



Appeal Decision

Site visit made on 2 July 2019

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 October 2019

Appeal A Ref: APP/P1805/C/19/3219678

Appeal B Ref: APP/P1805/C/19/3219679

Appeal C Ref: APP/P1805/C/19/3219680

**Land at Four Stones Restaurant, Adams Hill, Clent, Stourbridge,
Worcestershire DY9 9PS**

- 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 Baljit Singh Bhandal (Appeal A), Mr Balbir Singh Bhandal (Appeal B) and Mr Amrik Singh Bhandal (Appeal C) against an enforcement notice issued by Bromsgrove District Council.
- The enforcement notice was issued on 27 November 2019.
- The breach of planning control as alleged in the notice is without planning permission the erection of a replacement glazed sunroom ("the unauthorised development").
- The requirements of the notice are:
 1. Remove the unauthorised development from the Land.
 2. Remove from the Land all building materials and rubble arising from compliance with the requirements of step 1 above.
- The period for compliance with the requirements is 3 months.
- Appeal A is proceeding on the grounds set out in section 174(2)(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.
- Appeals B and C are proceeding on the grounds set out in section 174(2)(a), (f) and (g). Since the prescribed fees have not been paid within the specified period, the appeals on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decisions: The appeals are dismissed and the enforcement notice is upheld with a variation.

Appeal A on ground (a) and the deemed application

Main Issues

1. The main issues are:
 - whether the development is inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;
 - the effect of the development on the openness of the Green Belt;
 - whether the development preserves or enhances the character or appearance of the Clent Conservation Area; and,

- if the development is inappropriate, would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the development.

Reasons

Background

2. The appeal site comprises a detached building presently in use as a restaurant. Planning permission¹ was granted in July 2016 for the demolition of a front sun room and replacement with a new flat roof sun room. The Council became aware in July 2017 that a sun room had been constructed at the appeal site which was not in compliance with the July 2016 permission. It is said that: the number of glazed panels on the front of the sunroom constructed is one less than that approved; the upper section of the front elevation is glazed in contrast to that approved; and, the roof as built is sloping, higher and includes a projecting canopy to the front which includes support columns. An application² seeking to regularise the extension was refused in July 2017 and subsequently dismissed on appeal³ in April 2018.
3. The development subject of the enforcement notice before me in this appeal, is that which was subject to the previous section 78 appeal. The terms of the appeal on ground (a) derive directly from the alleged breach of planning control set out in the notice. There is no power before me to grant permission for something different to that enforced against, only the whole or part of those matters.

Inappropriate Development

4. The appeal site lies within the Green Belt. Policy BDP4.4 of the Bromsgrove District Plan (2017) (BDP) states that the development of new buildings in the Green Belt is not inappropriate development in some circumstances. Those circumstances include, amongst other things, proportionate extensions to non-residential buildings, taking into account the potential impact on the openness and purposes of including the land in the Green Belt. The policy is consistent with the Framework which states, at paragraph 145, that the construction of new buildings in the Green Belt is inappropriate, except for, inter alia, 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.
5. As with the Inspector in the April 2018 appeal, I find the original building has been substantially increased in size through various additions. In my view, the development as enforced against results in a disproportionate addition over and above the size of the original building. The appellant does not disagree.
6. The development therefore comprises inappropriate development in the Green Belt, in conflict with BDP Policy BDP4.4 and the Framework. In accordance with paragraph 144 of the Framework, I afford substantial weight to the harm that arises to the Green Belt by reason of inappropriateness.

¹ LPA Ref: 16/0403

² LPA Ref: 17/00646/FUL

³ APP/P1805/W/17/3191833

Openness

7. Openness as a concept has both a visual and spatial dimension. Whilst the sun room is no greater in footprint than that permitted in July 2016, it is of greater volume due to the roof design and canopy and, given its location to the front of the building, is widely prominent.
8. I conclude, therefore, that the development has a harmful effect on openness and conflicts with the fundamental aim of Green Belt policy to keep land permanently open as set out in paragraph 133 of the Framework.

