
Appeal Decision

Site visit made on 28 June 2017

by Chris Preston BA(Hons) BPI MRTPI

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

Decision date: 13 July 2017

Appeal Ref: APP/R0660/C/16/3167034

Land at Rush Cottage, Gore Lane, Chorley, Alderley Edge, Cheshire SK9 7SP

- 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 Zarka Sarwar against an enforcement notice issued by Cheshire East Council.
 - The enforcement notice, numbered 14/00759E, was issued on 29 November 2016.
 - The breach of planning control as alleged in the notice is: The construction of unauthorised ground, first floor and rear canopy extensions.
 - The requirements of the notice are:
 - (a) Demolish the ground and first floor rear extensions that are shaded in green on the attached plan marked "Plan B" in their entirety;
 - (b) Make good the rear of the property by making it wind and waterproof, render it to match the original dwelling;
 - (c) Remove from the land all materials and debris resulting from step (a) above;
 - (d) Demolish the rear canopy extension shown in the approximate position shaded yellow on the attached plan marked "Plan C" in its entirety; and
 - (e) Remove from the land all materials and debris resulting from step (d) above.
 - The period for compliance with the requirements is: For steps (a), (b) and (d), five months from the date the notice takes effect and, for steps (c) and (e), six months from the date the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (c) of the Town and Country Planning Act 1990 as amended.
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Decision

1. 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.

Procedural Matter

2. As set out in the banner heading above, the alleged breach of planning control described in the enforcement notice was the 'construction of unauthorised ground, first floor and rear canopy extensions'. The appellant accepts that the rear canopy represents a breach of planning control and intends to comply with the requirements of section 5 (d) and (e) of the notice in that respect. Accordingly, she has made clear that her grounds of appeal relate only to the ground and first floor extension. I have determined the appeal on that basis.

The Appeal on Ground (c)

3. An appeal on ground (c) is made on the basis that the matters referred to within the enforcement notice do not constitute a breach of planning control.

Where an appeal is submitted on ground (c) the onus rests with the appellant to demonstrate his case. The relevant burden of proof is the balance of probability.

4. The appellant contends that the extension amounts to 'permitted development' under the terms of Class A, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO) on the basis that it is an extension to a dwellinghouse that does not contravene any of the exclusions identified at paragraph A.1 and meets the conditions set out at paragraph A.3. The Council on the other hand considers that the extension fails to comply with the requirements of paragraphs A.1 (h) and (j).
5. With reference to paragraph A.1(h), the Council contends that the extension is of more than a single storey and that it projects beyond the rear wall of the original dwellinghouse by more than 3m and, in relation to paragraph A.1(j), it considers that the extension projects beyond a wall forming a side elevation of the original dwelling and would have more than a single storey and exceed more than four metres in height.
6. I note that both parties have referred to the 2015 version of the GPDO which came into force on 15 April 2015. Prior to that date, the 1995 version of the GPDO was in force. Permitted development rights cannot be claimed retrospectively and the question is whether the development would have benefitted from planning permission granted by virtue of Article 3 of the GPDO at the time the works were undertaken. It is not clear, from the information before me if the works were undertaken before the 2015 version of the GPDO came into force.
7. The 1995 version had been amended numerous times and the most recent changes affecting household extensions were made in 2008¹. The extension in question was erected after that date because it is clearly absent on the overhead photograph supplied by the Council which dates from October 2010.
8. Having compared the 2015 and amended 1995 GPDO it is apparent that the provisions in question remained largely unaltered. Paragraphs A.1 (h) and (j) of the 2015 version replicate paragraphs A.1 (f) and (h) of the 1995 version. Consequently, whilst it is unclear which version was in force at the time the extension was carried out, it would appear to have little impact on whether the development amounted to 'permitted development'.
9. The relevant provisions require consideration of what constitutes the 'original' rear and side walls of the property. For the purposes of the GPDO 'original' means as the building existed on 01 July 1948. Precisely what existed at that date is uncertain. Planning permission was granted in July 1946 for alterations and extensions to the property and the Council have provided plans and correspondence relating to those proposals. The plans show floor plans of the house as it stood in 1946, prior to alteration. The extensions approved at that time included a two storey extension to the northern side of the property and a two storey extension to the west with bedrooms at first floor level and an open sided car port at ground floor, linking to a wash house and store at the rear.
10. Whether those extensions were built is unclear. In fact, the appellant contends that it is plainly evident that what was constructed following the submission in

