



Appeal Decision

Site visit made on 7 July 2020

by Timothy C King BA (Hons) MRTPI

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

Decision date: 7 August 2020

Appeal Ref: APP/K3605/C/19/3237638

5 Copse Road, Cobham, Surrey KT11 2TN

- 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 Alan Hopley against an enforcement notice issued by Elmbridge Borough Council.
- The enforcement notice was issued on 23 August 2019.
- The breach of planning control as alleged in the notice is: Within the last four years and without planning permission, roof alterations which incorporate hip to gable roof conversion and rear projecting second floor flat roof extension.
- The requirements of the notice are to:
 1. Permanently remove all roof alterations and rebuild the roof in accordance with the planning permission 2016/0486, the approved elevations are attached and marked 'Approved Plan A01'. Or,
 2. Reduce the size of the roof extension to the rear and reinstating a roof slope, in accordance with the plan attached and marked 'Step 2 Plan A02'. And,
 3. Permanently remove all waste from the site associated with complying with Step 1 or Step 2.
- The period for compliance with the requirements is 6 months from the date on which this notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (e), (f) and (g) 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.

Formal Decision

1. The enforcement notice is corrected as follows:

Delete Requirement 2.

Delete Requirement 3 and replace with:

"Requirement 2

Permanently remove all waste from the site associated with complying with Requirement 1."

2. Subject to the above correction, the appeal is allowed, planning permission is granted on the application deemed to have been made under s177(5) of the 1990 Act, as amended, for roof alterations which incorporate a hip to gable roof conversion and rear projecting second floor flat roof extension, and the enforcement notice is quashed.

Background

3. In May 2016 the Council granted planning permission for a part two/part single-storey rear and side extension and side rooflights, following partial demolition of existing house and detached rear outbuilding. This development was implemented and completed but, although the appellant indicates that the dormer extension was constructed first, the approved works and the alterations to the main roof have effectively been carried out in conjunction with one another, with the first floor extension abutting the dormer's rear façade.

The Appeal on ground (e)

4. An appeal on ground (e) is that copies of the enforcement notice were not served, as required by s172 of the 1990 Act, as amended.
5. S172(2) provides that a copy of the notice shall be served on the owner and occupier of the land to which it relates, and any other person having an interest in the land, including mortgagees, tenants and sub-tenants, being an interest which, in the opinion of the LPA, is materially affected. It is for the Council to decide who is materially affected, but the Council does risk an appeal on ground (e) if it exercises its discretion wrongly.
6. The appellant makes the point that, prior to the enforcement notice being issued, the Council did not serve any Planning Contravention Notice (PCN). The Council, for its part, says that it held a copy of the land registry entry, obtained in March 2019, on file, and then passed the file to its Legal Services team. However, an additional charge was registered in June 2019 and, although the enforcement notice was issued in August 2019, the involvement of Prestige Finance, a second mortgagee, was not identified and, as such, this firm was not a recipient of the notice. The Council's Legal Services team therefore failed to update itself by way of the above procedure
7. In the event the notice was not properly served on everyone with an interest in the land. S176(5) affords me power to disregard non-service, provided that neither the appellant nor that person has been substantially prejudiced by the failure to serve him or her.
8. Where the person substantially prejudiced would have reasonably advanced an argument under ground (a) and that is not already part of the appeal, and could not be introduced because of the fees situation, quashing the notice is likely to be the most appropriate course of action.
9. However, that is not the case in this instance as a very comprehensive submission was produced by the person appealing the notice on various grounds including ground (a). I also acknowledge the Council's point that, given the circumstances, it would merely necessitate that a new notice be issued and served on all the appropriate parties. Accordingly, the case would be no further forward.
10. In the circumstances I am satisfied that no substantial prejudice has resulted and, by way of discretion under s176(5), I conclude that the appeal under ground (e) should not succeed.

