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## Appeals Decisions

Site visit made on 1 December 2017

**by Anthony J Wharton BArch RIBA RIAS MRTPI**

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

**Decision date: 11 December 2017**

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### **Appeals A - Ref: APP/J1860/C/17/3176201 & 3176202 Charcam Gables, Martley, Worcester WR6 6PA**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeals are made by Mrs Maria Masters and Mr Greg Masters against an enforcement notice issued by Malvern Hills District Council.
  - The enforcement notice, numbered E/16/00142/PHY3, was issued on 18 April 2017.
  - The breach of planning control as alleged in the notice is as follows: *'the unauthorised erection to the rear of the dwelling house, together with the further unauthorised enlargement of the dwellinghouse comprising the replacement of the roof and the addition of a box dormer to the rear, together with the unauthorised alteration to a projecting gable to the front and the connected unauthorised provision of a raised platform to the rear'*.
  - The requirements of the notice are as follows:
    - 1) *Permanently remove the unauthorised erection to the rear of the dwelling house, including the lawful disposal of the resultant materials, and construct the resulting eaves of the replacement roof of the dwellinghouse to the rear of the dwellinghouse to the height and to the matching design of the existing eaves of the replacement roof at the front of the dwellinghouse;*
    - 2) *Permanently remove the unauthorised box dormer on the front slope to the rear of the dwellinghouse, including the lawful disposal of the resultant materials, and construct the resulting roof slope of the replacement roof of the dwellinghouse to match the existing plane, materials and design of the roof existing on either side of the unauthorised box dormer.*
  - The period for compliance with the requirements is *sixteen weeks*
  - The appeal is proceeding on *grounds (a), (b), (f) and (g)* as set out in section 174(2) of the Town and Country Planning Act 1990 as amended.
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### **Appeal B - Ref: APP/J1860/W/17/3175848 Charcam Gables, Martley, Worcester WR6 6PA**

- 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 and Mrs G & M Masters against the decision of Malvern Hills District Council.
  - The application Ref 17/00013/HOU, dated 9 January 2017 was refused by notice dated 21 March 2017.
  - The development proposed is as follows: *'single storey rear extension, rear dormer, raising of the ridge of the highest part of the dwelling by approximately 0.3 metres, and re-building of the southernmost gable to the front elevation'*.
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### **Decisions**

1. Appeals A are allowed in part and dismissed in part.
2. Appeal B is allowed in part and dismissed in part. See formal decisions below.

## Background information

3. The appeals property, '*Charcam Gables*' (previously known as '*Homelands*') is a detached, gable-ended bungalow within the village of Martley, which is approximately 8 miles to the west of Worcester. The bungalow lies within the village development boundary but just outside of the Martley Conservation Area (MCA) which is predominantly located to the south east of the site around the junctions of Great Witley and Clifton Roads and around St Peters church. There is a smaller section of the MCA immediately to the north of the appeals site. The bungalow is located on the east side of the B4197 which runs north to south through the village and has white rendered walls and a concrete tiled roof. It is set back from the road and there is a well-established, lawned and planted front garden.

4. The house has been extended in the past and the works had included a rear extension. This has been demolished and replaced by the appeals extension. The overall bungalow site was formally much larger but planning permission was granted on appeal in 2014 for 4 bungalows on land to the rear and to the south west of the house. These have now been constructed and are accessed via a short driveway to the south of the appeal site. There is another bungalow to the south and a two-storey dwelling to the north. The character of this part of the village with its relatively modern dwellings is noticeably different to the older parts within the MCA.

5. The alleged unauthorised works as set out in the enforcement notice (EN) comprise the rear extension; the replacement of the roof and the dormer; the projecting gable to the front and the raised platform to the rear (Appeal A). The so called '*raised platform*' is what the Council refer to as a '*roof terrace*' to the flat roofed extension. However, on my site inspection, I noted that it was simply a flat roof with rooflights and surrounding low parapet wall. Apart from this last element, the same three main parts of the works are described in the application for planning permission (Appeal B). These works are described in section 3 of the application as a single storey rear extension; a rear dormer and the raising of the roof; and the rebuilding of the southernmost gable to the front elevation.

6. In July 2013 a proposed application for a '*first floor extension and formation of a 'granny annexe*' was refused on appeal (APP/J1860/D/13/2198139). The Inspector at that time referred to the site being elevated at a significantly higher level than the road and footpath and above neighbouring bungalows to the south. The result was, and still is, that the property is highly visible and evident in views from the main road to the south. The previous proposal, however, was different to what has now been built and I do not have the full details before me. In any case I have now considered these appeals on their merits.

7. Having inspected the works as carried out and having considered all of the representations, I agree with the Council that the above works are all elements of a single operation of development. Although the Council has given individual reasons why each element does not constitute permitted development, I also agree that the entirety of the works requires planning permission, since at least one of the elements does not constitute permitted development.

8. It would appear that this is accepted on behalf of the appellant. On 1 September 2017, in correspondence relating to clarification of the grounds of appeal, it was confirmed to the Planning Inspectorate Case Officer that there was no appeal on ground (c) as it was not considered '*that the development in its entirety constitutes permitted development*'. If, in its entirety, it is not permitted development and it was carried out as a major redevelopment of the property, no part of the works can constitute permitted development.

