



Appeal Decisions

Site visit made on 10 December 2019

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 December 2019

Appeal A Ref: APP/A3655/C/18/3214887

Appeal B Ref: APP/A3655/C/18/3214888

Land at Meadowbrook, Prey Heath, Mayford, Surrey GU22 0SL

- 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 Michael Anthony Waite (Appeal A) and Mrs Sarah Waite (Appeal B) against an enforcement notice issued by Woking Borough Council.
- The enforcement notice was issued on 9 October 2018.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land from use as a single dwellinghouse ("the original dwellinghouse") to use as two separate units of residential accommodation; in particular the use of the double garage shown hatched black on the plan ("the garage") as a single dwellinghouse.
- The requirements of the notice are: (i) Cease using the garage as a single dwellinghouse; and (ii) Restore the garage including its external appearance to accord with the approved plan from planning consent reference PLAN/1995/0474; and (ii) [sic] Remove from the land all materials, rubble and debris arising from compliance with requirements (i) and (ii) above.
- The period for compliance with the requirements is: (i) Three months; (ii) and (iii) Six months.
- Appeal A is proceeding on the grounds set out in section 174(2) (a), (e) and (f) of the Town and Country Planning Act 1990 as amended.
- Appeal B is proceeding on the grounds set out in section 174(2) (e) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period for Appeal B, the appeal 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 corrections.

Preliminary Matters

1. The plan attached to the enforcement notice is inaccurate. The footprint of the building is more extensive than that shown on the plan. Also, part of the area shown hatched black on the plan is not part of the new dwelling attacked by the notice, but part of the original dwelling. However, the entire building and its curtilage is included within the red line on the plan. As a result, there can be no doubt about what is attacked by the notice. In any event, the address stated in paragraph 2 of the notice is sufficient to specify the precise boundaries of the land to which the notice relates, in accordance with paragraph 4 (c) of The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002. Therefore, in the interests of certainty I shall correct the notice by deleting the plan and the references thereto in the address and the allegation.

2. The notice refers to use of the garage as a single dwelling in both the allegation and the requirements. However, the new dwelling includes other parts of the building, including rooms previously used as a store, study and a bedroom in the original dwelling. Additionally, as the building has subsequently been extended it cannot be restored to accord with the 1995 planning permission referred to. Again, there can be no doubt about what it is that the notice attacks. Even so, in the interests of certainty I shall correct the allegation to delete references to the garage, in consequence of which I shall also correct the requirements to delete references to the garage, as well as deleting reference to the 1995 planning permission. The alleged breach of planning control could be remedied simply by requiring use of the appeal site as more than one dwelling to cease and its restoration to the condition before the breach took place. Correcting the notice as set out above will not cause injustice.

Appeals A & B

Ground (e) appeals

3. The ground of appeal is that copies of the notice were not properly served on everyone with an interest in the site. The onus of proof is on the appellants, the relevant test of the evidence being on the balance of probability.
4. The appellants' ground (e) submissions have been dealt with in the preliminary matters. At s329 (1), the Act prescribes the methods by which an enforcement notice may be served. This includes by delivering it to the person on whom it is to be served or to whom it is to be given; or by leaving it at the usual or last known place of abode of that person or, in a case where an address for service has been given by that person, at that address; or by sending it in a prepaid registered letter, or by the recorded delivery service, addressed to that person at his usual or last known place of abode or, in a case where an address for service has been given by that person, at that address.
5. In the annex to the notice there is a list of persons on whom copies were served. The list includes the appellants and the occupiers of the new dwelling. There was no evidence that any of the parties listed had not been served with a copy of the notice using one of the methods set out at s329 (1) of the Act. The appellants did not provide details of any other persons with an interest in the site who had not been served with a copy of the notice. No information was submitted which might have shown that any additional persons had an interest in the site at the time the notice was served.
6. Therefore, I find that, on the balance of probability, copies of the notice were properly served on everyone with an interest in the site. Even if that were not the case, s176 (5) of the Act provides for disregarding a failure of service where persons do not suffer substantial prejudice as a result. The appellants have not suffered any prejudice, as they have been able to make appeals and explain fully in these proceedings why those appeals should be allowed. There was no suggestion that any other person has been prejudiced. As a result, even if there had been evidence of a failure to serve interested persons, I would have concluded that it should be disregarded.
7. Accordingly, the ground (e) appeals fail.

