
Appeal Decisions

Site visit made on 15 September 2020

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 09 October 2020

Appeal A: APP/X0415/C/19/3236766

Appeal B: APP/X0415/C/19/3236767

**Land at Ti Soleil, Lincoln Road, Chalfont St Peter, Buckinghamshire
SL9 9TG**

- 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 Lance Jordan (Appeal A) and Mrs Leonora Daniel (Appeal B) against an enforcement notice issued by Chiltern District Council.
- The enforcement notice was issued on 2 August 2019.
- The breach of planning control as alleged in the notice is: -
Without planning permission the erection of a two-storey extension to the front and a part two-storey/part single-storey extension to the rear of the dwelling ("the Unauthorised Development") the approximate positions of which are shown hatched on the attached plan, and which are shown coloured pink on attached drawing TS PA 02 Rev H.
- The requirements of the notice are: -
 - 5.1 Demolish the Unauthorised Development, comprising those extensions to the dwelling on the Land the details and position of which are shown coloured pink on the attached drawing number TS PA 02 Rev H, which was submitted as part of application reference CH/2017/1898/FA as the 'proposed' floor plans and elevations, and;
 - 5.2 Remove from the Land all debris and materials arising as a result of compliance with step 5.1 above.
 - 5.3 Make good all elevations and external surfaces exposed as a result of the compliance with step 5.1 above to restore the property to its original appearance in accordance with the details shown on attached drawing number TS PA 01 Rev D, which was submitted as part of application CH/2017/1898/FA as the 'existing' floor plans and elevations.
- The period for compliance with the requirements is 6 months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (b), (f) and (g) of the Town and Country Planning Act 1990 as amended (the 1990 Act). 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 1990 Act.
- Appeal B is proceeding on the grounds set out in section 174(2)(b), (f) and (g) of the 1990 Act.

Summary Decision: The appeals succeed in part and the enforcement notice is upheld as corrected and varied in the terms set out below in the Formal Decision and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act.

Procedural Matters

1. The Council have stated that on 1 April 2020 Chiltern District Council ceased to exist and was replaced by Buckinghamshire Council and that Buckinghamshire Council is defending the appeals. I have dealt with the appeals on this basis.
2. As set out above there are two appeals on this site. They relate to the same enforcement notice, therefore, to avoid duplication I have dealt with them together in the reasoning below unless specified differently.
3. On an appeal any defect, error, or misdescription in an enforcement notice may be corrected using the powers available in section 176(1)(a) of the 1990 Act, or the terms may be varied, where the correction or variation will not cause injustice to the appellants or local planning authority. It would appear that the postcode for the address of the property as indicated within the enforcement notice contains a typographical error. The correct postcode has been cited on the submitted appeal form. As such, I intend to correct the notice by deleting 'BT' at the end of the postcode and replacing it with 'TG'. I consider that this correction can be carried out without injustice to the parties. I have used the corrected address in the banner heading above.

Ground (b) appeals - Appeal A and Appeal B

4. The issue under ground (b) is whether or not the breach of planning control alleged in the enforcement notice has occurred as a matter of fact. The appellants must show on the balance of probabilities that the matter as alleged in the notice has not in fact occurred.
5. In 2016 planning permission¹ (2016 permission) was granted for 2 2-storey front extensions, part 2-storey/part single storey rear extension and replacement rear and front dormers at the appeal property. The appellants have stated that the foundations and ground floor walls of the development as constructed on site are in the same positions as shown on the approved drawings associated with the 2016 permission. These works appear to have been commenced in September 2016. This is not disputed by the Council.
6. In addition, the appellants consider that the differences between the 2016 permission and the as built development relate to the building up of the first-floor walls between the front and rear gable projections. Therefore, they consider that the wording of the alleged breach is not correct as, in their opinion, the development has not been completed in accordance with the approved plans.
7. Where it is considered that the development differs materially from the scheme granted planning permission it is reasonable to consider that the development has been carried out without planning permission rather than a breach of a condition with regard to compliance with the approved plans. The enforcement notice cites section 171A(1)(a) of the 1990 Act and the Council has stated that it considers that the development is materially different to that granted planning permission.
8. Based on the evidence, before me it appears that the digging of a trench to contain the foundations of the development would have been a '*material operation*' as defined within section 56 of the 1990 Act. As such, it would

¹ Ref: CH/2016/0177/FA

appear that the development permitted by the 2016 permission was commenced within the time limits set out in condition 1 of that permission.

9. Nevertheless, it is reasonable to consider that it is possible to deviate from the permitted works in a manner that later becomes an enforcement issue without retrospectively altering the fact that the commencement of the development had occurred for section 56 purposes.
10. Whilst part of the works could be construed as commencing the 2016 permission the development as constructed is significantly different to that approved through that permission. This is due to the fact that the replacement front and rear dormers were not built and, in their place, substantial flat roofed extensions have been constructed between the 2 2-storey front extensions and between the 2-storey rear gable and part 2-storey/part single storey rear extension. In addition, the roof design of the 2 2-storey front and rear extensions has been altered by the addition of flat roof areas that adjoin the central flat roofed extensions.
11. The pitched and hipped roof design of the extensions and dormer windows approved through the 2016 permission would be sympathetic to the character and appearance of the host building and the surrounding area. However, I have found in the ground (a) appeal below that the development as built materially harms the character and appearance of the host dwelling and the surrounding area.
12. As such, as a matter of fact and degree, the development that has been completed on the appeal building is a materially different development to the 2016 permission. I conclude that on the balance of probability that the alleged breach has occurred as a matter of fact.

