



Appeal Decision

Site visit made on 9 June 2020

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 10 July 2020

Appeal Ref: APP/K3605/C/19/3240702

Woodend, Leatherhead Road, Oxshott, Leatherhead KT22 0EX

- 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 Mans Zelmerlow against an enforcement notice issued by Elmbridge Borough Council.
 - The enforcement notice was issued on 14 October 2019.
 - The breach of planning control as alleged in the notice is: Within the last four years and without planning permission, a single-storey outbuilding with room in the roof space has been erected.
 - The requirements of the notice are to:
 - 1) Permanently remove from the Land the outbuilding hatched in blue on the attached plan; AND
 - a) Permanently remove all resultant wastes from Land.
 - The period for compliance with the requirements is Three (3) calendar months after this Notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to made under section 177(5) of the Act as amended falls to be considered.
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Formal Decision

1. The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Application for costs

2. An application for costs was made by Mr Mans Zelmerlow against Elmbridge Borough Council. This application is the subject of a separate decision.

Background

3. In June 2019 planning permission (ref 2019/0945) was refused for a single-storey outbuilding with rooms in the roofspace, due to the Council considering that its design and appearance would be harmful to the character of host dwelling and its surroundings, and also the expected effect on the living conditions of a new dwelling on an adjoining site which, at my site visit, I noted was under construction.
4. Despite the above decision an outbuilding was subsequently erected in the dwelling's rear garden in a roughly similar position to the development previously refused planning permission.

5. In the circumstances the Council then considered it expedient to issue an enforcement notice.

The Appeal on Ground (a) and the deemed planning application (DPA)

Main Issues

6. The main issues are:
 - 1) the effect of the development on the character and appearance of the host dwelling and its surrounding area, with particular regard to its design, form, height and appearance; and
 - 2) the effect on the living conditions of neighbouring 'House D', with particular regard to its impact on the neighbouring property's rear garden.

Reasons

Character and appearance

7. The site falls just outside the Metropolitan Green Belt, the boundary of which meets the limits of the rear gardens of the residential properties along this section of Leatherhead Road.
8. The building, clad in dark stained timber, is to be used as an art and music studio which, in reflecting the interests of the current occupiers of Woodend, can be considered as incidental to the enjoyment of the main dwellinghouse. Although the functional floorspace is at ground floor level a small staircase leads up to a limited storage area.
9. The building is sited in excess of 3.1m from the garden's boundary with the former site of No 2 Prince's Cottage, now being redeveloped with a pair of semi-detached dwellings. Its footprint is sited considerably less to the boundary with the track beyond to the garden's north at a distance of approximately 2m. The outbuilding measures approximately 3.9m to ridge height, but with an eaves height of some 2.9m and some accommodation on the upper storey, it requires the benefit of planning permission for its lawful retention. The appellant is agreed as to this requirement.
10. Woodend itself is a modern, two-storey, brick-built dwellinghouse with a chamfered-end roof form. The outbuilding is noticeably set back, and angled away from, the dwelling's rear building line and, given this context, I find that its ridge height is not excessive in its setting. The use of timber is at odds with the dwelling's brick facing but I noted the timber's dark staining which blends in with the wooded surrounds, its roof design incorporating a front canopy to temper the height and add visual interest, and its detachment and positioning relative to the dwelling.
11. Taken together, these factors ensure that the two buildings enjoy a satisfactory relationship. The Council's Supplementary Planning Document 'Home Extensions Guide' (SPD) does not specifically address the design and potential impact of outbuildings but it does indicate that additional development should not compromise the retention of adequate garden space. In this instance usable garden space is plentiful.
12. I thereby consider that, in terms of character and appearance, the outbuilding has no appreciable adverse impact, its front façade and fenestration within this

elevation afford it a domestic feel, and it is satisfactorily distanced from the site's boundaries, particularly that of the former Prince's Cottage site. As a consequence I find that the outbuilding has an appropriate relationship with the dwelling, 'Woodend' and also, given its setting, the development is not out of character with the surrounding area.

13. On this first main issue I conclude that the development in situ is neither harmful to the character of the host dwelling nor its surrounding area, and there is no material conflict with the relevant aims and requirements of policy DM2 of the Elmbridge Development Management Plan (DMP), policy CS17 of the Council's Core Strategy, nor relevant advice contained within either the Council's SPD or paragraph 127 of the National Planning Policy Framework (the Framework).