Appeal A

Ground (a) appeal

Main Issues

8. The main issues in this ground of appeal are:

- Whether the new dwelling provides suitable living conditions for the existing and future occupiers, having regard to daylight and outlook, noise and disturbance, external amenity space and internal size.
- Whether the effects of the new dwelling on the Thames Basin Heaths Special Protection Area (SPA) have been adequately mitigated.

Reasons

Living conditions

9. The site contains a detached single storey residential building which originated around forty years ago and has since been substantially extended. The new dwelling has been formed from part of the building used as a double garage in the original dwelling, together with some adjacent rooms. During my site visit, I observed that the new dwelling contained a combined living room and kitchen, together with a bathroom, one bedroom and a study.
10. The bedroom in the new dwelling has limited access to daylight, as it is only directly lit by two small rooflights set within the north facing slope of a valley roof. Whilst the level of daylight in the room might accord with the Building Regulations, compliance with other legislation is of limited relevance in a planning context and in any event, no details were provided in that respect. Also, given that the roof lights are well above eye level, any direct outlook from the bedroom is significantly restricted. Both above factors mean that occupiers of the new dwelling are likely to experience an oppressive sense of enclosure in the bedroom.
11. It would not be unreasonable for occupiers of the new dwelling to expect to enjoy good levels of peace and quiet in their bedroom. However, the bedroom is adjacent to the large living room in the original dwelling. A living room is likely to generate significant levels of noise and disturbance, for example during family gatherings, or when TV programmes and amplified music are being played. Whilst I understand that sound insulation was installed to the internal walls to comply with the Building Regulations, I give this little weight for reasons already set out above. In any event, the level of sound insulation provided was unclear. Therefore, based on the available evidence I conclude that occupiers of the new dwelling are likely to experience significant levels of noise and disturbance in the bedroom at times.
12. The appellant agreed to rearrange the bedroom and study so that the latter became the bedroom and vice versa. However, there was no suggestion that the internal arrangements in the new dwelling would otherwise be altered. Consequently, the outlook available and juxtaposition of rooms in both dwellings would remain similar to when I visited. In addition, given that the bedroom is significantly larger than the study, I am not convinced that such a rearrangement would be enduring. In this respect, to investigate whether there had been a breach of any planning condition requiring the above rooms

to be rearranged, the Council would have to have unfettered access to the new dwelling. It would therefore be practically impossible for a breach of such a condition to be detected. Consequently, any condition would be unenforceable, thereby failing one of the tests in paragraph 55 of the National Planning Policy Framework (the Framework). Use of the bedroom as a study when it was in the original dwelling is of limited relevance in terms of the planning merits of the new dwelling. It follows that rearranging the rooms would not satisfactorily address the harm identified above.

