



Appeal Decisions

Site visit made on 13 August 2019

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 September 2019

Appeal A Ref: APP/E2001/C/18/3212523

6 The Haven, Walkington HU17 8YH

- 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 Robert Barber against an enforcement notice issued by East Riding of Yorkshire Council.
- The enforcement notice was issued on 24 August 2018.
- The breach of planning control as alleged in the notice is, without planning permission, erection of a two-storey extension to the front elevation of the dwelling house.
- The requirements of the notice are: remove the two-storey front extension and restore the main dwelling to its original condition including reinstatement of original window and door openings to their previous positions using materials to match the host dwelling, and level the land and remove all debris resulting from compliance from the land.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Appeal B Ref: APP/E2001/X/18/3212534

6 The Haven, Walkington HU17 8YH

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr and Mrs Robert and Karen Barber against the decision of East Riding of Yorkshire Council.
- The application Ref DC/18/01985/CLE/EASTSE, dated 18 June 2018, was refused by notice dated 24 August 2018.
- The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is erection of a two storey extension to the front elevation following demolition of the existing detached garage and erection of a single storey extension to the rear.

Summary of Decision: The appeal is dismissed.

Applications for Costs

1. An application for costs was made by Mr Robert Barber against East Riding of Yorkshire Council. This application is the subject of a separate Decision.

2. An application for costs was made by East Riding of Yorkshire Council against Mr Robert Barber. This application is the subject of a separate Decision.

Preliminary Matters – Appeal B

3. The Council issued two separate decisions on an LDC application for a two-storey front extension and a single storey rear extension. One determined that the erection of a single storey extension to the rear was lawful. The other, that the erection of a two-storey extension to the front elevation following demolition of the existing detached garage was not lawful.
4. An appeal may be made under section 195 against a refusal to issue a certificate in whole or in part, with “part” in this context including a modification by the Council of the development described in the application. Such rights are afforded to the Council under section 191(4) of the 1990 Act.
5. The appeal before me is made under section 195 of the 1990 Act and relates to the decision of the Council to refuse to grant a certificate of lawfulness in respect of an application made under section 191 of the 1990 Act. The appeal forms make clear that the appeal is made against the Council’s decision referenced 18/01985/CLE. The evidence before me is clear that decision related to the erection of a two-storey extension to the front elevation following demolition of existing detached garage. I have therefore determined Appeal B on the same basis and have not considered the Council’s decision to grant an LDC in respect of the single storey extension to the rear aspect of the original application.

Appeal A on ground (b)

6. To succeed on ground (b) the onus is on the appellant to show, on the balance of probabilities, that what is alleged in the notice has not occurred as a matter of fact.
7. The notice alleges the erection of a two-storey extension to the front of the property. The appellant accepts, in paragraph 6.33 of their appeal statement, that the erection of a two-storey extension at the front of the property has taken place. I saw from my site visit that a two-storey extension has been constructed to the front of the property.
8. The appellant’s argument on ground (b) is largely that the notice alleges the extension has been erected without planning permission and there has therefore been a breach of planning control. The appellant disagrees that is the case. However, the question of whether what has occurred amounts to a breach of planning control is not the purpose of a ground (b) appeal. Such arguments are to be dealt with under ground (c) and I will do so accordingly.
9. Appeal A on ground (b) therefore fails.

Appeal A on ground (c) and Appeal B

10. In Appeal A on ground (c) the onus is on the appellant to demonstrate, on the balance of probabilities, that the matters stated in the notice which give rise to the alleged breach of planning control do not constitute a breach of planning control. This is also the basis of Appeal B in respect of the LDC application, hence I deal with the two appeals together.

11. There is no dispute between the parties that the matters stated in the notice and the works subject of the LDC application amount to development for the purposes of section 55(1) of the 1990 Act. I see no reason to disagree since the erection of a two-storey extension to the front of the property clearly amounts to building operations.
12. Section 57(1) of the 1990 Act set out that planning permission is required for the carrying out of any development of land. Such permission may be granted under permitted development rights.
13. The wording of section 174(2)(c) of the 1990 Act is in the present tense: the "matters do not constitute a breach". Nevertheless, since the 2015 GPDO¹ does not grant retrospective planning permission, the Courts² have held that the relevant Order for assessing which permitted development rights apply is the one in force when the development was begun.
14. In February 2014, the appellant submitted a planning application to the Council for the erection of a two-storey extension to the front following the demolition of the existing detached garage and the erection of a single storey rear extension³. On 4 June 2014, the Council wrote to the appellant confirming that the works, as amended on revised plans submitted on 29 May 2014, amounted to permitted development under the 1995 GPDO (as amended)⁴. The application was withdrawn by the appellant on 5 June 2014. Subsequently, construction on the single storey rear extension commenced in October 2014.
15. The Council indicates that the works to the front extension did not commence until October 2017. The appellants have not indicated when the works commenced. It is only said that the works were carried out post April 2015. The appellant does nevertheless indicate that a tree was removed from the garden in summer 2014 to facilitate the construction of the front extension. However, it is said that the tree was around 4m from the closest part of the front extension, whilst the appellant's tree report which accompanied the 2014 planning application indicated there was no need for the tree to be removed to facilitate the extension. As a result, the removal of the tree in this instance does not amount to a material operation in my view for the purposes of section 56(4) of the 1990 Act. Thus, in the absence of any other compelling evidence from the appellant regarding start date of the front extension, I find on the balance of probabilities that commencement on the front extension subject of the notice did not begin until October 2017.
16. The appellants argue that, because the Council initially considered the front and rear extensions together as one proposal and that the appellant has always put the two elements together, that they amount to a single development for the purposes of section 55 of the 1990 Act. Therefore, it is said, because works on the rear extension began in October 2014, the development as a whole, including the front extension subject of the enforcement notice, is to be considered under the 1995 GPDO.