### **Appeals A on ground (b)**

9. This ground is only pleaded in relation to reason (ii) set out in section 4 of the notice with regard to the rear extension. It is claimed that the rear extension has not, as a matter of fact, been built so as to exceed the height of the eaves of the house as it existed previously. Reference is made to the DCLG '*Permitted development rights for householders*' – *Technical guidance page 12*.

10. I accept that the eaves height should be measured from the ground level at the base of the outside wall, to a point where that wall would meet the upper surface of the flat roof and that any overhang or parapet should be ignored for the purpose of the measurement. From the photographic evidence (September 2016 and May 2017), and my site inspection, I acknowledge that the top of the flat roof (on the other side of the parapet) appears to meet the top of the wall which may have represented the eaves height of the original house. However, the situation is far from clear since the raising of the whole of the roof must have affected the original eaves level.

11. Furthermore, the Council refers to the breach in part 3 of the notice and I agree that, irrespective of whether or not reason (ii) is fully accurate, the pertinent point is that the rear extension is unauthorised. As a matter of fact and degree, therefore, what is alleged to have taken place, has indeed taken place. A rear extension has been built, together with other works, all of which are unauthorised. Thus, even if the rear extension flat roof was not built to a height which exceeded the eaves height of the existing house, what is alleged in part 3 has occurred as a matter of fact. The appeals fails, therefore on ground (b).

### **Appeals A on ground (a) and Appeal B**

12. The main issues in terms of the planning merits of both appeals as follows:

- The effect of the works on the character and appearance of this part of Martley, including its effect on the setting of the conservation area.
- The effect of the works on neighbouring amenity, including consideration of the potential use of the flat roof (raised platform) as a roof terrace.

13. The development plan for the area is the South Worcestershire Development Plan (SWDP). The most relevant policies are SWDP 21 (Design) and SWDP 6 (Historic Environment). SWDP 21 seeks to ensure that the scale, massing and height of development are appropriate to the setting of the site and the surrounding landscape character and townscape. Where appropriate it also seeks to enhance heritage assets and their settings. In respect of neighbouring amenity, the policy also seeks to ensure that, amongst other things, any new development provides an adequate level of privacy, outlook and does not have an overbearing affect.

14. Policy SWDP 6 indicates that development proposals will be supported where they conserve and enhance the significance of heritage assets, including their settings. Clearly the dwelling lies just outside of the MCA but the effect on its setting must be considered. Both policies are consistent and up-to-date with the general principles set out in the National Planning Policy Framework (NPPF) in aiming to achieve sustainable development, as well as with sections 7 (Requiring good design) and 12 (Conserving and enhancing the historic environment).

15. The Council, in preparing the notice, decided that the elements which caused harm, and which were identified in the reasons for refusal, were the box dormer and the rear extension. They have, therefore '*under enforced*'. The other elements, the raising of the roof and the alterations to the front of the property have not been

enforced against. Having considered these latter elements, in the context of both appeals, I consider the works to be acceptable.

16. In my view, the raising of the main roof and the front alterations do not, in themselves, cause any visual harm to the property; to the locality generally or to the setting of the MCA. In both appeals, therefore, and in terms of the merits of the cases and whether or not planning permission should be granted, I now go on to consider the impacts of the dormer construction and the rear extension both when taken together and also separately.

*The combined effect of the rear extension and the dormer construction on the character and appearance of the area and on the setting of the MCA*

17. Having seen the combination of these two elements of the works carried out (from both near and distant viewpoints), I share the concerns of the Council and other interested persons about their overall effect. The crude manner in which the parapet of the flat roof meets the main roof slope has resulted in an obtrusive, out of scale and unacceptable design. The main public view of the property is from the road (when travelling south to north) and, because of the elevated position, the gable end/roof configuration is most dominant.

18. As seen I do not consider that the development can be described as being of a high quality. It is not sympathetic either to the existing dwelling or its surroundings. I agree with the Council that the poor design and massing has resulted in an incongruous and visually harmful development. As it stands I consider, therefore, that it is contrary to policy SWDP 21 in terms of its inappropriate design, as well as with the design policies in section 7 of the NPPF.

19. At paragraph 64 the NPPF is quite specific that '*permission should be refused for development of poor design that fails to take opportunities available for improving the character and quality of an area*'. I do not consider, therefore that planning permission should be granted for the combination of the rear extension and the dormer construction as built. However, in reaching this conclusion it is my view that the rear extension is the most harmful and that the dormer, when considered in isolation is acceptable in its design. In terms of the effect of just the dormer on the setting of the MCA, I consider that its character and appearance would be conserved by its retention but that the opposite is the case if both elements were to be retained as built.

20. I have referred above to the crude manner in which the rear extension parapet meets the main roof line. Combined with the bulk and massing of the extension this, in my view, makes it unacceptable. However, if the detailing at this juncture tied in with the new eaves level and the clumsy parapet were to be omitted, the overall effect would not be so nearly as obtrusive and over dominant.