13. I am given to understand that occupiers of the new dwelling share access to the grounds of the original dwelling, including an outdoor swimming pool. Whilst the grounds are generous in size, in practice occupiers of the new dwelling nevertheless have no dedicated, separate private area available in which they can undertake informal outdoor activities, such as relaxing or sunbathing. To my mind, the absence of such a space reinforces the sense of the restrictive living environment resulting from the other factors identified above. The absence of a private amenity space is also inconsistent with the Council's Outlook, Amenity, Privacy and Daylight Supplementary Planning Document (SPD), which requires one bedroom dwellings to incorporate a private, sunlit area for sitting outside. It is also inconsistent with the Council's Design SPD, as adequate privacy and amenity space has not been provided.
14. During my visit, I observed that the living room in the new dwelling accommodated some furniture including a good sized sofa and easy chair, a coffee table and some drawers and there was a large, freestanding TV. The kitchen area was fitted with a worktop and an oven and hob, together with a sink and drainer. This area also contained wall mounted storage space, with further space for storage and domestic appliances underneath. There was space to move around the living room and kitchen with ease after the furniture and other day-to-day domestic items had been accommodated. Also, after the bedroom furniture including a double bed, wardrobe and drawers had been accommodated, there was a reasonable amount of circulation space in the bedroom. Consequently, in terms of their internal size the living room and kitchen and the bedroom provided reasonably comfortable spaces and did not have a particularly cramped feel. The study contained furniture including a small sofa together with a desk and chair. It provided a comfortably sized space as did the bathroom, which contained all the usual facilities.
15. The main parties could not agree on the internal size of the new dwelling, the appellant having assessed the gross internal floor area (GIA) as being around 59 m², whilst according to the Council it was around 52 m². The Council referred to a shortfall compared with the minimum 65 m² GIA anticipated for a two bedroom dwelling in the Outlook, Amenity, Privacy and Daylight SPD and the 61 m² minimum for such accommodation set out in the Government's technical housing standards¹. However, as noted above the new dwelling is laid out as one bedroom accommodation. Whilst the room used as a study could conceivably be used as a second bedroom in future, there is no firm evidence to suggest that is a likely occurrence and, in any event, I must deal with the appeal based on the current circumstances. Whichever figure is more accurate in terms of the GIA, the new dwelling exceeds the 50m² minimum for one bedroom accommodation in the technical housing standards. The adequacy of the GIA when assessed against the technical housing standards

¹ Technical housing standards-nationally described space standard DCLG March 2015.

reinforces my findings in respect of how the new dwelling is experienced in terms of its internal size.

16. Drawing the above matters together, whilst the new dwelling is not cramped or substandard in terms of its internal size, the limited daylight and restrictive outlook and levels of noise and disturbance likely to be experienced in the bedroom, together with the absence of any private external amenity space, have resulted in unacceptably harmful living conditions for the existing and future occupiers. I acknowledge that the current occupiers might be content with these arrangements but that carries limited weight, as occupiers can change quickly whilst the harm caused would be more enduring.
17. Therefore, the new dwelling does not accord with criteria in Policy DM11 of the Council's Development Management Policies Development Plan Document (DPD), as the internal layout results in undue disturbance between adjoining residential properties in the building and it does not have access to a suitable area of private amenity space. The failure to ensure an appropriate level of private amenity space also does not accord with criterion in Policy CS 21 of the Woking Core Strategy (CS). Furthermore, the failure to provide a high standard of amenity for existing and future users is inconsistent with paragraph 127 of the Framework.

Effects on the SPA

18. According to the Council, the site is between 400 m and 5 km of the SPA; no firm evidence was provided to indicate otherwise. The SPA is protected by European legislation, transposed into UK law by the Conservation of Habitats and Species Regulations 2017, being of international importance as a habitat supporting breeding populations of three rare species of ground nesting birds: Dartford Warbler, Woodlark and Nightjar. CS Policy CS 8 requires an appropriate financial contribution to be made towards the provision of Suitable Alternative Natural Greenspace and Strategic Access Management and Monitoring, where new residential development is between 400 m and 5 km of the SPA and an appropriate assessment has concluded that there would be no adverse effect on its integrity. I am given to understand that details of the required contributions are set out in the Council's SPA Avoidance Strategy.
19. No Planning Obligation under s106 of the Act has been provided in respect of making a contribution in accordance with the requirements of the Avoidance Strategy and there is no evidence that such a contribution has been otherwise secured. The Planning Practice Guidance (PPG) advises that positively worded conditions requiring payment should not be imposed and that conditions requiring a Planning Obligation or agreement under other powers to be entered into are unlikely to be enforceable. Negatively worded conditions restricting development until a Planning Obligation or other agreement had been entered into are also unlikely to be appropriate, apart from in limited circumstances not applicable to this appeal². Therefore, such a condition could not be used to secure the required contribution as it would not pass the tests in the Framework paragraph 55.
20. Accordingly, I cannot be certain that if permission were to be granted, adequate measures have been provided to avoid or mitigate any adverse effect on the integrity of the SPA arising from the new dwelling. It follows that there

