
Appeal Decisions

Site visit made on 17 July 2018

by **D E Morden MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 28 September 2018

**Appeal A: APP/W1905/C/17/3181186; B: APP/W1905/C/17/3181187
Oak House Farm, Newgatestreet Road, Goffs Oak, Herts, EN7 5RU**

- 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 Mr V J & Mrs K M Barclay against an enforcement notice issued by Broxbourne Borough Council.
- The enforcement notice, Ref ENF/17/007, is dated 14 June 2017.
- The breach of planning control as alleged in the notice is the material change of use of a single dwelling house to two separate units of accommodation by subdivision of the main dwelling house and associated operational development. The operational development consists of an erection of an unauthorised timber link structure to connect the approved front extension to the main dwelling house with the approved garage and erection of a further unauthorised timber extension to the garage to facilitate the unauthorised change of use.
- The requirements of the notice are to:-
 - (i) cease the use of the site as two separate units of accommodation and revert it back to its lawful use as a single dwelling house; and
 - (ii) remove all structures and fittings associated with the unauthorised use as two dwelling houses. For the avoidance of doubt the removal should include – (a) remove the timber extension on the south elevation of the garage building; (b) remove the timber link extension between the main house and the garage building and (c) remove the brick wall that is creating a small courtyard area between the main house's front extension and the detached garage building; and
 - (iii) incorporate the front extension into the main dwelling house by the removal of separating internal walls; and
 - (iv) install bay windows to the front extension on the dwelling house as per the approved plans attached to 07/10/0822/HF; and
 - (v) install two garage doors to the detached garage building and remove any obstruction within the building to facilitate parking of vehicles as per the approved plans attached to 07/10/0822/HF; and
 - (vi) remove from the land all rubble, rubbish or debris arising from compliance with the above requirements.
- The period for compliance with the requirements is 6 months.
- The appeals are proceeding on the grounds set out in section 174(2)(a), (d) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decisions: The appeals are allowed and the enforcement notice, subject to corrections, is quashed as set out in the Formal Decisions at paragraph 28 below.

Application for costs

1. An application for costs was made by Mr and Mrs Barclay against Broxbourne Borough Council. This application is the subject of a separate Decision.

Preliminary matters

2. It is clear from the representations that the parties agree that the link extension between the garage and the single storey front extension to the house was built as part of the conversion of the garage and the front extension to a separate dwelling. It is not clear from the allegation, however, if the Council meant or intended to mean that the single storey extension to the garage was also part of the associated operational development that facilitated the unauthorised change of use.
3. That small bedroom extension on what was the front of the garage was built approximately 3 years later or more when a third child was expected. In my view that was simply an extension to an already completed development and cannot be considered as facilitating the change of use. I will correct the allegation to clarify that and simply describe it as operational development. There is not a problem in including it within what would then be a composite enforcement notice alleging firstly, a material change of use (which does include some associated operational development - the link) and secondly, separate operational development (the front extension to the garage).

Relevant background/history

4. Looking at the relevant background/history, the main dwelling on the site is a replacement dwelling that was approved in 2001. An application for extensions to it, including a detached double garage located between the house and the road, was approved in 2010. That application included a two storey extension to the west side (rear of the house as viewed from the road) and a single storey extension to the east side (facing the road).
5. In 2012 the appellants began converting the garage to living accommodation (including two bedrooms in the upper roof space). The ground floor was made into a living room area; a single storey link was constructed between the garage and the single storey front extension to the house, the rooms therein made into a kitchen and bathroom. In 2015 an application for the retention of the garage conversion into habitable rooms and the addition of the timber frame link between the garage and the house was refused.
6. In 2016 an application for a two storey infill extension between the house and the garage providing annexe accommodation was refused and an appeal against that refusal was dismissed in January 2017. Finally a breach of condition notice was served on the appellants regarding the residential use of the garage contrary to the condition attached to the 2010 planning permission. That notice should have been complied with by 20 January 2018 but I saw at my visit that the use was still continuing.

The appeals on Ground (d) – appeals A and B

7. On this ground the appellants claimed that the Council was too late to issue its notice, the change of use and associated operational development having taken place more than four years before it was issued. The Council argued that the appellants had concealed the fact that there was a separate, second 'dwelling'