Living conditions

14. The Council has raised objections as to the outbuilding's height and design being overbearing on, and causing overshadowing to, the rear garden of 'House D', currently under construction.
15. House D is one of two pairs of semi-detached, two-storey dwellings, a development allowed on appeal in May 2017, and with the general design varied in May 2019 under planning permission ref 2019/0722. The dwellings all have rear dormer-windows, and House D is nearest to, and in sight of, the rear of the neighbouring outbuilding. However, there is a considerable distance between these two buildings, and the Council does not consider that there are privacy implications. I agree, especially noting that there are no window openings in the outbuilding's facing elevation, and that its restricted first floor storage area is lit by windows in the front roof slope and flank elevation.
16. I must disagree, though, with the Council's assertion that the development would adversely impact on the living conditions at House D in terms of the resultant effect on its rear garden. The outbuilding is in excess of 3m from the common boundary and, although its eaves height along its rear elevation is slightly higher than the canopy base at its front, the roof slopes away to the ridge height which stands less than 4m from ground level.
17. House D's north-east facing rear garden, although truncated by the angled common boundary with Woodend, is still of adequate size. Due to this orientation, and as this boundary is screened by substantial verdure, the main daylight source will be from other aspects, as will sunlight entry. Accordingly, I find that the development will not have an overbearing effect on House D's rear garden, once the development is completed and occupied.
18. I therefore conclude that the development will not be harmful to the living conditions at House D, and there will be no material conflict with DMP policy DM2, the Council's SPD, nor relevant advice in paragraph 127 of the Framework.

Other considerations

19. The Council, in an attempt to support its case, has produced a previous appeal decision letter (refs: APP/F5540/C/14/3001462 & APP/F5540/C/143001464) where an enforcement notice issued by the Council of the London Borough of Hounslow against the erection of a mono-pitched roofed single-storey outbuilding was upheld.

20. I have had regard to the then Inspector's comments and the Council's belief that direct parallels can be drawn between this decision and the current appeal. However, whilst the main issues might be similar, I am mindful that the Inspector considered that the unrelieved brick elevation of the building at issue appeared overbearing and, in causing overshadowing, was detrimental to the neighbouring occupiers in the use of their garden. I have found otherwise here.
21. The distinctions I have drawn between the two cases is indicative of the fact that each case should be considered in relation to the particular circumstances involved and the individual planning merits and/or impacts that arise.

Conclusions on the DPA

22. I have found that the development, as built, creates no significant harm and is acceptable in terms of both main issues. Accordingly, for the reasons given, and having had regard to all matters raised, the appeal on Ground (a) succeeds and planning permission, by way of the DPA, is granted.
23. The Council has not put forward any suggested conditions that I might impose in granting planning permission. However, the development is largely complete, and both its external appearance and the internal accommodation roughly reflects the plans which accompanied the unsuccessful application in 2019. Moreover, the outbuilding, as referred to in the enforcement notice, is exactly what it says, and my site visit inspection confirmed that the internal accommodation does not include any substantive living facilities and facilities that would enable it to be put to a habitable use independent and separate to the adjacent dwelling, especially as access to the rear garden is only currently available either through the house or via a passage to its side.
24. Nonetheless, should the situation change in the future and the outbuilding is no longer considered as incidental to the enjoyment of the dwellinghouse, or the outbuilding has been significantly extended, or altered internally to facilitate a considered material change in planning terms, it is open to the Council to use its remedial powers as it sees fit. Accordingly, I do not intend to impose any conditions on the planning permission hereby granted.

The appeal on Ground (f)

25. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. S173(4) provides that the purpose shall be either to remedy the breach of planning control or to remedy any injury to amenity. In this case it would appear from the requirements of the notice that its primary purpose is to remedy the breach by restoring the land to its condition prior to the breach taking place.
26. The appellant, in his representations, lays great stress to this particular ground and makes frequent reference to "*worse fallback*", highlighting the consideration that a potential fallback position exists. Further, he takes issue with the Council having used its enforcement powers "*against an outbuilding that is further away from the curtilage boundary than would be lawful to erect an outbuilding of similar height.*" However, this is immaterial to the assessment of the development at issue. If a building requires the benefit of planning permission, as is the case here, then it is subject to normal planning

controls, and the Council is entitled to enforce against such a development should the authority consider it expedient to do so.

27. Moreover, the appellant has not advanced any definitive articulated scheme that would fall within the necessary parameters, and no obvious scheme is before me to this end. Disputing the need for any alternative scheme to be advanced he cites the case of *Mansell v Tonbridge & Malling BC* [2017] EWCA Civ 1314. Here, Lindblom LJ confirmed the legal considerations in determining the materiality of a fallback position as a planning judgement related to the basic principle that for a prospect to be a “real prospect” it does not have to be probable or likely; instead, a possibility will suffice. However, the judge also mentioned that in some cases a degree of clarity and commitment may be necessary, and this will always be a matter for the decision maker’s planning judgement relating to the particular circumstances of the case in hand.
28. I consider that the current appeal is a case in point and, had the DPA not been successful, I would have expected that an alternative scheme had been prepared and advanced for assessment, as to whether it would fall within the parameters of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, or were to involve specific material alterations to the building in situ, itself. In the event, the Ground (f) appeal does not require further consideration.

Formal Decision

29. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a single-storey outbuilding with room in the roof space at Woodend, Leatherhead Road, Oxshott, Leatherhead KT22 0EX.

Timothy C King

INSPECTOR