¹ Town and Country Planning (General Permitted Development) (England) Order 2015

² *Williams Le Roi v SSE & Salisbury DC* [1993] JPL 1033

³ LPA Reference: 14/00531/PLF.

⁴ Both parties have referred to the '2008 GPDO'. However, the Town and Country Planning (General Permitted Development) (Amendment) (No. 2) (England) Order 2008 is an amendment to the primary order, the Town and Country Planning (General Permitted Development) (England) Order 1995 (as amended). For the purposes of this appeal, I have regard to the 1995 Order, as amended by the 2008 Order, where the 2008 Order has been referred to by the parties.

17. However, there is no physical connection between the rear and front extensions and no requirement for one to support the construction of the other. They are interdependent. Thus, regardless of the fact that the two elements were shown on a single plan and considered by the Council at the same time in 2014, they are in my view two elements which are clearly separate and severable from one another. They therefore constitute two distinct acts of development. The fact that the rear extension was built first so to allow building access to be uninhibited by the front extension is not of sufficient weight to lead me to agree with the appellants that the works amount to a single building operation.
18. Consequently, the question as to whether the front two-storey extension subject of the notice constitutes permitted development falls to be considered against the provisions set out in the 2015 GPDO⁵, that being the version of the Order in force at the time of commencement of the front extension in October 2017.
19. Article 3 of the 2015 GPDO grants planning permission for those classes of development deemed to be 'permitted development' within Schedule 2 of the Order. Class A of Part 1 of Schedule 2 sets out that the enlargement, improvement or other alteration of a dwellinghouse is permitted development. There are limitations nevertheless.
20. Paragraph A.1(e) of Part 1 states that development is not permitted by Class A if the enlarged part of the dwellinghouse would extend beyond a wall which (i) forms the principal elevation of the original dwellinghouse. That is the case here. The appellants accept, in paragraph 5.25 of their statement in respect of Appeal B that the front extension does not meet the limitations of Class A of the 2015 GPDO. I see no reason to disagree.
21. Consequently, the development subject of the enforcement notice and the LDC application would not have been granted planning permission by virtue of Article 3 of the 2015 GPDO, either at the date the notice was issued or at the date the LDC application was made. There is no evidence before me that planning permission has been granted in any other form under section 58 of the 1990 Act.
22. As such, I find that what is alleged in the notice and what is the subject of the LDC application, namely the erection of a two-storey extension to the front elevation of the dwelling house, amounts to development for which there is no planning permission is granted, including under the GPDO.

Conclusion

23. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the erection of a two storey extension to the front elevation following demolition of the existing detached garage at 6 The Haven, Walkington HU17 8YH was well-founded and that the appeal should not succeed. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.
24. In the light of the above Appeal A on ground (c) also fails.

Appeal A on ground (a) and the deemed application

⁵ The 2015 GPDO came into force on 15 April 2015.

25. An appeal on ground (a) is that planning permission should be granted for the matters as stated in the notice, either in whole or in part. Where there is an appeal on ground (a), an application for planning permission is deemed to have been submitted.

Main Issue

26. The main issue is the effect of the development on the living conditions of the occupiers of 2 and 3 Huzzard Close with particular regard to outlook

