
Appeal Decision

Site visit made on 10 October 2016

by Sukie Tamplin DipTP Pg Dip Arch Cons IHBC MRTPI

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

Decision date: 27 October 2016

Appeal Ref: APP/D3640/C/16/3153635

Willowood, School Road, Windlesham GU20 6PA

- 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 Mrs Elizabeth Bardoe against an enforcement notice issued by Surrey Heath Borough Council.
- The notice was issued on 7 June 2016.
- The breach of planning control as alleged in the notice is:
Without planning permission the unauthorised erection of a two (2) storey four (4) bay garage building, with residential accommodation at first floor level on "the Land" and in the area shown cross hatched in Black on the attached plan (attached to the notice). The location and dimension of the black hatched area on the plan are indicative and the plan is not to scale.
- The requirements of the notice are:
 - i) Remove the outer staircase;
 - ii) Remove the dormer windows;
 - iii) Remove all appliances, apparatus and furnishings associated with primary living accommodation including the bed, bathroom and kitchen; and
 - iv) Reduce the overall height of the building to 4 metres to comply with the requirements of Class E. 1(e)(i) of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015.
- The period for compliance with the requirements is six (6) months.
- The appeal is proceeding on the grounds set out in section 174(2) (a),(c),(f) & (g) of the Town and Country Planning Act 1990 as amended.

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

Application for costs

1. An application for costs was made by Mrs Elizabeth Bardoe against Surrey Heath Borough Council. This application is the subject of a separate Decision.

Background

2. Willowood is a detached property which is located to the south side of School Road, and is part of an intermittent linear ribbon of development in Windlesham. The land slopes gently southwards from the road and the appellant says that historically there have been flooding issues which have been resolved by landscaping and drainage works in part of the large garden.
3. The building¹ subject of the appeal has been constructed about 20m to the west of the house and provides storage for cars and domestic paraphernalia.

¹ This is referred to variously in the evidence as the garage block, garage building or simply as the outbuilding.

Above this and accessed by an external stairway is accommodation comprising a kitchen, living room and sleeping facilities and a separate bathroom.

The appeal on ground (c)

4. Ground (c) arises where an appellant seeks to argue that the matters alleged by the enforcement notice do not constitute a breach of planning control. It is one of what are termed the "legal grounds" of appeal against an enforcement notice and the onus of proof lies with the appellant, the relevant test of the evidence being the balance of probability.
5. Part 1 of Schedule 2 of *The Town and Country Planning (General Permitted Development) Order 2015* (the GPDO) says that subject to various limitations and conditions planning permission is granted for development within the curtilage of a dwellinghouse. Class E of Part 1, says in turn, that the provision within the curtilage of the dwellinghouse of (a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such is permitted development. Section E.1 sets out the various limitations in terms of the footprint, height, location and detailing.

Whether incidental to the enjoyment of the dwellinghouse

6. The appellant accepts that the roof space within the outbuilding contains facilities that might enable that building to be virtually self-contained but says that the key point is that the building is not used for that purpose. In support of this she says that because the main house at Willowood contains a kitchen, bedrooms, main bathrooms and living space the outbuilding simply provides secondary incidental space which increases the facilities of the dwellinghouse but does not offer an alternative location for its core functions. She says that the roofspace is used for occasional guests and family who visit and also very infrequently for home working.
7. However, whether or not it is in regular use, case law has said that the distinctive characteristic of a dwellinghouse is its ability to afford to those who use it the facilities required for day to day private domestic existence, (*Gravesham BC v SSE & O'Brien* [1982] 47 P&CR 141; [1983] JPL). Whilst I note the appellant's description of the accommodation as "a small area within the roofspace of a single area of space that has a bed, kitchenette and WC", I do not find this accurate. The upper accommodation has a fully equipped kitchen including generous work space, a fridge, hob and a full size oven and all the facilities available for preparing main meals. The living area has a settee, separate bed and other facilities such as a large television. The bathroom has a full size bath and shower as well as a WC. In my judgment and in the light of *Gravesham* the accommodation has the characteristics of a dwellinghouse and there would be little or no need for any occupant to rely on facilities in main house.
8. In these circumstances I find that the facilities provided are more than that reasonably required for purposes incidental to the enjoyment of the dwellinghouse as such. In coming to this conclusion I have taken account of the judgments relied upon by the appellant in paragraphs 48 and 50 of her statement and in particular *Emin v Secretary of State for the Environment* [1989] EGCS 16. I also note that the circumstances in the Millfield House appeal decision are not comparable because the use of that outbuilding was not for living accommodation.

