



Appeal Decision

Site visit made on 10 December 2019

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 January 2020

Appeal Ref: APP/D3640/C/18/3206253

56 Little Heath Road, Chobham, Woking, Surrey GU24 8RJ

- 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 David Ironside against an enforcement notice issued by Surrey Heath Borough Council.
- The enforcement notice was issued on 30 May 2018.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised extension of the garage to the southern boundary of the land.
- The requirements of the notice are: (i) Remove the staircase within the covered way, stair landing/balcony area (and balcony rails); (ii) Demolish the extended garage roof canopy; (iii) Demolish the supporting walls/false frontage; (iv) Remove all materials associated with (i)-(iii) above from the land.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (c) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, 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 Decision: The appeal is dismissed and the enforcement notice is upheld with corrections.

Preliminary Matters

1. The appellant disputed the requirement in the enforcement notice to remove all the materials following demolition of the unauthorised garage extension. This is a matter appropriate to ground (f), which concerns whether the notice requirements are excessive for their purpose. Therefore, after seeking the views of the main parties I intend to consider the appeal as if it had also been made on ground (f).
2. Interested residents made representations which largely concerned the planning merits of the garage extension. However, such matters are not before me as there is no ground (a) appeal.

Ground (c) appeal

3. The ground of appeal is that the matters alleged in the notice do not constitute a breach of planning control. It is for the appellant to show that their appeal should be allowed, the relevant test of the evidence being on the balance of probability.
4. The appeal site contains an enlarged semi-detached dwelling. A double garage at the side is attached to the dwelling by a covered walkway. In 2014,

planning permission was granted to construct a roof extension to the garage, including rear dormers and a side elevation staircase¹. In 2016, permission was granted for an alternative scheme including kitchen and bathroom facilities above the garage². In respect of both permissions, the approved drawings showed amongst other things, an external spiral staircase positioned centrally at the side of the garage, leading up to a small landing at first floor level.

5. The garage has been extended, incorporating a roof canopy up to the boundary with the adjacent property. The garage extension is a substantial structure, not shown on the approved drawings. The Council refused permission for the garage extension and two appeals were subsequently dismissed during 2018³. The appellant accepted that the extended garage roof canopy had been erected in breach of planning control. When I visited, most of the roof canopy had been removed, leaving sections of false pitched roof at the front and rear of the garage extension. The appeal was therefore limited to the staircase and landing, together with the supporting walls and false frontage.
6. The garage extension encloses an area which includes where the external staircase and landing shown on the approved drawings would have been. As built, the staircase and landing are materially different to that shown on the approved drawings in terms of overall appearance, stair arrangement, position and the size of the landing area. Moreover, the staircase and landing are enclosed by the walls of the garage extension. They are part of the physical fabric of the garage extension. There is little evidence to indicate that construction of the staircase and landing did not form part of the operations comprising erection of the garage extension as a whole. Consequently, the available evidence is that the staircase and landing were part of the breach of planning control alleged in the notice and did not benefit from the planning permissions granted in 2014 and 2016.
7. The appellant did not explain how Article 3, Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) granted planning permission for the supporting walls and false frontage. The walls and false frontage are part of the physical fabric of the garage extension. There is little evidence to indicate that they did not form part of the operations comprising erection of the garage extension as a whole. Where the limitations of the GPDO are exceeded it is the whole development that is unlawful, not just that part constructed in excess of permitted development rights. As a result, the walls and false frontage could not have been permitted by the GPDO and they were erected in breach of planning control.
8. The above findings notwithstanding, following the site visit both main parties agreed that the staircase and landing, together with the walls and false frontage, had been granted planning permission since the issuing of the notice⁴. As a result, the appellant has shown that those matters do not constitute a breach of planning control. Accordingly, I shall use the powers available under s176 (1) of the Act to correct the notice by deleting the requirements at paragraph 5 (i) and (iii). In doing so, I am satisfied that no injustice would be caused.

¹ Council Ref: 14/1103.

² Council Ref: 16/0349.

³ Refs: APP/D3640/D/17/3185161 & APP/D3640/D/18/3197108.

⁴ Council Ref: 18/0583.

9. Following the above corrections to the notice, a part of the garage extension i.e. the remainder of the extended garage roof canopy, is still in breach of planning control. The ground (c) appeal therefore fails.

Ground (f) appeal

10. At s173, the Act sets out the two purposes which the requirements of an enforcement 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.
11. The Council did not specify which of the above purposes it had sought to achieve by issuing the notice. However, the notice required the garage extension and its constituent parts to be demolished, as opposed to being altered or modified in some specified way. The notice also required materials arising from the demolition to be removed from the site. Therefore, 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.
12. I understand that the appellant intends to use some of the demolition materials in a future roof enlargement. However, if such works took place, they are unlikely to account for re-use of all the demolition materials. In any event, varying the notice to stop short of removing all the demolition materials would not fulfil the purpose of restoring the site to its condition before the breach took place.
13. Consequently, having regard to the corrections that will be made to the notice following the outcome of the ground (c) appeal, the requirements do not exceed what is necessary for the purpose of remedying the breach and the appeal on ground (f) also fails.

Conclusion

14. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections.

Formal Decision

15. It is directed that the enforcement notice be corrected by deleting the requirements at paragraph 5 (i) and (iii). Subject to these corrections the appeal is dismissed and the enforcement notice is upheld.

Stephen Hawkins

INSPECTOR