Conservation Area

9. The appeal site lies within the Clent Conservation Area, the significance of which is largely derived from its pattern of simple, brick-built cottages of varying sizes set amongst a spacious and verdant semi-rural setting. I saw from my site visit that very few of the buildings here contain additions to the front. This ensures a sense of simplicity is maintained, which gives insight into the historical composition of the built environment.
10. The sunroom projects beyond the front of the property and sits close to the adjacent Rose Cottage and the road of Adam's Hill to the front. Rose Cottage is a white rendered, two storey house which sits below the appeal site, such that the floor level of the sunroom sits broadly level with the adjacent property's first floor level. The contemporary design of the sun room with its aluminium frames and large expanses of glazing, coupled with its height and proximity to the road, means it appears as a dominant and incongruous feature within the street scene.
11. I conclude, therefore, that the development does not preserve or enhance the character or appearance of the Clent Conservation Area, in conflict with BDP Policy BDP20 which reflects the statutory duty set out in section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
12. Paragraph 196 of the Framework states that, where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits. Nevertheless, there is little evidence before me from the appellant setting out that the development will result in any public benefits that would outweigh the harm. Great weight is to be afforded to the failure to conserve the heritage asset.

Other Considerations

13. It is argued that the July 2016 permission forms an available fallback position for the appellant. Nevertheless, for significant weight to be afforded to a fallback position, there needs to not only be a greater than theoretical possibility that the development might take place, but also that it would be equally or more harmful than the development subject of the notice.
14. It seems to me that the July 2016 development would deliver the additional floor space sought by the appellant. However, the approved scheme would have lesser volume than the development before me here due to the flat roof and lack of canopy. As a result, the 2016 scheme would have a less harmful effect on the Green Belt and the Clent Conservation Area than the appeal development. It would not, therefore, justify the harm I have identified as

arising from the development as enforced against and thus, I afford it very limited weight.

Conclusion

15. The development is inappropriate development and the Framework establishes that substantial weight should be given to any harm to the Green Belt. It also results in harm to the openness of the Green Belt to which I afford substantial weight. Moreover, I afford great weight to the failure of the development to conserve the significance of the heritage asset.
16. Consequently, whilst I have considered all matters in support of the development, I conclude that, collectively, they do not clearly outweigh the harm I have identified in relation to the Green Belt by reason of inappropriateness, the harm to openness and other harm. Accordingly, very special circumstances do not exist and the proposal would conflict with BDP Policy BD4.4 and the Framework.
17. Section 177(1)(a) allows permission to be given under the appeal on ground (a) to any part of the matters alleged in the notice. To that end, the appellant has advanced four alternative schemes to that subject of the notice.

Alternative Development 'A'

18. The appellant advances, largely under the appeal on ground (f), that alterations could be made to the sun room to make it acceptable in planning terms. Those alterations comprise the removal of the part of the roof which provides a canopy over the front of the sun room. The sun room would otherwise be retained in its current form. The canopy had been removed at the time of my site visit.
19. It seems to me that the sun room with the canopy removed would form part of the matters stated in the notice and it is therefore open to me to grant planning permission for it under the ground (a) appeal.
20. Nevertheless, the alternative would retain significant amounts of glazing set in amongst the modern and slick appearance of the aluminium frame. This would appear in stark contrast to the traditionally proportioned, timber windows found on the appeal and surrounding properties. Moreover, the scale of the sun room is particularly large in the context of the size of the original building. Thus, even with the removal of the canopy, it would appear as a dominant and incongruous feature.
21. I accept that planning permission was previously granted for the erection of an extension of similar footprint and design. However, the 2016 scheme would be slightly lower than that as built and would contain a flat roof rather than the pitched roof of the development as enforced against.
22. I conclude, therefore, that the alternative would not overcome the harm I have identified in respect of the effect of the development on the Green Belt and the Clent Conservation Area.

Alternative Development 'B'

23. The appellant advances, largely under the appeal on ground (f), that alterations could be made to the sun room to make it acceptable in planning terms. Those alterations comprise the removal of the entire roof and its

replacement with a flat, glazed roof. The resultant extension would be a similar footprint, height, shape and design as that which was granted permission in 2016.