9. This view is supported by the *Permitted development for householders: Technical Guidance* as amended April 2016 (PDTG)², which provides an interpretation of Part 1 of the GPDO. This says that a large range of common buildings such as garden sheds, other storage buildings and garages are allowed as long as they can be properly described as having a purpose incidental to the enjoyment of the dwelling house. But incidental uses would not include separate self-contained accommodation or the use of an outbuilding for primary living accommodation such as a bedroom, bathroom, or kitchen.
10. Consequently, because the building subject of this appeal is not, as a matter of fact and degree, incidental to the enjoyment of the dwellinghouse, it is not permitted by the GPDO.
11. However even if I had accepted the appellant's points and her view that it is the use of the building as opposed to the facilities it provides that is determinative, the Council say that the building does not satisfy the limitations set out in Section E.1 of the GPDO as referred to above. In particular the Council say that the building has more than one storey, (E.1(d)), its height exceeds 4 metres (E.1(e)), and it includes a raised platform(E.1(h)). If any of these limitations has been exceeded the building cannot benefit from the planning permission granted by the GPDO.

Whether single-storey

12. The appellant asserts that the building is single storey and says if the roof space is used it does not cease to be one-storied
13. There is no definition of 'single storey' in the GPDO but the Collins English Dictionary defines a single storey of a building as having only one floor or level. It says a floor of a building comprises all the rooms that are on a particular level and a room as an area enclosed within a building. This seems to me to reflect the ordinary, day to day, meaning of the term "single storey".
14. In this case the ground floor is occupied by storage of vehicles, domestic paraphernalia, garden and husbandry equipment. There appears to be no internal link to the area described as roof space. The upper living accommodation is accessed via a permanent external staircase and it is quite separate from the storage beneath. The upper accommodation has all the attributes of 'permanent' living space. There is a floor, ceiling and two dormer windows albeit that part of the rooms have restricted head height. This is materially different from an internal roof space which is intermittently used and is ancillary to the uses on the ground floor. In these circumstances the appeal premises have, as a matter of fact and degree, two levels and thus the building is not single storey. On this element alone the building does not benefit from planning permission granted by the GPDO.

Height

15. Section E.1(e) of the relevant part of GPDO says that planning permission is not required for a building within the curtilage of a dwelling house if it does not exceed 4m in height. The PDTG says that where there are references to height, the relevant ground level is the highest part of the surface of the

² *Permitted development for householders: Technical Guidance* Department for Communities and Local Government: Updated April 2016:

- ground next to the building and where ground level is not uniform the ground level is the highest part of the surface of the ground next to the building.
16. The appeal site appears to have had historic flooding issues and I saw that the level of the land dips gently southwards from School Lane. Consequently works have been undertaken to improve drainage and this has involved some re-sculpting of the land. Whilst there is evidence of an historic retaining wall close to the main house there little direct evidence of the historic level of the ground adjacent to the outbuilding.
 17. A detailed site survey has been provided and this records the current land levels. This demonstrates that the concrete apron and path adjacent to the building has a datum level of about 49.97m other than adjacent to the north-east corner of the building where steps³ lead up to the level of the garden to the north. The ridge height of the subject building is 54.93m, thus the appellant's survey demonstrates that the height of the building above the adjacent path and concrete apron is 4.96m.
 18. But it is suggested that the appropriate datum level from which to measure height is the highest ground level beyond and to the north of the path around the outbuilding. The submitted survey shows that this height is 50.90m above datum so that in this scenario the ridge height of the building above the adjacent 'natural' ground level is still over 4m in height. Whilst the appellant says that the ground levels "just to the rear of the building " are 50.94m and 50.95m above datum I give this little weight as the survey shows these spot heights are 2m and 3.5m north-east of the building. The term 'height' in the PDTG is the highest part of the land next to the building and in my judgment land levels 2m or more from the building are not 'next' to the development. In any event the reference to adjacent 'natural' ground level was removed in the April 2016 revision of the PDTG.
 19. Moreover, although I have evidence about the current land levels the appellant says that there has been significant ground works within the appeal site and this has included the provision of a new driveway as well as the drainage improvements. The new driveway is described as being "slightly further to the west than originally existed" but the appellant has provided no further evidence of the line of this or whether it was originally across the site of the outbuilding. The appellant told the Council in her email of 14 January 2015 that the land around the building was excavated and she fully intended to reinstate the borders. Thus it is apparent that the levels of the land hereabouts have been altered and the reinstated borders do not provide a reliable datum. Hence she has not demonstrated that the building is less than 4m in height and on the contrary her own survey shows that the structure is more than 4m in height above the adjacent land, which in this case is the path around the building.
 20. Consequently, because the building is, as a matter of fact, over 4m in height above the immediately adjacent land it is not permitted by the GPDO.