The Appeal on ground (c)

11. The appeal on this ground is that the matters alleged in the notice do not constitute a breach of planning control. The onus of proof on matters of fact is on the appellant, and is on the balance of probabilities.
12. Ground (c) assumes the fact of the original development as it occurred at the time of the enforcement notice's issue, so it can only succeed on this basis if that original development does not now amount to a breach of planning control due to a change in the planning control situation.
13. Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), as amended allows for the enlargement of a dwelling consisting of an addition or alteration to its roof. This includes a hip to gable enlargement and dormer extensions subject to, for semi-detached houses, the volume of the resulting roof space not exceeding the cubic content of the original roof space by more than 50 cubic metres. Although the appellant states the increase in this particular instance to be 37.2 cubic metres, and the Council does not dispute this figure, the fundamental contention between the main parties here is whether the alterations made to the dwelling's flank actually involves a hip to gable extension.
14. The Council, in considering that a gable is the triangular upper part of a wall at the end of a ridged roof, says that the flank wall has no gable end and, as such, the roof extension cannot be permitted development. It seems to me, however, that in practical terms, a gable is a section of wall located at the upright end of the pitched front and rear roof slopes. A gable end will commonly refer to the entire wall, including the gable and the wall below it. In this particular case there is definition between the flank end of the roof and the flank wall below, with the brickwork giving way to the tiled roof end and the existence of guttering. The triangular upper part of the roof's flank end has effectively been extended by the projecting dormer feature which attaches to the rear roof slope and does not exceed the height of the highest part of the existing roof.
15. Having examined the development closely I am therefore satisfied that the alterations carried out to the dwelling's flank elevation here constitute a hip to gable extension. Moreover, reference to the notice's alleged breach shows that the Council contradicts itself on this fundamental point.
16. However, Condition B.2(b)(i) draws a distinction between hip to gable enlargements and enlargements which join the original roof to the roof of a rear or side extension from other forms of roof extension. In this particular instance, the first floor extension adjoins the face of the dormer addition which attaches to the rear roof slope in its entirety. As such, for the dormer to be considered permitted development, it is required, under (aa), that the eaves of the original roof are maintained or reinstated and also, under (bb), that the edge of the enlargement closest to the eaves of the original roof shall, so far as practicable, be not less than 0.2m from the eaves. Here, due to the physical form of the development carried out to the rear of the dwelling it is not possible to maintain or reinstate the eaves. Accordingly, the development fails to satisfy Class B's relevant provisos.
17. The appeal on ground (c) therefore fails.

The Appeal on ground (a) and the Deemed Planning Application (DPA)

Main Issue

18. The main issue is the effect of the development on the character and appearance of the area.

Reasons

19. As mentioned, I have found that the alterations to the dwelling's flank elevation constitute a hip to gable extension. The Council wavers on this point, borne out by its attempt to rebut the appellant's ground (c) submission. Nonetheless, the Council has shown, by offering the alternative of a second option, that it was willing to accept, as a remedy to the breach, an option to its retention but with the removal of the section beyond the original rear roof plane. Indeed, in its representations against the ground (f) appeal, the Council appears to change its mind, and finds that the permitted development entitlement is somewhat consistent with my assessment. On this basis, the Council's case is limited to the projection beyond the rear roof plane with the creation of the section that is the rear facing dormer extension.
20. As issued, the enforcement notice's requirements allowed for two options. The first would involve the dormer extension and associated alterations made to the main roof being removed, and the extensions to the dwelling be limited only to that approved under planning permission ref 2016/0486. The second option was worded so as to require remedial works be carried out to "reduce the size of the roof extension to the rear", and reinstalling the rear roof slope. This option would require that the works be completed in accordance with Plan A02, drawn up by the Council, and attached to the enforcement notice.
21. However, the end-state, resultant on the specified works, would not reflect the physical reality of the situation. With the specified works involving the removal of the rear facing section of the dormer extension, thereby still leaving a gabled end to the roof, the small triangular section shown positioned between the rear roof slope and the limit to the first floor extension's roof, is incorrectly depicted on Plan A02. The said plan shows it to be part of the side section to the dormer but this is a misrepresentation. Given this, Plan A02 is not a credible consideration and, as such, with Requirement 2 not capable of being implemented, I must disregard its wording as being a feasible option. Accordingly, I shall correct the notice and strike out this particular requirement.
22. The enforcement notice would therefore be complied with should Option 1's requirements, as worded, be carried out. This would necessitate the removal of the rear facing dormer and would require for the roof of the first floor rear extension to pitch into the rear roof slope. However, although putting forward this requirement to be acceptable the Council has not mentioned, nor realised, that it would then be available for the appellant or any other future occupier to remove the required adjoining roof section and, upon this, it would be possible to rebuild the dormer extension in the same manner as that currently in situ.
23. This would result in the hip to gable feature and its rear facing element so long as the total cubic content of the roof extensions and alterations did not exceed 50 cubic metres. This would, of course, include the additional volume arising from the roof area of the first floor extension, as part of the main roof enlargement. Nonetheless, from the evidence presented to me, it would

