
Appeal Decisions

Site visit made on 14 March 2017

by Paul Freer BA (Hons) LLM MRTPI

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

Decision date: 03 April 2017

Appeal A Ref: APP/L3625/C/16/3157279

Land and premises known as 95 Lumley Road, Horley, Surrey RH6 7JF

- 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 Paul Arnold against an enforcement notice issued by Reigate & Banstead Borough Council.
 - The enforcement notice was issued on 20 July 2016.
 - The breach of planning control as alleged in the notice is the erection of a single storey rear extension at variance to Planning Permission 15/01698/HHOLD.
 - The requirements of the notice are to reduce the depth of the single storey rear extension to a limit of 3.3 metres and to construct the roof and eaves in accordance with Planning Permission 15/01698/HHOLD and as shown on approved drawing number 3341/01.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended.
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Appeal B Ref: APP/L3625/D/16/3161748

95 Lumley Road, Horley RH6 7JF

- 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 & Mrs Paul & Marta Arnold against the decision of Reigate & Banstead Borough Council.
 - The application Ref 16/01487/RET, dated 23 June 2016, was refused by notice dated 22 August 2016.
 - The development is described as a retrospective application for proposed 3.77m single storey rear extension.
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Summary Decision: Appeal A is dismissed and the enforcement notice is upheld as corrected. Appeal B is dismissed.

Procedural Matters

1. The breach of planning control alleged in the Enforcement Notice is the erection of a single-storey rear extension at variance to Planning Permission 15/01698/HHOLD. The breach of planning control is described in the Enforcement Notice as falling within section 171 (A)(1)(a) of the Town and Country Planning Act 1990.
 2. However, Planning Permission 15/01698/HHOLD is subject to a number of conditions, including a condition (Condition 1) that states:
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1. The development hereby permitted shall be carried out in accordance with the following approved plans (*those plans are specified on the Decision Notice but not reproduced here*).

Reason

To define the permission and ensure that the development is carried out in accordance with the approved plans and in accordance with the National Planning Practice Guidance.

3. Having regard to the wording of and reason for that condition, I consider that the breach of planning control alleged in the Enforcement Notice should more properly be described as a failure to comply with a condition or limitation subject to which planning permission has been granted, and as such falling within section 171 (A)(1)(b) of the Town and Country Planning Act 1990. I therefore sought the views of the appellant and the Council as to whether correcting the notice in that regard would cause any injustice.
4. The appellant considers that the notice could be so corrected without causing any apparent injustice to his case. The Council maintains that there is no need to correct the notice but does not suggest that correcting the notice would cause any injustice.
5. I take the Council's point that the appellant has not implemented the development for which he was granted planning permission, but instead has implemented a different scheme. Nevertheless, breach of planning control alleged in the Enforcement Notice does not refer to a completely different development: it is specifically phrased as being at variance to the planning permission that was previously granted. Given the way in which the breach of planning control is phrased, it logically relates to a breach of a condition imposed on a permission previously granted rather than to the erection of a completely different development. Moreover, in practical terms, given also that the appeal is proceeding on ground (g) only, the correction would result in no substantive difference to the way in which the appeal is considered. I am therefore satisfied that the Enforcement Notice could be corrected in this respect without causing injustice, and I will correct the notice accordingly.
6. The development now subject to Appeal B is described as a retrospective application for proposed 3.77m single storey rear extension. Although the application was made retrospectively, the term "retrospective" is not a form of development. Moreover, the extension had been constructed by the time the application was submitted, such that the inclusion of the word "proposed" is not appropriate. Accordingly I consider that the development may be more properly described as a single storey rear extension.
7. Where an appeal against an enforcement notice is travelling with or linked to an appeal against the refusal of planning permission for the same development, it is convention for the appeal against the enforcement notice to be cited as the lead appeal. Hence, the appeal against the enforcement notice is identified above as Appeal A and that against the refusal of planning permission as Appeal B. However, because in this case Appeal A is proceeding on ground (g) only, it is necessary to consider Appeal B in the first instance.

