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## Appeal Decisions

Site visit made on 21 November 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: 03 January 2017**

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### **Appeal A: APP/A3655/C/16/3152912**

#### **Byron Lodge, Ridgeway Road, Pyrford, Woking GU22 8PR**

- 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 Mr Gurdip Sahota against an enforcement notice issued by Woking Borough Council.
- The notice was issued on 11 May 2016.
- The breach of planning control as alleged in the notice is without planning permission the construction of a raised brick patio and steps in the rear garden extending the width of the property measuring 0.9m in height and 5.5m in depth shown in the approximate position hatched black on the Plan and as shown on the photograph (plan and photograph attached to the Notice).
- The requirements of the notice are:
  - (i) Remove the raised brick patio and steps in the rear garden described at paragraph 3 above (the allegation); and
  - (ii) Remove from the land all material, rubble and debris arising from compliance with requirement (i) above.
- 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) and (f) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: The appeal is dismissed and the Enforcement Notice is upheld.**

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### **Appeal B: APP/A3655/C/16/3152901**

#### **Byron Lodge, Ridgeway Road, Pyrford, Woking GU22 8PR**

- 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 Mr Gurdip Sahota against an enforcement notice issued by Woking Borough Council.
- The notice was issued on 11 May 2016.
- The breach of planning control alleged in the notice is failure to comply with condition No 03 of a planning permission Ref PLAN/2014/0293 granted on 12 May 2014.
- The development to which the permission relates is erection of a part two storey part single storey rear extension.
- The condition in question is No 03 which states that: *"The development hereby permitted shall be carried out in accordance with the approved plans listed in this notice"*.
- The Enforcement Notice alleges that condition 03 has not been complied with in that:
  - The reduction in the number of glazing bars increasing the area of glazing in the two openings (folding doors) on the rear of the north elevation orientated towards the neighbouring property at Woodpecker House, Ridgeway Road, Pyrford, Woking, Surrey;
  - The roof form in the rear extension has been altered from a hipped roof with an

eaves height of 2.65m and a maximum height of 3.8m to a flat roof with a maximum height of 3.1m;

- A roof light has been installed on the flat roof of the rear extension;
- The insertion of two first floor windows without glazing bars on the rear elevation;
- The insertion of double doors to serve a Juliet balcony on the rear elevation;
- The installation of a floor to ceiling window on the ground floor of the rear elevation.
- The Non-Material Minor Amendment bearing planning reference number AMEND/2015/0034 was refused on 3 July 2015.
- The retrospective planning application bearing planning reference number PLAN/2015/1337 for changes to PLAN/2014/0293 was refused on 5 April 2016.
- The requirements of the notice are:
  - (i) Restore the single storey rear extension and fenestration on the rear elevation of the property to accord with the approved plans from planning consent reference number PLAN/2014/0293 and the Non Material Minor Amendment reference number AMEND/2015/0024.
  - (ii) Remove from the Land all materials, rubble and debris arising from compliance with requirement (a) above.
- 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) and (f) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the formal Decision.**

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### **Appeal C: APP/A3655/W/16/3152897**

#### **Byron Lodge, Ridgeway Road, Pyrford, Woking GU22 8PR**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Gurdip Sahota against the decision of Woking Borough Council.
- The application Ref PLAN/2015/1337, dated 2 December 2015, was refused by notice dated 15 April 2016.
- The development proposed Double and single storey rear extension.

**Summary of Decision: The appeal succeeds in part and permission for that part is granted.**

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### **Background and procedural issues**

1. Byron Lodge is a large detached house located on a private residential road. The houses hereabouts vary in architectural form and styling but are generally 'suburban' in character and spaciouly laid out with large gardens. The appeal site has the benefit of a planning permission<sup>1</sup> (the 2014 pp) for works of alteration and extension to the rear of the property. A subsequent application for a Non-Material Minor Amendment (the 2015 (1) NMA) granted variations to the 2014 pp, specifically a Juliette balcony and fenestration alterations to various windows.
2. A later NMA (the 2015 (2) NMA) for further alterations to the single storey element of the extension was refused on 3 July 2015<sup>2</sup>. Subsequently a further planning application for amendments to the 2014 pp was submitted and refused; this is the subject of Appeal C. The description of the development on the appeal form more fully describes the matters before me; namely part two

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<sup>1</sup> PLAN/2014/0293

<sup>2</sup> AMEND/2015/0034

storey, part single storey rear extension, increasing the size of the existing raised terrace (amendment to PLAN/ 2014/0293) and I shall use this in my decision. I saw that the development has already taken place and thus I shall consider the application under S73a for permission for development already carried out.