¹ The Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008

1946 was not what was shown on the submitted plans². Certainly, what is on site at present does not appear to conform to the details shown. The approved details showed a flat roof on the western extension but a pitched roof is present on site. The extension to the west houses the main entrance to the property instead of the open sided void or car port. Moreover, the extension on the western elevation links to a much larger building which was not shown on the plans in 1946. The two storey extension to the northern elevation appears not to have been constructed.

11. Even if the extension as approved in 1946 was implemented there is nothing to indicate with any certainty that the works were undertaken prior to 01 July 1948. The appellant maintains that it is not unreasonable to conclude that the western extension was constructed as part of an amended scheme post 1946 but pre 1948. However, in the absence of any corroborative information that assertion is unfounded. It would appear that the two storey side extension to the north was never constructed and it could equally be that the owner of the property decided not to implement the 1946 permission at all.
12. Following the information relating to the 1946 permission, no planning records of any further works appear to exist until 2002 when the current conservatory was approved. Therefore, precisely when the western wing of the house was erected is not clear and I cannot conclude that it was in place as of 01 July 1948. As stated, the onus in an appeal on ground (c) rests with the appellant. The appellant acknowledges that the extent of the original dwellinghouse is unclear³. In the absence of any definitive evidence to indicate that any extensions had been erected prior to 01 July 1948 I find that the 'original' dwellinghouse, as of that date, was the dwelling shown on the existing plan submitted in 1946.
13. The eastern elevation is shown as the "front" of the property on the plans submitted in 1946 and the western elevation as the "back" of the house. A front entrance porch was present on the eastern elevation and the symmetrical design and arrangement of the windows portray that to be the principal façade. The two gable ends on the northern and southern aspects were relatively void of any architectural features in comparison and the western elevation was clearly the rear of the house, judging by the less coherent arrangement of fenestration. Therefore I find that the 'original' front and rear walls were those in the eastern and western elevation of the property.
14. It follows that the ground and first floor extension referred to within the enforcement notice has extended beyond the rear wall of the original dwellinghouse. When measured from that original rear elevation, the depth of the two storey extension is well in excess of 3m such that it would fail to comply with the terms of paragraph A.1(h)(i) of the 2015 GPDO or paragraph A.1(f)(i) of the 1995 GPDO. Therefore, the development would not have benefitted from permitted development rights whichever version of the GPDO was in force at the time of construction.
15. The Council also allege that the extension would be two storeys and project beyond a wall forming the side wall of the original dwellinghouse. However, for the reasons set out above I find no compelling evidence to indicate that the western wing was in place as of 01 July 1948 and, as such, am not satisfied the

² Paragraph 2.1.3 of the appellant's comments on the Statement of Case of the Local Planning Authority

³ Paragraph 6.3.5 of the Grounds of Appeal statement, dated January 2017

side walls of that wing should be considered as the side walls of the original dwelling. However, that conclusion has little bearing on my decision in relation to the appeal on ground (c) because the development was not permitted in any event by virtue of the depth of the extension measured from the rear wall.

16. Consequently, the ground and first floor extension represented development for which planning permission was required. It did not conform to the requirements of Class A permitted development rights and, thus, did not benefit from planning permission granted by article 3 of the GPDO. No other planning permission has been granted for the works which therefore constitute a breach of planning control. For those reasons, the appeal on ground (c) must fail.

The Appeal on Ground (a)

17. I am mindful that the Council did not specifically refer to design or the effect on the character and appearance of the development within the stated reasons for issuing the enforcement notice. However, the officer report relating to the development clearly refers to those matters and the issues have been addressed by both parties within their respective statements. The effect on the character and appearance of the dwelling is clearly a matter of dispute and I shall determine the appeal accordingly. From the information before me the main issues are:

- i) Whether the development represents inappropriate in the Green Belt for the purposes of the National Planning Policy Framework (the Framework) and development plan policy;
- ii) The effect on the openness of the Green Belt;
- iii) The effect on the character and appearance of the dwelling; and
- iv) If the development is inappropriate development, whether any harm to the Green Belt by way 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 development.