- within the overall building and so could not claim four years of continuous use as a separate dwelling prior to the issue of the enforcement notice.
8. The Council stated that at the last appeal Mrs Barclay had put in a statement confirming that all sanitary and cooking facilities were in the main house. The letter was actually put in with an earlier application (submitted in November 2015) to retain the link extension between the garage and the extended house, the extension on what was the front of the garage and, to use the garage and the extensions for living accommodation. That was the description on the officer's report although the decision notice (refusal) made no reference to that latter extension and the application form only referred to the use of the garage.
 9. As stated by the appellant the kitchen and bathroom have always been in the single storey east side (front) single storey extension to the main house but separated from it and only ever accessed from the link between the extension and the converted garage. The hand drawn plan submitted with the application in 2015 shows that to be the situation and the Council has not disputed that both planning and enforcement officers visited the building in 2015 and 2016 so were well aware of how the building was laid out. Each dwelling has its own entrance front door and there is no internal link between the two households and never has been.
 10. The appellants produced a number of photographs and other documents which have not been challenged by the Council. They show the inside of the buildings and can be dated from the babies and growing children that appear in them. The internal layout is as I found it at my site visit. There are also sworn statements from non-family members and other documentary evidence including a Council Tax statement, child benefit statement, postal redirection confirmations and building society statements that confirm that the appellants' son and daughter in law and their children were living at the site.

Conclusion on ground (d)

11. On the evidence before me contained in the written representations I conclude that the use of the garage, the link extension and what was a single storey east (front) extension to the main house has been as a separate dwelling. The evidence suggests on the balance of probability that this has been a continuous use since 2012 and has, therefore, achieved the necessary period of four years continuous use that renders it immune from enforcement action. Whether as operational development or as part of the material change of use the link extension is immune from enforcement action as more than four years have passed since its erection and use as part of the dwelling.
12. I note the Council's view about concealment but it is not absolutely clear what that short statement of the appellant about the use was submitted for, what it means, and I do not have all the details of the application that it refers to. Further, the Council do not dispute the appellants' statements that both planning and enforcement officers visited the site and inspected the building in 2015 and 2016, the first time certainly well within the time period during which action could have been taken against the unauthorised use. On that basis I do not consider that the Council can successfully argue concealment in this case.
13. It is not argued that the single storey extension on the front of the garage has been there for more than four years; Mr V Barclay's own statement sets out that it was constructed in 2015 and the notice was, therefore, issued less than

four years after its substantial completion. The appeal on ground (d) for this extension must therefore fail. I will issue a split decision, if necessary depending on my decision on the ground (a) appeal concerning this extension. I have also considered whether another new 'chapter' began when the small extension was added in 2015 but it did not result in something materially different, in my view, and the change of use to two units completed its four year immunity period in 2016.

The appeals on Ground (a) – appeals A and B

Further preliminary matters on Ground (a) only

14. Neither party had made representations on the possibility that I might have to consider the appeals on ground (a) just in relation to the single storey extension forming a bedroom on the front of what was originally the garage. The parties were invited to make further representations on that scenario and also on the revised National Planning Policy Framework (the Framework 2018) published after the site visit had taken place, if any representations already submitted needed altering or that any additional representations needed to be made. The parties' responses to that invitation to comment have been taken into account by me in reaching my decision on these appeals.
15. It is a matter of law that all lawful development has permitted development rights and having determined that the second dwelling is lawful it has such rights. I appreciate that the parties had not dealt with this point in their representations but it arises as a natural consequence of my decision on the ground (d) appeals. Similarly, as the parties did not anticipate this point might arise, there was no ground (c) appeal made and nothing, therefore, said about whether or not the extension to the garage was permitted development. I need to consider that as a consequence of my decision on the ground (d) appeal for the change of use.
16. In my view, the principal elevation of the new lawful original dwelling is that which faces south/south east and contains the front entrance door. This wall is set back a long way behind (to the north of) the 'garage' front and the single storey extension to the main house that are incorporated into the new dwelling.
17. The extension is on the front of that garage and, even if I determined that it was within the curtilage of the new dwelling (which does not have to be enclosed), it could not, therefore, be permitted development by virtue of condition A.1(e)(i) of Class A of the Town and Country Planning (General Permitted Development) Order 2015. That states that development is not permitted 'if the enlarged part of the dwelling house would extend beyond a wall which forms the principal elevation of the original dwelling house;'. I will therefore deal with the ground (a) appeals.

Main Issues

18. The main issues in this case, having regard to the relevant policies in the adopted development plan, are whether the extension constitutes inappropriate development in the Green Belt and if so are there any very special circumstances that would justify granting permission in this instance. If it is not inappropriate development there are also still the issues of whether the development provides satisfactory living conditions for the occupants and whether it is materially harmful to the character and appearance of the area.