3. The Council have issued a Breach of Condition Notice in respect of a first floor window on the north elevation of the 2 storey extension. This window is not before me and any findings reached are not to be taken, in any way, as an assessment about the merits, of that window.
4. There are 2 typographical errors in the Enforcement Notice subject of Appeal B. Firstly this says that the date for the refusal of the application PLAN/2015/1337 was 5 April 2016. The date is shown correctly in Appeal C. This can be corrected to 15 April 2016 without any prejudice to any party. Secondly the second requirement refers to step (a) but it is clearly step (i). This can also be corrected without injustice.
5. The three appeals all concern works of alteration to the same property, although with various differences so that I consider them together in my decision as and when appropriate.

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

6. 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.
7. In a nutshell, the appellant's argument under this ground is that consent for the raised patio and steps, was granted by the 2014 pp. The appellant acknowledges that the patio, was not referred to in terms in the description of development but says that it is shown on 2 plans<sup>3</sup>. Hence relying on *Barnett v SSCLG* [2008] EWHC 1601 (Admin) (*Barnett*) he says that the approved plans clearly show that the raised patio is an intrinsic part of what has been permitted.
8. But the judgment in *Barnett* also says "While it may well be appropriate when interpreting plans to draw inferences from what is shown on them....it would not be appropriate to draw any inferences beyond those that are strictly necessary and where the inference to be drawn is the only inference that can reasonably be drawn. A possible inference is not sufficient."
9. I agree that a patio or terrace is shown on the existing and proposed plans, but it is not apparent whether this patio is the retention of the existing terrace and more critically there is no indication that the raised patio would be extended across the width of the house to a depth of about 5.5m. Whilst a patio is shown on the side elevation this does not suggest that the increased size of the patio would be across the full width of the house. It is not visible, or indicated on any approved block or site plan. Hence, to use the terminology of *Barnett*, the construction of a raised full width patio is not inferred by the plans as a whole and is not the only possible inference that can be drawn. It follows that planning permission was not granted for the raised patio and steps by the 2014

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<sup>3</sup> Plans 1432/05 and 1432/06 (side and rear elevation)

pp. For this reason and because the patio did not benefit from permission granted by a Development Order it constitutes a breach of planning control under S171A(1)(a) of the 1990 Act. Consequently the appeal on ground (c) does not succeed.

**Appeal on ground (a) and the deemed application (Appeal A) and Appeal C (part).**

*Main Issue*

10. The main issue in these appeals is the effect of the erection of the raised patio on the living conditions of neighbouring occupiers.

*Living conditions*

11. Both Woodpecker House and the appeal property, Byron Lodge, stand about 1.1m<sup>4</sup> from the common boundary which is delineated by a close boarded fence about 1.8m in height above natural ground level. The gardens of both properties fall gently but steadily down from the respective house, and the common fence line generally follows the slope of the land. In contrast the raised patio area follows the floor level of the house so that the screening effect of the fence is reduced at its outer or garden edge. At this point the patio is elevated about 0.9m above natural ground level and thus the top of the fence, as seen from Byron Lodge, is in turn only about 1m above the patio. Consequently any users of this part of the patio have an extremely close, elevated and extensive view over the private amenity and sitting area of Woodpecker House and can readily see into the downstairs windows of that house. Thus there is an unacceptable and significantly adverse effect on the living conditions of the occupiers of Woodpecker House by reason of severe loss of privacy.
12. The appellant concedes that there is a degree of adverse impact on the occupiers of Woodpecker House by reason of overlooking and loss of privacy and by the time of my site visit some bay trees had been placed in planters alongside this boundary. But any such screening will only have a limited effect and, because of the location of Byron Lodge to the south of Woodpecker House, any substantial screening would be likely to result in overshadowing of the neighbouring garden and house. That too would be harmful to the living conditions presently enjoyed by the occupiers of Woodpecker House.
13. Moreover, from what I saw, and the photographs submitted by the Council, this raised patio is materially different from the structure that pre-dated it which appears to have been more a means of access to the lower garden than a living space in its own right. The extensive patio appears to have been designed so that it can be used intensively as outdoor living space as a 'seamless' extension of the dining facilities within the main house, and this finding is supported by the photographs submitted by a neighbour that showing that it is lit, at least on occasion, at night. In these circumstances, the effect of harmful overlooking is intensified by use at unsocial hours.
14. Consequently there is a conflict with the aims of Policy CS21 of the *Woking Core Strategy* (WCS), which seeks, amongst other matters, to ensure that proposals achieve a satisfactory relationship to adjoining properties avoiding significant harmful impact in terms of loss of privacy or daylight. For similar