Reasons

27. The appeal site comprises a two-storey, detached property. The two-storey extension subject of the appeal projects beyond the front elevation of the property, with its side elevation facing the rear of 2 and 3 Huzzard Close. The extension has been located where previously there was a detached garage.
28. No 2 has been extended to the rear with a ground floor conservatory. Nevertheless, a reasonable depth of garden has been retained between the conservatory and the shared boundary to the side of the appeal property. The Council indicates that the separation between the extension and No 2 is around 12.5m. Moreover, the extension is offset at an angle to the rear of No 2, which directly faces the original flank wall of the appeal property. As such, I am satisfied the outlook from the rear windows of No 2 will not be significantly harmed.
29. In terms of the relationship with No 3, I note that the two sites are broadly level, that the eaves of the extension are lower than the main house and that its roof pitches away from the neighbouring properties. However, the extension is located directly opposite the rear dining room window of No 3 at a distance of around 10.5m according to the Council. I note the Council does not have any adopted guidelines for such relationships. However, based on my own observations and the evidence before me, even at the 12.5m separation distance suggested by the appellant, I consider the relationship between the extension and the rear of No 3 is unduly close.
30. Furthermore, the extension covers almost the entire width of the garden of No 3, projecting as it does around 8m beyond the front elevation. This results in a combined projection with the original house of around 13.7m. Moreover, the extension is around 4.2m in height to the eaves and around 7.2m in height to the ridge. As such, it has resulted in a significant amount of largely unrelieved brickwork in close proximity to the rear windows of No 3.
31. In addition, any screening offered by the boundary fence is limited by its modest height. As a consequence, given the relatively shallow depth of the neighbouring rear garden, I find the extension appears as a dominant and obtrusive presence in the outlook of the dining room window in the rear of No 3.
32. I note that a garage previously existed where the extension has been built. However, it is indicated that the garage measured around 2.25m to the eaves and 5.2m to the ridge. It was also around 3m wide, located approximately 5m from the front of the dwelling and around 0.6m from the boundary with No 3. It was therefore much smaller in scale than the extension. Furthermore, photographs of the garage provided by the Council show that neighbouring residents obtained an outlook between the house and the garage whilst the

garage did not have the same sense of dominance or enclosure of the extension subject of the appeal.

33. I also note the presence of trees in and around the appeal site. However, the trees do not appear unduly solid or obtrusive in the outlook of the neighbouring property.
34. I conclude, therefore, that whilst the development will not have a harmful effect on the living conditions of the occupiers of 2 Huzzard Close, it will have a harmful effect on the living conditions of the occupiers of 3 Huzzard Close with particular regard to outlook. That is the prevailing consideration in this instance. As a consequence, the development conflicts with Policy ENV1 of the East Riding Local Plan 2012-2029 Strategy Document 2016 which states that all development should have regard to the amenity of existing properties, as well as paragraph 127 of the National Planning Policy Framework which requires a high standard of amenity for all existing users.

Other Matters

35. I note that the development will not give rise to harm to the living conditions of neighbours in terms of noise and disturbance, loss of light or privacy. However, the lack of harm in respect of such matters does not outweigh the harm I have identified in respect of the main issue above.

Conclusion

36. For the reasons given above, and having considered all relevant matters raised, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended

Appeal A on ground (f)

37. The appeal on ground (f) is made on the basis that the requirements of the notice exceed what is necessary. Section 173(4) of the 1990 Act sets out the purposes which an enforcement notice may seek to achieve. They are either (a) remedying of the breach of planning control or (b) remedying any injury to amenity which has been caused by the breach.
38. The notice alleges the erection of a two-storey extension to the front elevation of the dwelling. The requirements of the notice are to remove the extension and restore the property to its original condition. As such, I am satisfied that the purpose of the notice falls within section 173(4)(a), that being to remedy the breach of planning control.
39. The appellant has not set out any lesser steps he considers would remedy the breach of planning control. The case on ground (f) is largely that amendments to replace the roof or to remove a storey from the extension would be excessive and unreasonable. There is no suggestion that such amendments would remedy the breach of planning control.
40. It seems to me that the requirement to remove the extension in its entirety and restore the front elevation of the property do not go beyond what is necessary to remedy the breach of planning control. There are no lesser steps before me. Nor are there any clear or obvious alternatives that would overcome the harm with less disruption to the appellant.

41. The notice correctly does not require the previous garage to be rebuilt, as case law has established that a notice should not impose a more onerous requirement than to restore the land to its condition before the breach took place.

42. Appeal A on ground (f) therefore fails.

Appeal A on ground (g)

43. An appeal on ground (g) is made on the basis that any period specified in the notice in accordance with section 173(9) of the 1990 Act falls short of what should reasonably be allowed.

44. The appellant argues that a period of 12 months is more reasonable and necessary. It is said that the works would be delayed by weather conditions and that the costs associated with the works will be significant and inflated due to the time constraints.

45. However, the appellant has provided little evidence to suggest that would be the case nor that there any severe financial situations preventing them from financing the works. It seems to me that a period of 12 months would be unduly long and approaching a time period akin to a temporary planning permission.

46. Nevertheless, the Council indicates that a period of 3 months was taken between work on the extension starting and the outer shell being complete. It seems to me that the works involved in removing the extension and restoring the property to its former condition would be a lengthier and more difficult task. As a result, I consider a period of 6 months to be a more reasonable period for compliance, particularly taking into account the disturbance that would arise to the appellant during that time.

47. Appeal A on ground (g) therefore succeeds to a limited extent.

Formal Decisions

Appeal A

48. It is directed that the enforcement notice be varied by the deletion of the words "3 months" in paragraph 6 of the notice and the substitution of the words "6 months" as the period for compliance.

49. Subject to this variation, the enforcement notice is upheld.

Appeal B

50. The appeal is dismissed.

J Whitfield

INSPECTOR