Appeal B – the section 78 Appeal

8. The Council's Decision Notice sets out a single reason for refusal, from which I consider that the main issue raised is the effect of the extension on the living conditions of the occupiers of the neighbouring residential property at No 93 Lumley Road, specifically in relation to their outlook. The occupiers of that property have also expressed concern in respect of light entering their kitchen, and I shall subsume consideration of that issue under this issue.
9. The extension as constructed extends to a depth of some 3.77 metres from the rear elevation of the host property. The extension features a mono-pitch roof, sloping away from the rear elevation of the main house. The height of the extension at that point is just below cill level of the first floor windows. However, the pitch of the roof is relatively shallow, such that there is not a significant drop in height along the length of the extension. Moreover, the extension projects practically to the boundary with No 93 throughout its length.
10. The adjoining property at No 93 has not itself been extended to the rear, although the rear of the property is formed by a two-storey outrigger to the main dwelling. At ground floor level, this outrigger contains the main kitchen for the house. There is a door in the rear elevation of this outrigger, the upper portion of which is glazed. However, the main window serving the kitchen is located in the side elevation of the outrigger, and therefore faces away from the extension to the appeal property.
11. As part of my site visit, I was able to view the extension to the appeal property from the kitchen and rear garden of No 93. I accept that the extension to the appeal property impinges upon the outlook from the kitchen when viewed through the glazed door in the rear elevation. However, the glazed door is not the primary outlook from that room. The primary outlook is derived from the window in the flank elevation, which remains unaffected by the extension to the appeal property. I therefore consider that the outlook from No 93 is not significantly affected by the extension to the appeal property.
12. Similarly, I accept that the extension to the appeal property detracts to some extent from the light that enters the kitchen of No 93. However, the main source of light entering the kitchen is derived from the window in the side elevation, and that light would not be obstructed or reduced by the extension to the appeal property. I therefore consider that the extension to the appeal property does not result in a significant loss of light to the kitchen of No 93.
13. In addition to the outlook from within the property itself, the Council's Decision Notice also specifically refers to the effect on the rear garden of No 93. I noted that the part of the rear garden closest to the kitchen door is paved, is well kept and contains a table with chairs, all of which collectively suggest that the space is actively used. In my view, by reason of its height, length and proximity to the boundary, the extension to the appeal property dominates the outlook from that part of the rear garden and significantly detracts from the amenity value of that space. I recognise that the overall length of the garden is approximately 22 metres and that much of the garden to No 93 is not affected by the extension to the appeal property. Nevertheless, in my view, that part of the garden closest to the main house is of particular benefit in terms of casual relaxation, such as sitting out in the evening and eating, the latter being facilitated by the proximity of the kitchen in the main house.

14. The occupiers of No 93 have specifically commented in their representations that the extension to the appeal property severely affects the enjoyment of their garden space, thereby confirming that this space is both used by and of value to them. I therefore consider that the adverse impact on this garden space resulting from the extension to the appeal property unacceptably detracts from the amenities previously enjoyed by the occupiers of No 93 before the extension to the appeal property was constructed.
15. I conclude that extension as constructed unacceptably detracts from the living conditions of the occupiers of the neighbouring residential property at No 93 Lumley Road, specifically in relation to their outlook from their rear garden. I therefore conclude that the extension as constructed is contrary to Policy Ho 9 of the Reigate and Banstead Borough Local Plan 2005 which, amongst other things, indicates that residential development should not seriously affect the amenities of adjoining properties. The extension as constructed also fails to accord with the Council's Supplementary Planning Guidance: Householder Extensions and Alterations (SPG), which indicates that an extension should not appear overbearing when viewed from neighbouring properties.