21. Therefore, taken alone and despite its length, I consider that the dormer shape and bulk look in proportion with the main roof. It stops at a reasonably lower position than the main ridge, well short of the main gables and is not so distinctly noticeable if considered in isolation. I consider that this element by itself is therefore, acceptable.

*The effect on residential amenity*

22. Having noted the relationship of the rear extension's bulk and massing and any potential use of the flat roof as a terrace, I again share the Council's and others' concerns. Clearly, if the flat roof were to be used as a terrace I consider that it would lead to serious issues of loss of privacy and overlooking for residents of neighbouring properties. This would be particularly the case for occupants of the new bungalows and the house immediately to the south.

23. However, I have noted that the roof was not intended to be used as such and that the French doors were simply to ensure that sufficient daylight entered the rear room. I do not consider that a condition is necessary in relation to any windows in the dormer. Any replacement roof would simply be a flat roof without a high parapet or railings. In any case a separate permission would be required for a roof terrace and if such a use were to be carried out without permission the LPA could take further enforcement action. It would appear that the LPA would soon be informed by neighbours of any further breaches of planning control.

24. But, I still consider that the height, bulk and massing of the rear extension would be seen as being overbearing in terms of the outlook from other neighbouring dwellings. This is another reason, therefore, why I consider that the rear extension is not acceptable at its current height. Thus, as well as being contrary to policy SWDP 21, in terms of its inappropriate design, it would also be contrary to the policy with regard to its detrimental effect on residential amenity. The rear extension as built also fails, therefore, on this second issue.

*Overall conclusion on the planning merits in both appeals*

25. For the above reasons I shall vary the EN by removing the requirement to remove the dormer and grant planning permission under ground (a) for that element of the works in Appeals A. In Appeal B, I shall grant planning permission for all of the works with the exception of the rear extension as built. Thus both appeals succeed in part and fail in part in relation to the granting of planning permission for the works as carried out.

**Appeals A on ground (f)**

26. I have concluded that the dormer itself is acceptable and it follows, therefore, that I find requirement No 2 to the notice to be excessive. I accept the argument that it is not necessary to require removal of both elements in order to overcome the harm caused. However, I do not consider the first requirement is excessive. I have found the rear extension, as built, to be significantly harmful and compliance with that requirement would overcome the harm caused by this part of the breach. I do not consider that there are any lesser steps than the requirement as set out.

27. I do not give weight to the arguments put forward in relation to what may or may not constitute permitted development if both elements are required to be removed. If neither element were in place then any alternative works carried out would either be subject to full planning permission or would have to comply in full with permitted development rights. In conclusion the appeals on ground (f) are successful in part and the enforcement notice will be varied accordingly.

**Appeals A on ground (g)**

28. Under this ground of appeal it is argued that the requirements as drafted could not be achieved within a 16 week period and a minimum period of 6 months is requested. The Council considers that such a period is unnecessary.

29. On the basis that I shall be varying the notice and that there will be no requirement to remove the dormer, the works required should, in my view, be able to be carried out within the 16 week period. The appeals fail on ground (g) and the time for compliance will not be extended.

**Other matters**

30. In reaching my conclusions in both appeals I have taken into account all of the other matters raised made by the Appellants, by the Council and by other interested persons. These include the initial statements; the full planning history of the

property; the policy context; references to the MCA and its setting; the settlement character; the detailed design and materials; the Appellants' addendum statement; the various appendices; the delegated reports; references to previous appeals; the photographic evidence showing other flat roofed extensions in the locality and the Appellants' final comments dated 9 November 2017.

31. However, none of these carries sufficient weight to alter my conclusions on the grounds pleaded in Appeals A or Appeal B. Nor is any other factor of such significance so as to change my formal decisions which are set out below.

### **Formal Decisions**

#### **Appeals A**

32. Appeals A are allowed in part on ground (a) and planning permission is granted as follows:

*'for the enlargement of the dwelling house comprising the replacement of the roof and the addition of a box dormer to the rear, together with the alteration of a projecting gable to the front'* at Charcam Gables, Martley, Worcester WR6 6PA.

33. Appeals A also succeed in part under ground (f) and I direct that the enforcement notice be varied by deleting in full the following requirement:

*Numbered 5.2 in part 5 of the notice (WHAT YOU ARE REQUIRED TO DO).*

34. Otherwise Appeals A are dismissed, the enforcement notice is upheld as varied and planning permission is refused for the rest of the application deemed to have been made under section 177(5) of the Act. For the avoidance of doubt the rest of the application refers to that part of the allegation referring to the *'erection of an extension to the rear of the house'*.

#### **Appeal B**

35. Appeal B is allowed in part and planning permission is granted as follows:

*'for a rear dormer, raising the ridge of the highest part of the dwelling by approximately 0.3 metres and re-building of the southernmost gable to the front elevation'* at Charcam Gables, Martley, Worcester WR6 6PA.

36. Otherwise Appeal B is dismissed and planning permission is refused for a single storey rear extension at Charcam Gables, Martley, Worcester WR6 6PA.

*Anthony J Wharton*

Inspector