Raised platform

21. Class E, E.1(h) says that development is not permitted if it would include the construction or provision of a verandah, balcony or raised platform. The PDTG says in turn that "a raised platform is defined as any platform that has a height

³ The Permitted Development Technical Guidance says that ground level would not include any addition laid on top of the ground, and thus in this case would not include the steps.

of more than 0.3 metres". The appellant says that Class E limitations do not seek to prohibit staircases but acknowledges that this is a matter of planning judgment. The dictionary definition of 'balcony' is a platform projecting from a building with a rail, or balustrade. In this case, whether or not the landing can also be described as part of the staircase, the physical components are not dissimilar from the characteristics of a balcony. From what I saw, the landing is a platform of a size that could be used as a small external sitting or amenity area and is enclosed by railings. In these circumstances, as a matter of fact and degree, it is caught by the limitation E.1(h).

22. In coming to this conclusion I do not find the appellant's suggestion that each tread of a staircase could be regarded as a 'raised platform' cogent because these are functional elements that do not and are unlikely to have another purpose as amenity space.

Conclusions on Ground (c)

23. Section 57(1) says that planning permission is required for any development of land other than in respect of specified exceptions including where such permission is granted by a development order. But for the reasons I have given the provisions of the GPDO cannot be relied upon in this appeal and there is no express grant of planning permission.
24. Section 171A (1)(a) of the TCPA says that the carrying out of development without the required planning permission constitutes a breach of planning control. Consequently the erection of the garage building is a breach of planning control and therefore the appeal on ground (c) fails.

The appeal on Ground (a)

Main issues

25. The main issues in this appeal are:
- whether the structure constitutes inappropriate development in the Green Belt; and
 - if so, whether the benefits of the structure clearly outweigh the harm by reason of inappropriateness together with any other harm, including any effects on the openness of the Green Belt, such that very special circumstances have been demonstrated.

Reasons

Green Belt

26. The National Planning Policy Framework (the Framework) says that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The essential characteristics of Green Belts are their openness and their permanence⁴. Openness is generally defined by an absence of built form. Paragraph 89 of the Framework says the construction of new buildings is inappropriate in the Green Belt, other than specified exceptions including 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. In this case, and in the light of *Sevenoaks District Council v SSE and*

⁴ Paragraph 79: The National Planning Policy Framework

Dawe [1997] (QBD 13.11.97 CO 1322-97). which held that a detached outbuilding could be regarded as part of the dwelling, the appellant argues that the development is not inappropriate.

27. It is the appellant's contention that, because the requirements of the notice simply seek a reduction in the size of the outbuilding, this suggests that the resultant building would not represent a materially different structure to the building currently on site and thus there would not be a disproportionate addition over the size of the original dwelling.
28. Taking into account the combined size of the existing extensions to the original house the Council calculates that the increase in floor area, including the outbuilding is in excess of 150% of the original building. This percentage increase is based on the original building which was said to be 122 square metres and which increased in size to 230 square metres as a result of approved extensions prior to and in 1980. Added to this is the outbuilding subject of the appeal which has a floor area of about 75 square metres. Hence the additional floorspace amounts to a total of 183 square metres and the size of dwelling is now 305 square metres. This figure is disputed by the appellant but no alternative estimate is provided and in the absence of this I give more weight to the Council's calculations.
29. The Council does not rely on any development plan policy and the Framework does not define the phrase disproportionate increase. Nonetheless, an increase of 150% in the size of an original dwelling house, means that the total increase in size is significantly greater than the size of the original house. By any measure this equates to a disproportionate increase and inevitably undermines the purpose of Green Belt policy which seeks to keep land permanently open.
30. The appellant appears to have misunderstood the difference between the assessment of buildings and structures that are permitted development by reason of the GPDO and structures that require planning permission. In this case, as I have noted above in the ground (c) appeal, the building requires planning permission. Thus it is the effect of the entire building, not just the difference between what could have been built without planning permission and what has been built which has to be considered in the light of its impact on the Green Belt. Even if the building is reduced in size it would not become retrospectively 'permitted development'. In these circumstances the garden building is inappropriate development by reason of the disproportionate increase.
31. Paragraph 87 of the Framework explains that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 88 says in turn that substantial weight should be given to any harm to the Green Belt and that very special circumstances will not exist unless the potential harm to the Green Belt, by reason of inappropriateness and any other harm, is clearly outweighed by other considerations.

Openness

32. Willowood is sited in a prominent corner location on School Road and the garage building is sited in a position about equi-distant between the main dwelling and Forge Cottage which is located to the north-west. Dwellings hereabouts tend to be set back from the road and have large gardens and

consequently there is a sense of openness within the intermittent ribbon of development.

33. However, whether or not the structure is visible from a public viewpoint, there is, as a matter of fact, a permanent loss of openness by reason of the construction of a building of significant height, and mass as identified earlier in this decision. Hence the loss of openness adds to the harm that I have identified by reason of inappropriate development.