Other Matters

16. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise. I have found that the single storey extension subject to Appeal B fails to accord with the development plan in one respect. It is therefore necessary for me to consider whether there are any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.
17. I understand that the appellant originally envisaged an extension with a depth of 3.5 metres, but that the architect unilaterally amended the design to a length of 3.3 metres, this to accord with the Council's SPG. The appellant then decided upon a further change in the design of the extension, replacing the bi-fold doors originally envisaged to a wall with French doors. I understand that it was this latter change that resulted in the extension being constructed to a depth of 3.77 metres, some 0.47 metres deeper than indicated in the SPG as being an appropriate depth for a single storey extension.
18. In granting planning permission 15/01698/HHOLD, the Council clearly considered that an extension with a depth of 3.3 metres had an acceptable impact on the living conditions of the occupiers of No 93. The extension granted planning permission was also located practically on the boundary with No 93, such that the main difference between that extension and the extension as now constructed is the increase in depth of some 0.47 metres with the latter.
19. Although this may not appear to be significant in isolation, I am mindful of the shallow pitch of the roof and resultant eaves height at the full depth of the extension. It is also significant that the extension is practically on the boundary with No 93. For these reasons, I consider that the additional depth of 0.47 metres as constructed is significant in terms of the overall impact on the rear garden of No 93, and contributes to the extension being dominant and overbearing when viewed from the rear garden of that property. It follows

that the grant of planning permission for the extension at a length of 3.3 metres does not justify planning permission being granted for the extension as constructed.

20. I find that the extension is acceptable in all other respects, including its impact on the character of host property and the surrounding area. Nevertheless, the extension is contrary to policies in the development plan in terms of its effect on the living conditions of the occupiers of the neighbouring property and there are no material considerations of sufficient weight to indicate that the appeal should be determined otherwise than in accordance with the relevant policy in the development plan. I therefore conclude that planning permission ought not to be granted for the extension as constructed.

Appeal A – the appeal on ground (g)

21. The ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The period for compliance specified in the notice is three months. A period of six months is sought.
22. The essence of the appellant's case on this ground is that there is a shortage of skilled builders in the locality and that those with sufficient skills to carry out the work are likely to have full schedules. The appellant therefore considers that he would not be able to instruct a builder to carry out the works within the required timescales. The appellant was also initially concerned that the period of compliance would coincide with the winter period, and that this would cause difficulties in terms of carrying out external works. However, as it transpires, the period of compliance would now fall over the Spring and early summer months, such that the latter concerns are less relevant.
23. As a generalisation, I can accept that it can be difficult to find a builder suitably qualified to carry out work of the required standard to a private dwelling. However, I have been provided with no evidence to support the appellant's contention that this is the case with the extension subject to the enforcement notice. For example, I have been provided with no evidence to show that suitably qualified builders have been found and approached but are unable to carry out the work within the required timescale due to other commitments. It also appears to me that the requirements of the notice are not especially complex or technical, such that they would require a specialist contractor to carry them out. Indeed, it is no part of the appellant's argument that the steps required by the notice could not be physically achieved within the stated period of compliance. I am therefore not persuaded that the appellant's concerns about being unable to instruct a suitably qualified builder to carry the works are sufficient to justify an extension to the period of compliance specified in the notice.
24. Accordingly, the appeal on ground (g) fails.

Conclusion

25. For the reasons given above, I conclude that the appeals should not succeed. I shall dismiss the section 78 appeal against the refusal of planning permission and shall uphold the enforcement notice as corrected.

Formal Decisions

26. It is directed that the enforcement notice be corrected by

- deleting the words "section 171 (A)(1)(a)" in paragraph (2) of the notice and replacing them with the words "section 171 (A)(1)(b)"
- deleting the words "the erection of a single storey rear extension at variance to Planning Permission 15/01698/HHOLD" at Schedule 2 of the notice and replacing them with the words "failure to comply with Condition 1 imposed on planning permission 15/01698/HHOLD dated 21 September 2015, comprising the erection of a single storey rear extension".

27. Subject to those corrections, Appeal A is dismissed and the enforcement notice is upheld. Appeal B is dismissed.

Paul Freer

INSPECTOR