24. However, to carry out such an alteration, the canopy would be removed as well as the sloping roof, together with the upper glazed panels on the front and side elevation. The roof would be replaced with a new flat, glazed roof. Given that, as the appellant accepts, the alternative would require the addition of a flat roof, it seems to me that it cannot, by definition of the fact they are new works, form part of the sun room as enforced against. Consequently, I find that the alternative development would not form part of the matters as enforced against in the notice.
25. Regardless of the merits of the alternative, it is not, therefore, open to me to grant planning permission for it under the appeal on ground (a).

Alternative Development 'C'

26. The third alternative put forward is for the development to be altered such that it is in accordance with the 2016 permission. This would involve the addition of an upper section which is flat-roofed in line with the approved drawings. The proposal is for this to be aluminium framed and glazed to match the rest of the sun room.
27. This too would require the removal of the sloping roof and its replacement with a flat roof in line with the approved plans of the 2016 permission. Again, as this would involve new works in the formation of a roof, it seems to me that works would be required that do not form part of the sun room as enforced against. Consequently, I find that the alternative development would not form part of the matters of the notice and it is not, therefore, open to me to grant planning permission for it under the appeal on ground (a).

Alternative Development 'D'

28. Alternative 'D' would necessitate the installation of folding doors within the external wall of the building. The installation of folding doors within the front elevation of the building does not form part of the development enforced against. Regardless of the merits of the alternative, it is not, therefore, open to me to grant planning permission for it under the appeal on ground (a).

Overall Conclusion on Appeal A on ground (a)

29. For the reasons given above, I conclude that the appeal on ground (a) should not succeed and I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act.

Appeals A, B and C on ground (f)

30. An 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.
31. The notice does not specify which of the two purposes it seeks to achieve. Nevertheless, the requirements are to completely remove the unauthorised development. I am satisfied, therefore, that the purpose of the notice falls

- solely within section 173(4)(a), that being remedying the breach by restoring the land to its condition before the breach took place. To that end, the requirements to not go beyond what is necessary to remedy the breach.
32. Case law has nevertheless established that it is open to me to consider clear and obvious alternatives that would overcome the planning harm at less cost and disruption to the appellant than total demolition. The appellants have put forward four alternatives, which I have considered in Appeal A on ground (a).
 33. Taking each in turn, Alternative 'A' would retain much of the extension as enforced against, absent only of the canopy. It would not therefore remedy the breach of planning control.
 34. The appellants indicate that Alternative 'B' would retain the sun room as constructed, save for the canopy and the sloping roof. The approach would not therefore remedy the breach of planning control.
 35. Alternative 'C' would retain part of the unauthorised development, as indicated by the appellants. It would not, therefore, remedy the breach of planning control.
 36. Alternative 'D' would necessitate the installation of folding doors within the external wall of the building. The installation of folding doors within the front elevation of the building does not form part of the development enforced against. Thus, whilst the alternative would remove the sunroom subject of the notice, the variation of the notice to require the installation of folding doors would go beyond what is necessary to restore the land to its condition before the breach took place.
 37. Section 173(4)(a) of the 1990 Act does allow for the breach of planning control to be remedied by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land.
 38. Case law has established that a planning permission cited in a requirement of a notice must be extant and must not have lapsed. In order for the July 2016 permission to be extant, it therefore needs to have lawfully commenced on or before 6 July 2019.
 39. Section 56 of the 1990 Act states that development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out. Case law has established that deciding whether the operations done were comprised within the development allowed by the 2016 permission involves looking at what has been done as a whole and reaching a judgement as a matter of fact and degree upon that whole.
 40. Case law has also established that it is possible to commence a development for the purposes of section 56 of the 1990 Act and thereby meet a deadline imposed by a condition on the permission, and then later deviate from the permission in a manner without retrospectively altering the fact that the commencement of the development had occurred for the purposes of section 56.
 41. The determining consideration is a comparison between the 2016 scheme and the scheme as built. In this instance, I note that the extension that has been built on a similar, if not the same footprint, as that which was granted in 2016.