² Paragraph: 005 Reference ID: 21a-005-20190723 & Paragraph: 010 Reference ID: 21a-010-20190723.

is a failure to accord with CS Policy CS8. The absence of an appropriate contribution to avoid harmful effects on the SPA also fails to accord with criterion in DPD Policy DM11 and is inconsistent with the Framework chapter 15, which seeks to conserve and enhance the natural environment.

Other matters

21. The new dwelling does not constitute inappropriate development in the Green Belt and has not caused harm to the character and appearance of the area. There is also no harm to the levels of privacy, light and outlook enjoyed by occupiers of adjoining residential property or to highway safety. There has been no loss of a family home. Acceptable parking provision together with adequate storage space for recycling/refuse could be secured by a suitable condition. However, the absence of harm in respect of the above matters does not weigh in favour of granting permission.
22. I was referred to the Council's handling of previous planning applications, including an application made in respect of the new dwelling in 2018³. Furthermore, the appellant commented on the Council's handling of the appeal in terms of procedural matters. Whilst I can understand the appellant's frustration in relation to such matters, they do not have a material bearing on the outcome of the appeal. This is because I must determine the deemed application on its planning merits.

Conclusion on ground (a)

23. The new dwelling does not accord with the Development Plan and it is inconsistent with SPD and the Framework. Therefore, the ground (a) appeal also fails.

Appeals A & B

Ground (f) appeals

24. This ground of appeal is that the requirements of the notice are excessive for their purpose. According to s173 of the Act, there are two purposes which a notice can seek to achieve. The first (s173 (4) (a)) is to remedy the breach of planning control that has occurred, including by restoring the land to its condition before the breach took place. The second (s173 (4) (b)) is to remedy any injury to amenity caused by the breach.
25. The Council did not specify which of the above purposes that it had sought to achieve by issuing the notice. However, the purpose of the notice must be to remedy the breach of planning control by restoring the site to its condition before the breach took place. This is because the notice required the use of the new dwelling to cease and the removal of the works that had facilitated that use.
26. The appellants argued that the notice required alterations that went beyond remedying the breach. However, no detailed explanation was offered in this respect. Moreover, following the corrections made in consequence of the preliminary matters, the notice does not require removal of any works other than those that have facilitated the use of the new dwelling.

³ Council Ref: PLAN/2018/0680.

27. Therefore, the requirements of the notice do not exceed what is necessary to remedy the breach and the appeal on ground (f) also fails.

Conclusion

28. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the deemed application.

Formal Decisions

29. It is directed that the enforcement notice be corrected by:

- Deleting the attached plan;
- Deleting the references to the plan in paragraph 2 ("the land to which the notice relates") and in paragraph 3 ("the matters which appears [sic] to constitute a breach of planning control") thereto;
- Deleting the references to the garage in the allegation at paragraph 3, by deleting the remainder of the paragraph after "accommodation;"
- Deleting step (i) of the requirements at paragraph 5 ("what you are required to do") and replacing it with the following step (i) "Cease the use of the land as more than one dwellinghouse";
- Deleting step (ii) of the requirements at paragraph 5 and replacing it with the following step (ii) "Restore the land to its condition before the breach took place"; and
- Renumbering the second step numbered (ii) in paragraph 5 to step (iii).

Subject to these corrections Appeals A and B are dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made on Appeal A under section 177 (5) of the 1990 Act as amended.

Stephen Hawkins

INSPECTOR