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<sup>4</sup> At their closest point.

reasons there is conflict with a core principle of the National Planning Policy Framework (the Framework) which says that planning should always seek a good standard of amenity for all existing and future occupants of land and buildings. Hence, in terms of Appeal A the appeal on ground (a) fails as does the deemed application and similarly the appeal for the retention of the raised patio and steps subject of Appeal C also fails.

**Appeal on ground (a) and the deemed application (Appeal B) and Appeal C (part).**

*Main issues*

15. The main issues in these appeals are the effect of the unauthorised alterations to the part single, part 2 storey rear extensions on the appearance of the host property and the living conditions of neighbouring occupiers.

*Appearance*

16. The general form of the rear part two storey extension and part single storey extension has been approved by 2014 pp and subsequent 2015 (1) NMA. Hence the as-built scheme has to be assessed in this context.
17. The Enforcement Notice lists 6 alterations to the approved plans subject of condition 03 but these can be grouped into 3 parts, firstly the developments in terms of the single storey element, flat roof in lieu of hipped roof and roof light, secondly the two storey extension, bi-fold doors and double doors to serve a Juliette balcony and thirdly fenestration alterations to the original house.
18. Looking at the alterations as a whole I agree that the styling of the new work is different to that of the original house, because the design of the openings has been varied so that there is a greater area of glazing and the frames are dark coloured. Moreover the flat roof hidden by the parapet is at variance with the pitched tile roof. However none of these alterations are visible from the street and in themselves their simplified and streamlined design is not unattractive, albeit slightly incongruous given the suburban design of the original house. However in terms of appearance I consider that the visual harm is insignificant and is in any event not visible from the public realm. Thus this issue weighs in favour of the appeal.

*Living conditions*

19. Turning first to the alterations to the single storey extension, the effect of this is screened by the two storey element on the one side and by vegetation on the other. Hence, although I note the comment about light spill from the roof light there is no significant adverse impact on living conditions of neighbouring occupiers.
20. In terms of the second group of alterations, it is suggested that the increased area of glazing results in loss of privacy by reason of overlooking. However the 2014 pp granted bi-fold door in approximately the same location and these could similarly be opened so that the north elevation of the ground floor is unobstructed by framing. In terms of the upstairs window (5<sup>th</sup> bedroom) the 2015 NMA (1) had previously permitted a Juliette balcony and thus there is limited additional effect in terms of overlooking. Moreover views from this window would be east and thus mainly across the garden of Byron Lodge itself.

21. Finally in terms of the third group, these windows and doors all face the garden of Byron Lodge and thus risk of un-neighbourly overlooking is reduced. Moreover the vegetation on the boundaries of Woodstock and Woodpecker House would partially screen many such views.
22. Thus the alterations, other than the raised patio considered above do not have a significant or harmful effect on the appearance of the host property as previously approved by the 2014 pp. Neither do they result in additional adverse impacts on the living conditions of neighbouring occupiers<sup>5</sup>. Hence there is no conflict with WCS Policy CS21 or the design and amenity aims of the Framework.
23. For the reasons given above I conclude that Appeal B should succeed on ground (a) and that the enforcement notice should be quashed. I propose to discharge the condition subject of the notice, and to grant planning permission on the application deemed to have been made for the operations previously permitted without complying with the condition enforced against insofar as it relates to the specific matters identified in the Notice and to substitute a varied condition as indicated above.
24. Similarly these same parts of the development subject of Appeal C will be approved. For the avoidance of doubt the parts concerning the raised patio and steps will be refused and the details of the first floor window are not before me.