However, it is not possible to ascertain from the approved drawings whether what has been constructed are building operations which can be construed to amount to a commencement of the 2016 scheme. Neither of the main parties have provided sufficient substantive evidence to that effect. The planning permission granted in July 2016 is therefore now time expired.

42. Moreover, condition 4 of the 2016 permission required details of the joinery at a scale of 1:20 should be submitted to and approved in writing by the Council prior to the commencement of development. Whilst evidence has been provided that such details were submitted to the Council, there is no evidence that the Council approved the details in writing.
43. The appellants invite me to use my power under section 177(1)(b) of the 1990 Act to discharge condition 4 of the 2016 permission. However, the notice is clear that the breach of planning control falls within section 171A(1)(a) of the 1990 Act, that being development without planning permission, rather than section 171A(1)(b), a breach of condition or limitation on a planning permission.
44. Thus, having regard to section 177(5) of the 1990 Act, the appeal made under section 174(2)(a) is that planning permission ought to be granted for the breach of planning control constituted by the matters stated in the notice. The appeal is not brought on the basis that the condition or limitation concerned ought to be discharged, because the breach falls within 171A(1)(a), not 171A(1)(b) – the notice does not allege a breach of condition. To my mind, the inclusion of the phrase, as the case may be, in section 174(2)(a) distinguishes between the powers available under sections 177A(1)(a) and 177A(1)(b).
45. It can therefore logically be construed that the power to discharge any condition or limitation subject to which planning permission was granted under section 177(1)(b) relates to appeals made under section 174(2)(a) relating to a breach of planning control which falls within section 171A(1)(b). That is not the case here. I therefore, am unable to discharge condition 4 on the 2016 permission in the powers afforded to me under this appeal.
46. As a consequence, taking all of the above into account, I cannot be satisfied, on the balance of probabilities, that on the evidence before me, the permission was lawfully commenced and therefore remains capable of implementation in accordance with its conditions.
47. Therefore, is not open to me to vary the requirement in the way suggested by the appellants. There is no extant planning permission that could be cited as an alternative.
48. As a result, the appeals on ground (f) fail.

Appeals A, B and C on ground (g)

49. The appeals on ground (g) are that the time limit given for compliance with the notice is too short.
50. The notice gives a time period of three months for compliance with its requirements. The appellants initially suggested a period of six months would be more appropriate to allow sufficient time for the requirements to be undertaken without disrupting the business operating from the premises. In

their later statement, it is put forward that a period of 18 months would be more appropriate. However, I have been provided with little evidence as to how the removal of the extension within a period of three months would unduly affect the appellants' business. Moreover, a period of 18 months would amount to a grant of temporary planning permission and would not satisfactorily deal with the need for expediency.

51. Nonetheless, it is clear by the grant of planning permission in 2016 that the Council considers some form of extension on this footprint is acceptable in terms of its impact on the Green Belt and the character and appearance of the area. There are several alternatives which the appellants have put forward, three of which I have been unable to consider the planning merits of because they do not form part of the development as enforced against. It therefore seems to me that it would be reasonable to extend the time period for compliance to nine months to allow the parties the opportunity to explore alternatives which would overcome the harm I have identified in respect of the appeal on ground (a).

52. Consequently, the appeal on ground (g) succeeds to a limited extent.

Formal Decisions

Appeal A

53. It is directed that the enforcement notice is varied by the deletion of the words "3 months" from section 6 of the notice and the substitution of "9 months" as the period for compliance. Subject to the variation, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

54. It is directed that the enforcement notice is varied by the deletion of the words "3 months" from section 6 of the notice and the substitution of "9 months" as the period for compliance. Subject to the variation, the enforcement notice is upheld.

Appeal C

55. It is directed that the enforcement notice is varied by the deletion of the words "3 months" from section 6 of the notice and the substitution of "9 months" as the period for compliance. Subject to the variation, the enforcement notice is upheld.

J Whitfield

INSPECTOR