Whether the development represents "inappropriate development" within the Green Belt

18. Paragraph 87 of National Planning Policy Framework (the Framework) identifies that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 88 identifies 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 way of inappropriateness, and any other harm, is clearly outweighed by other considerations.
19. Paragraph 89 identifies that the construction of new buildings in the Green Belt should be considered as inappropriate unless they fall into a closed list of exceptions. One of those exceptions relates to 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.
20. Similarly, saved policy GC1 of the Macclesfield Borough Local Plan (2004) (the Local Plan) states that permission will not be given for new development in the

Green Belt, except in very special circumstances, unless the building falls within a limited number of exceptions, one of which relates to the limited alteration or extension of existing dwellings, subject to the requirements of policy GC12. Saved policy GC12 states that extensions for up to 30% of the floor space of the original dwelling may be permitted providing that the scale and appearance of the house is not significantly altered.

21. The saved policies of the Local Plan pre-date publication of the Framework by some distance and were drawn up on the basis of former policy guidance in the form of PPG2. In line with paragraph 215 of the Framework due weight should be given to the saved policies according to their degree of consistency with the Framework. The broad thrust of policies GC1 and GC12 is consistent with the aims of the Framework and, with regard to the elements of the policies relating to extensions to buildings, the contents are similar. I note that GC1 only refers to extensions to dwellings whereas paragraph 89 of the Framework refers to extensions to buildings more generally.
22. Moreover, the Framework does not set a specific threshold of what is considered to be a disproportionate addition. The 'up to 30%' threshold set within policy GC12 therefore provides greater detail than is prescribed in national policy. Nonetheless, there is nothing within the Framework to prevent a local policy adding specific criteria that are applicable at local level and I am satisfied that the 30% criteria is consistent with the aims of national policy. In view of the above significant weight can be attached to policies GC1 and GC12.
23. The parties have also referred to policy PG3 of the emerging Cheshire East Local Plan (the CELP). That plan has reached an advanced stage and nothing has been submitted to suggest that there are any inconsistencies between the Framework and sections 1-4 of the policy, which relate to the approach to new development within the Green Belt. I note that the policy also proposes a number of changes to Green Belt boundaries (section 5). From the information before me those alterations would not affect the Green Belt status of the appeal site and, for the purposes of this appeal, I give significant weight to the emerging policy having regard to paragraph 216 of the Framework.
24. In terms of the 'original building', the Framework uses the same definition as the GPDO which is the building, as it existed on 01 July 1948. Taking my conclusions on the state of the dwellinghouse at that time it is clear that the cumulative extent of additional floorspace since that time is well in excess of 30%. The Council has based its calculations of the original dwelling on the basis that the 1946 permission was partially implemented in the form of the two storey extension to the western elevation. On that basis, it calculates that the original floorspace was approximately 207m². The appellant estimates that area of the building would have had a floorspace of 247.5m², as shown on Figure 1 within his statement.
25. Even if I were to take those figures at face value the additions since that time would be well above 30%. The original dwelling as calculated by the Council does not include the large two storey element at the rear of the original house which is shown as 'Element B' on plans submitted by the appellant⁴. Nor does it include the conservatory to the side, the single storey kitchen extension or the first and second floor extensions which are referred to in the enforcement notice. The appellants estimate that 'Element B' has a floor area of 149m² and

⁴ Figure 1 Property Plan, produced by Axis, dated January 2017

the ground and first floor extensions comprising the appeal scheme have a floor area of 70.5m². If the substantial conservatory were added to those calculations the resulting floorspace would be in the region of 100% greater than the original dwellinghouse, as defined by the Council.

