on ground (c) would have failed.
7. The Appellant says that there has been no material increase in floor area or volume, but does acknowledge that the footprint of the development is large

³ Paragraph 89 of the Framework

⁴ Elmbridge Local Plan Development Management Plan April 2015

⁵ Ref:2013/2860

⁶ Pursuant to the Town and County Planning (General Permitted Development) Order (1995)

⁷ Ref:2013/4433

⁸ Ref:2014/1535 drawing no 13/0942 Rev A

⁹ Ref:2014/4828 drawing no14/1124

¹⁰ Appendix A5 to the Appellant's statement

when compared with the original cottage¹¹. The Council says that the dwelling was extended in the past, sometime in the 1950s, at first floor level and that the footprint of the dwelling as it now stands is more than double that of the original cottage. In addition the volume of the cottage has significantly increased with the implementation of the permission and the unauthorised extensions.

8. On a mathematical calculation the extension to the dwelling is disproportionate and it significantly increases the size and volume of the original, house. For reasons given below I also consider that the volume and prominence of the proposal is disproportionate with regard to the original dwelling. I therefore find that the extension results in a disproportionate addition over and above the size of the original building and that it is inappropriate development.
9. Policy DM18 of the Local Plan seeks to ensure that strict control is exercised over extensions in the Green Belt and I have found that the single storey rear/side extension does not comply with this Policy and that it is inappropriate development in the Green Belt. Inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances¹². I give this finding significant weight.

Openness

10. There is no definition of openness in the Framework but, in the Green Belt context, it is generally held to refer to freedom from, or the absence of, development. The essential characteristics of Green Belts are their openness and their permanence.
11. As set out above, the single storey rear/side extension significantly increases the bulk and mass of the dwelling which has an adverse impact on the openness of the Green Belt. The loss of openness in the Green Belt that results from the increase in the volume of the building conflicts with this essential characteristic. I give this finding significant weight.

Character and appearance of the Conservation Area

12. The Council, taking into account the LDCs and their possible cumulative impact does not consider that the harm to the Conservation Area is sufficient to warrant refusal. I note that, from the public viewpoint, the development with which I am concerned has little impact on the Conservation Area and I have no reason to come to a different conclusion from the Council.

Other considerations

13. I appreciate that the works that have been undertaken are to a high degree both internally and externally; that the resulting extension has little impact on the Conservation Area; and that there are many other extensions to dwellings in the area. With regard to the last point I note that none of the extensions I was able to see were comparable with the development with which I am concerned in this appeal. I appreciate that the proposal may be in compliance with some policies and planning guidance, however, this does not outweigh the

¹¹ Para 7.14 of the Appellant's statement

¹² Paragraph 87 of the Framework

harm I have identified or provide justification for a grant of planning permission.

Conclusions

14. I have found that the single storey rear/side extension is inappropriate development and that there is a loss of openness to the Green Belt. The Framework advises that substantial weight has to be given to any harm (which includes harm by reason of inappropriateness) to the Green Belt¹³. Therefore, on balance, I conclude that the other considerations in this case do not clearly outweigh the harm I have identified and that the very special circumstances necessary to justify the extension as built do not exist.
15. For the reasons given above, and having taken account of all other matters raised, I conclude that the appeal on ground (a) fails and that the deemed planning application should be refused.

The appeal on ground (f)

16. An appeal on ground (f) is on the basis that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control.
17. The purpose of the requirements is to remedy breach¹⁴ and the requirement to demolish the portion of the extension shown hatched on the plan attached to the notice is in accordance with the statutory purposes. There is no need for the requirements of a notice to provide for re-building. However, compliance with the requirements of a notice do not prevent the Appellant doing what she is lawfully entitled to do and I note that by virtue s.173(11) of the 1990 Act in requiring removal of the hatched part only the Council is 'under-enforcing' and, once the requirements have been complied with, planning permission would be granted for what remains of what has been built.
18. The Appellant has not suggested any alternative steps which would fulfil the statutory purpose and I find that the requirements are reasonable and do not exceed what is necessary to remedy the breach. The appeal on ground (f) fails.

The appeal on ground (g)

19. In an appeal on ground (g) the Appellant is saying that the period specified in the notice for compliance falls short of what should reasonably be allowed. The Appellant seeks a period of one year to find and employ a builder which she believes could take that long.
20. The period for compliance relates to the requirements which comprise the demolition of part of what has been built. I do not consider that the actual works required are extensive and that a reasonable period of time for this work is two months as cited. I do however remind the Council of its powers in s.173A(1)(b) of the 1990 Act to extend any period for compliance should it prove to be necessary.

¹³ Paragraph 88 of the Framework

¹⁴ S.173(4) of the 1990 Act

21. The appeal on ground (g) fails

Conclusions

22. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Decision

23. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Gloria McFarlane

Inspector