Benefits

34. The appellant says that the structure is well designed and reflects the character of the Windlesham Conservation area. The Council concedes that the design of the building is of high quality but says that because it is too large it harms the Green Belt and in particular has a negative effect on openness.
35. I agree that the building is well designed and its construction is of high quality but even in these circumstances the absence of a building would be a greater benefit. Hence design is a neutral factor in this appeal. No other benefits are claimed.

The Fall-back position

36. Relying on the GPDO, the appellant says that if the building had been built in accordance with the limitations of Class E the physical impact on openness would not be significantly less than the as-built structure.
37. But as I have noted above, this argument is based on a false premise because the garage building requires planning permission and the relevant matters are not comparable to a building built with permitted development rights where the only consideration is whether or not it is lawful. Furthermore there is no cogent evidence that the appellant has any other plans, other than a generalised intention to erect alternative buildings which would be permitted by the GPDO. Hence her claim that she could do this remains an unsupported assertion to which I give little weight. The alleged fall-back position is considered further under the ground (f) appeal.

The balancing exercise and conclusion

38. In carrying out the balancing exercise, I attach substantial weight to the harm that would be caused to the Green Belt by reason of inappropriate development. Added to this is the separate harm by reason of the loss of openness.
39. However, I do not agree that the use has an 'urbanising' effect as it is within an existing residential curtilage but, for the reasons I have given, I give little weight to the claimed fall-back position. Other than 'good design' no other benefits are claimed.
40. Consequently, there are no very special circumstances that outweigh the harm to the Green Belt and the ground (a) appeal does not succeed.

Appeal on ground (f)

41. This ground of appeal is that the requirements of the notice exceed what is necessary to remedy the alleged breach of planning control. The appellant does not suggest alternative lesser steps but simply asserts that all the

requirements are excessive because the external staircase, dormer windows and additional height would only have a marginal impact on the Green Belt and she relies on the fall-back position of what could be erected using GPDO permitted development rights. Moreover she says that the removal of internal fixtures and furnishings fall outside the remit of planning control.

42. Taking these in reverse order S173 (5) of the Act⁵ says that an enforcement notice may require the alteration or removal of any building or works. Case law⁶ says that such requirement can include the removal of works integral to and solely for the purpose of facilitating unauthorised use or development, even if such works on their own might not constitute development. Hence it is legitimate for a notice to require the removal of items that facilitate the use of the upper floor. The majority of items required to be removed appear to have been placed in or constructed to facilitate non-incidental residential or commercial occupation and this is both reasonable and proportionate. For similar reasons the removal of the dormer windows and external staircase would be also be proportionate because these facilitate the use of the upper storey.
43. The appellant says that the removal of floorspace would simply be replaced by additional outbuildings constructed in accordance with the limitations of the GPDO. But because the requirements do not seek the removal of the ground floor storage, and part of the land appears to subject to flooding, it seems improbable that the appellant would seek to construct a number of outbuildings to 'replace the floorspace' so that the alternative provision exacerbates the loss of openness. In any event, it is likely that any comparable 'living accommodation' would require planning permission. Accordingly and in the light of *Haven Leisure Ltd v SSE & North Cornwall DC* [1994] JPL 148, I accord this fall-back position limited weight in this appeal.
44. Moreover, the cumulative effect of the reduction in height and the removal of the external staircase and dormers would reduce the mass of the building and hence its effect on openness and are thus necessary to remedy the breach of planning control.
45. No lesser steps have been proposed and in this case the Council has elected to under-enforce and does not require the removal of the building. In these circumstances the requirements are proportionate and because they are not excessive or unreasonable the appeal on ground (f) does not succeed.

Appeal on ground (g)

46. The removal of the internal fittings and chattels would only take a matter of a week or two. However I agree with the appellant that the works to reduce the height of the building to 4m above the adjacent path would require preparatory design work and would probably involve complex building work and in these circumstances an extension in the compliance period would be appropriate. This would allow time to facilitate alternative home working space though I give this little weight as the appellant says such use is infrequent.
47. For the reasons given above I conclude that a reasonable period for compliance with steps i), ii) and iii) would be 9 months and I am varying the enforcement notice accordingly prior to upholding it. The compliance period for step iii)

⁵ Town and Country Planning Act 1990 as amended

⁶ *Somak Travel v SSE* [1987] JPL 630

would remain at 6 months. The appeal under ground (g) succeeds to that extent.

Formal Decision

48. It is directed that the compliance period (Section 6) is varied as follows:

Steps i), ii) and iv) Nine (9) Months.

49. Subject to this variation the appeal is dismissed, the enforcement notice as varied is upheld, and planning permission is refused for the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Sukie Tamplin

INSPECTOR