Reasoning

19. The Council in its recent response dealt with this on the basis that the ground (a) concerned both the extension in front of the garage and the link extension between the garage and the main house but the letter was very clear on that and it is only the former that I need to consider on ground (a). The link extension was dealt with in considering the ground (d) appeal. The Council's objection however, still sets out its policy and detailed objections which I will apply to the relevant extension.
20. The Council stated that the 2018 National Planning Policy Framework (the 2018 Framework) states at paragraph 145 that within the Green Belt, extensions or alterations that do not result in disproportionate additions over and above the size of the original building are not inappropriate development. The single line drawing submitted with the application for the extension shows it to be 3m by 3m and this was also the size set out in the appellant's appeal statement. That would be a 9sqm extension to a dwelling of 70.08sqm (using the appellants' figures from the recent response which were taken from the figures given in the original appeal statement and these were not challenged) - an increase of 12%. In my view that is not a disproportionate extension and would not be contrary to the Framework 2018 or the Council's Green Belt policies.
21. Turning to the second issue, the Council stated that the extension at 7.3sqm was significantly below the 12sqm (local) and 11sqm (national) standard and when taking into consideration that other rooms in the dwelling were also below standard in terms of size, the extension was unacceptable. As set out in the above paragraph the appellants stated that the room was 9sqm (not 7.3sqm as stated by the Council) and this was not challenged by the Council at any stage. Also, whilst the Council preferred its 12sqm standard for double bedroom sizes to the 11sqm in the nationally adopted standards, nothing was put forward justifying this stance. In these circumstances I see no reason why I should not consider the 9sqm against the adopted 11sqm and the room is not significantly below that (9sqm is over 80% of the 11sqm); it is also 75% of the Council's figure of 12sqm. I do not consider that is significantly below either standard. Dismissing the appeal for that reason is not justified on that basis.
22. Turning finally to the third issue, it was argued that the design was poor and contrary to paragraphs 127 and 130 of the Framework 2018, Policy HD16 of the Borough of Broxbourne Local Plan Second Review 2001- 2011 (BLP) adopted in December 2005 and Policy DSC1 of the emerging Broxbourne Local Plan 2018 – 2033 (ELP) which was only submitted for examination in mid-March 2018. It is only at the time of writing (September 2018) that hearings are taking place before an inspector so little weight can be afforded to it at this present moment. No copy has been provided in any event but I note the Council's summary of it in the recent response and its similarity, in principle, to HD16.
23. Whilst I note the Council's view that it considers both this extension and the link extension being flat roofed and of wooden construction are not appropriate I have already determined that the much larger link extension is a lawful building. The design of the very small extension on the south side (old front) of the garage has to be considered against that background. It is fairly well screened from the road and not easily visible even when standing outside the front entrance drive.

24. I acknowledge that a flat roofed extension is somewhat out of character with the main house but the link extension is also flat roofed. The Council referred to BLP Policy HD16(a) which states that proposals should respect the scale, massing, height and character of nearby buildings and should achieve a high standard of design. The Policy is actually concerned with new developments or redevelopment of sites within urban areas but I agree that the principles are relevant to extensions. The extension is not in my view contrary to the elements of that policy other than the one concerning a high standard of design. It is however, just a very minor house extension that is similar in materials and design to the link extension and I do not consider that dismissing the appeal on purely design and/or character grounds can be justified.
25. The appellants stated that they would accept a condition requiring cladding to achieve a different external finish but noted that timber buildings are not uncommon in this part of Hertfordshire. The dark wood finish helps to reduce the impact of the building considerably and bearing in mind that the link extension is also a wooden structure I believe it would be better and far less conspicuous if left as it is rather than finished with some other material.
26. The Council suggested a condition removing permitted development rights under Part 1, Classes A, B and E of the Town and Country Planning (General Permitted Development) Order 2015. It would be very difficult to construct anything as permitted development bearing in mind the location of the dwelling and the boundaries. However, I acknowledge that permitted development rights can change and I will therefore include a condition on the permission which in this location is justified.

Conclusion on Ground (a) and overall

27. For the reasons given above I conclude that the appeals should succeed on ground (a), the notice will be quashed and planning permission will be granted. The appeals on ground (g) do not therefore need to be considered.

Formal Decisions – Appeals A and B

28. I hereby direct that the enforcement notice be corrected as follows:

- 1) inserting '(1)' before the words 'a material change of use' in the first sentence of paragraph 3;
- 2) inserting the word 'associated' before the word 'operational' in the second sentence of paragraph 3;
- 3) inserting a full stop after the word 'garage' in the second sentence of paragraph 3;
- 4) deleting the words after the word garage in paragraph 3 and substituting therefor '(2) Erection of an unauthorised timber extension to the garage on its south elevation.'

Subject to these corrections the appeals are allowed and the enforcement notice is quashed. Planning permission is granted on the applications deemed to have been made under section 177(5) of the 1990 Act as amended, for the development already carried out, namely (1) the material change of use of the main dwelling house into two separate units of accommodation and associated operational development and (2) the erection of a single storey timber extension to the garage subject to the following condition:

- 1) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development within Schedule 2, Part 1, Classes A, B and E shall take place on this site without the prior permission in writing of the Local Planning Authority and such permission shall only be expressed through the grant of a planning permission.

D E Morden

INSPECTOR