appear that the maximum volume proviso would be met. Despite the removal and rebuild works involved such a fallback is available to the appellant which would not require the benefit of planning permission. Accordingly, this has to be a material consideration in my assessment of the DPA.

24. I have had due regard to the representations received from interested parties and I have some sympathy for the immediate neighbours. Nonetheless, in also having regard to the allowances under Class B, I have to be pragmatic. As mentioned, permissible modifications would still allow for the hip to gable addition, and the resultant imbalance between Nos 3 and 5 Copse Road would remain. On the opposite side, at my site visit I noted the effect on No 7 in terms of natural light and overshadowing. I find that the impact from the extensions built at the appeal property is not insignificant, but this is largely as a result of the depth and proximity of the first floor extension rather than the rear dormer feature and its hip to gable element, which are set behind the extension. Indeed, on this point, I note that the Council's enforcement case report states "...it is considered that the roof extension has had an acceptable impact on the amenities of neighbouring properties."
25. Representations have also been made as to the Party Wall Agreement between Nos 3 and 5. However, any irregularities in this respect and resultant damage that may have occurred, remain a matter between the two neighbouring parties themselves as this is extraneous to planning legislation and is not therefore a material consideration for the purposes of the DPA.
26. Irrespective of the impacts arising from the identified breach the development, in terms of its general construction, along with the extensions approved by the Council and subsequently built, has been integrally designed and, on the whole, is not visually unattractive. In light of this, weighing all matters up, including the Class B allowances, any harm that has resulted would not be significantly changed or the impact ameliorated should the GPDO entitlement be employed through what would ultimately be relatively limited modification.
27. I therefore conclude that the development is not harmful to the character and appearance of the area and, on balance, there is no significant material conflict with the relevant objectives of policy DM2 of the Elmbridge Development Management Plan.
28. For the above reasons, and having had regard to all matters raised, the appeal under ground (a) is allowed and planning permission is granted on the application deemed to have been made under s177(5) of the 1990 Act, as amended.

The Appeal on ground (f)

29. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to remedy the breach of planning control or the injury to amenity caused by the alleged development. S173(4)(a) and (b) of the 1990 Act as amended provides that the purposes of an enforcement notice can be (a) to remedy the breach of planning control, including by restoring the land to its condition before the breach took place, or (b) to remedy any injury to amenity which has been caused by the breach. Given the nature of its requirements, when issued, I consider that the enforcement notice's purpose was to remedy the breach, and the notice, as corrected, also serves such a purpose.

30. Nevertheless, due to the successful DPA there is no need for me to explore the ground (f) appeal lodged further.

The Appeal on ground (g)

31. Given the decision reached the ground (g) appeal no longer serves any purpose for this case.

Timothy C King

INSPECTOR