26. However, for the reasons given above, I find no evidence to support the conclusion that any of the extensions to the western elevation were in place as of 01 July 1948. On that basis, the cumulative extent of additional floorspace is undoubtedly more than double the floorspace of the original dwelling. The respective floorspace figures used by the parties for various elements of the building vary to some degree. However, those inconsistencies do not affect my conclusions. Whichever figures are used, the cumulative extent of floorspace additions is well in excess of the 30% threshold set by policy GC12.
27. Setting aside the floorspace calculation, the cumulative effect of the extensions has significantly altered the form of the property, creating an elongated footprint and much more substantial building in comparison to the compact floorplan and form of the original cottage. In effect a large two storey wing to the rear of the dwelling has been created, the footprint, mass and volume of which is greater than the scale of the original dwelling. In my view, the extensions that were in place prior to the erection of the current breach of planning control would, of themselves, represented a disproportionate addition to the dwelling in Green Belt terms.
28. The ground and first floor extensions have added to that cumulative impact and undoubtedly represent a disproportionate addition when added to the previous extensions to the dwelling, having regard to the terms of the Framework, policies GC1 and GC12 of the Local Plan and policy PG3 of the CELP. Consequently, the ground and first floor extension represents inappropriate development within the Green Belt.

The Effect on the Openness of the Green Belt

29. The cumulative impact of the extensions on the openness of the Green Belt has been significant due to the substantial increase in the scale of the dwelling and the change from a compact footprint to a sprawling, elongated, plan form. However, I am required to assess the specific impact of the development before me which, in the case of the ground (a) appeal is the ground and first floor extension.
30. The effect on openness has both a visual and physical dimension. As with any development into space that was previously devoid of a building, the physical impact of the development has had an impact on the openness of the Green Belt. In other words, the extension has protruded into an area that was previously free from development at the rear of the dwelling.
31. The western extension directly to the rear previously occupied approximately half of the width of the dwelling and connected to the larger western extension beyond, in effect to form a staggered building line. The two storey addition before me has effectively created a two storey extension across the entire width of the original dwelling. The staggered built form has been replaced with a solid mass of development that is of a more imposing scale and appearance. The changes in physical form have had a consequential impact on the openness of the Green Belt.

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32. However, that impact is only appreciated at close quarters. The site is not readily visible from public vantage points, including the public right of way which passes to the east. The site is very well enclosed and the impact on the openness of the Green Belt as it is appreciated in the wider area is negligible. Consequently, whilst there has been some loss of openness due to the increased physical size of the property in the context of the location of the site that impact is extremely limited and not a matter that weighs significantly against the proposal.

The effect on the character and appearance of the dwelling

33. As noted, the development has altered the footprint at the rear of the dwelling and has resulted in a continuous two storey addition across the full width of the rear of the property. To my mind that has further eroded the original character of the dwelling which was, in effect, a modest gable ended cottage on a very simple plan form. The development has emphasised the elongated floorplan which is at odds with the original form of the property. In addition, the use of a flat roof is not consistent with the original design, or the design of the other extensions and is a design feature that fails to respect the form and character of the property.
34. For those reasons I find that the development has caused harm to the character and appearance of the property and that it represents poor design, contrary to the aims of section 7 of the Framework and the aims of policies BE1(2) and DC2 of the CELP.

If the development is inappropriate development, whether any harm to the Green Belt by way 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 development

35. I have concluded that the development represents inappropriate development and that it would cause some harm to the openness of the Green Belt, albeit that the harm in that respect would be extremely limited due to the contained nature of the site. In addition, the extension represents poor design that has caused harm to character of the dwelling. Having regard to paragraph 88 of the Framework, and policies GC1 of the Local Plan and PG3 of the CELP, inappropriate development should only be approved in very special circumstances. Such circumstances will only exist where any harm to the Green Belt by way of inappropriateness, and any other harm, are clearly outweighed by other considerations.
36. Reference has been made to the redevelopment at Gore Lane Farm, close to the site. However, that development relates to a replacement dwelling and not extensions to an existing property. The officer report referred to the poor quality of the design of the previous dwelling and the fact that it was highly visible from the public domain and those matters were clearly weighed in the planning balance. The dwelling is not of poor design or particularly prominent in this case and the type of development and respective material considerations would not appear to be directly comparable. Consequently, reference to that development does not amount to a material consideration in favour of the development.
37. No other material considerations have been put forward that would clearly outweigh the harm that I have identified and, accordingly, the very special

circumstances needed to justify the development have not been demonstrated. Therefore, the appeal on ground (a) must fail.

Overall Conclusion

38. 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.

Chris Preston

INSPECTOR