#### **Appeal on ground (f) Appeal B**

25. Because Appeal B succeeds on ground (a) and will be quashed there is no need to consider ground (f).

#### **Appeal on ground (f) Appeal A**

26. The appellant's argument on this ground is that there was a terrace and steps to the rear of Byron Lodge prior the construction of the new raised patio and thus it is unreasonable to require the removal of the whole structure. In support of this photographs have been submitted showing the construction of the extension. But the plans of the 'existing' house, submitted as part of the 2014 application, do not show the extent of the former terrace which is only indicated on the elevation drawings.
27. However the photographs show that at least some, if not all, of the original terrace was completely removed during the construction of the extension and the appellant acknowledges that part of it was at a significantly lower level. In any event, whether or not part of it was at a similar height, which is disputed by the Council and a third party, it seems to me, from what I saw on the site visit and also from what is shown by the photographs, that the original terrace or patio has not, as a matter of fact, been retained. There is no evidence before me that the patio, in its current configuration, is simply an extension of the structure that was previously on site. In these circumstances, I conclude on the balance of probabilities that the original garden structure has ceased to exist. Accordingly, the proposed 'lesser steps' of restoring the original structure are simply not feasible.

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<sup>5</sup> This assessment does not include the first floor window on the north elevation of the 2 storey extension.

28. In the alternative, the appellant suggests that screening could be erected to overcome the loss of privacy. But for the reasons I have previously given, any fencing or other structure of a height sufficient to address the loss of privacy would be overbearing and result in overshadowing of the sitting area, and the closest rear reception room of Woodpecker House.
29. In these circumstances lesser steps would not overcome the harm to amenity and the appeal on ground (f) fails.

### **Overall conclusions**

30. For the reasons given above I have found that the erection of the raised patio is seriously harmful and Appeal A fails. However the elevational alterations are not harmful and thus the Notice subject of Appeal B will be quashed and the deemed application will be approved subject to the variation of condition 03.
31. Appeal C includes elements common to both Appeal A and Appeal B, and thus because part of the development is acceptable I shall issue a split decision allowing the elevational changes<sup>6</sup> but dismissing the patio works.

### **FORMAL DECISIONS**

#### **Appeal A: APP/A3655/C/16/3152912**

32. The appeal is dismissed, planning permission is refused for the deemed application and the Enforcement Notice is upheld.

#### **Appeal B: APP/A3655/C/16/3152901**

33. The appeal is allowed and the enforcement notice is quashed. In accordance with section 177(1) (b) and section 177(4) of the 1990 Act as amended, the condition 03 attached to the planning permission dated 12 May 2014, Ref PLAN/2014/0293, granted by Woking Borough Council is discharged and the following new condition is substituted. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for part two storey part single storey rear extension without complying with the said condition but subject to the other conditions attached to that permission and subject to the following new condition.

"The Development hereby permitted shall be carried out in accordance with the approved plans identified by permission dated 12 May 2014 ref PLAN/2014/0293 other than in respect of the following alterations:

- 1) The reduction in the number of glazing bars increasing the area of glazing in the two opening (folding doors) on the rear of the north elevation orientated towards the neighbouring property at Woodpecker House, Ridgeway Road, Pyrford, Woking, Surrey;
- 2) The roof form of the single storey rear extension comprising of a flat roof with a maximum height of 3.1m;
- 3) A roof light on the flat roof of the rear extension;
- 4) The insertion of two first floor windows without glazing bars on the rear elevation;

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<sup>6</sup> Other than the first floor window in the north elevation which is not before me.

5) The insertion of double doors to serve a Juliet balcony on the rear elevation;

6) The installation of a floor to ceiling window on the ground floor of the rear elevation”

at Byron Lodge, Ridgeway Road, Pyrford, Woking GU22 8PR as shown on the plans accompanying the application, PLAN/2014/0293, dated 12 May 2014.

**Appeal C: APP/A3655/W/16/3152897**

34. The appeal is dismissed insofar as it relates to the raised patio and steps.

35. The appeal is allowed and planning permission is granted only insofar as it relates to the following alterations:

1) The reduction in the number of glazing bars increasing the area of glazing in the two opening (folding doors) on the rear of the north elevation orientated towards the neighbouring property at Woodpecker House, Ridgeway Road, Pyrford, Woking, Surrey;

2) The roof form of the single storey rear extension comprising of a flat roof with a maximum height of 3.1m;

3) A roof light on the flat roof of the rear extension;

4) The insertion of two first floor windows without glazing bars on the rear elevation;

5) The insertion of double doors to serve a Juliet balcony on the rear elevation;

6) The installation of a floor to ceiling window on the ground floor of the rear elevation;

at Byron Lodge, Ridgeway Road, Pyrford, Woking GU22 8PR as shown on the plans accompanying the application, PLAN/2015/1337, dated 2 December 2015.

*Sukie Tamplin*

INSPECTOR