Ground (a) appeal and deemed planning application – Appeal A

Main Issue

13. The main issue is the effect of the development on the character and appearance of the host dwelling and the surrounding area.

Reasons

14. The appeal site is within an area defined as an Established Residential Area of Special Character (ERASC). The appeal property is a large, detached dwelling set back from Lincoln Road. Due to the sloping topography Lincoln Road is at an appreciably higher ground level to that of the appeal dwelling. The surrounding area is characterised by large dwellings set within mature landscaped plots which creates a verdant setting. Those dwellings are predominantly of traditional design with pitched and hipped roofs. They impart an attractive and high architectural quality to the street scene and the overall character and appearance of this part of ERASC.
15. The 2016 permission proposed 2 pitched roof gable extensions to the front of the dwelling with a centrally positioned, hipped roof dormer window. Whereas, the development as built has a substantial first floor mainly flat roofed extension that infills the space between the gables. Moreover, the gables also have elements of a flat roof where they adjoin the central infill extension. At the rear the 2016 permission would have resulted in 2 pitched roof gable extensions with 2 dormer windows positioned in the central space between the

gables. However, what has been constructed includes a substantial 2-storey flat roofed extension that projects further out and slightly overlaps one of the pitched roof gables.

16. Policy H15 of the Chiltern District Local Plan Adopted 1 September 1997 (including alterations adopted 29 May 2001) consolidated September 2007 & November 2011 (LP) states, amongst other things, that an extension should be designed and sited so as to be in keeping with the existing dwelling and any other buildings in the adjoining area. Criterion (iii) of the policy indicates that in order to achieve this that the roof of a two-storey or first-floor extension should normally be hipped or pitched and integrated into the existing roof. A flat-roofed two-storey or first-floor extension will not be permitted unless the extension: (a) is surrounded by existing pitched roofs on the existing dwelling, and (b) is subordinate to the main roof of the existing dwelling, and (c) is not prominent in the street scene or locality.
17. The flat roof parts of the front and rear extensions are adjacent to pitched roofs, but they are not surrounded by those pitched roofs. They are at a lower height to the ridge line of the main roof. Nonetheless, the front extension due to the difference in ground levels is closer to eye level when it is viewed from Lincoln Road. In addition, the parapet does not disguise that the roof is mainly flat. These factors in combination exacerbate the visual impact of the flat roof elements and result in them being a dominant feature on the front elevation. As such, the flat roofed elements of the front extension are not subordinate to the main roof and they are prominent in the streetscene. The rear flat roofed elements are not prominent in the street scene. However, given that the central section projects further out than one of the pitched roof gables and its substantial size it is a dominant feature on the rear elevation. As a result, it is not subordinate to the main roof.
18. In 2017 planning permission² was refused for the development as constructed and both parties have cited the appeal decision³ associated with that refusal. The Inspector in his decision stated, in relation to the front extension, that *'Although symmetry is maintained this area of in-fill gives the dwelling a contrived appearance that is at odds with the prevailing pattern of development within the locality and the ERASC it finds itself situated within.'* He goes on to state, in relation to the rear extensions, that *'I consider these aspects of the proposal fail to integrate with the appearance of the property and would give rise to contrived, cumbersome and discordant architectural features that do not respect the scale and proportions of the host dwelling'*. Based on my observations and my findings above I agree with these conclusions.
19. I note that paragraph 127 of the National Planning Policy Framework (the Framework) states, amongst other things, that planning decisions should ensure that developments are sympathetic to local character, including the surrounding built environment, while not preventing or discouraging appropriate innovation or change. I consider that the development for the reasons given above is not sympathetic to local character and the surrounding built environment and is not an appropriate innovation or change.
20. The extensions as constructed are highly likely to make a more efficient and effective use of the available space than the 2016 permission. However, the

² Ref: CH/2017/1898/FA

³ Ref: APP/X0415/D/18/3196370

external form of those extensions materially harms the character and appearance of the host building and the surrounding area. Whereas, the pitched roof gables and hipped roofs of the dormer windows of the 2016 permission would be sympathetic to the attractive and high architectural quality of ERASC and the character and appearance of the host building.

21. Considering all of the above, the development does not comply with LP Policy H15. It also does not comply with LP Policies GC1 and H13 and Policy CS20 of the Core Strategy for Chiltern District which, amongst other things, seek development which is designed to a high standard, does not adversely affect the character and appearance of the locality and which reflects and respects the character of the surrounding area and those features which contribute to local distinctiveness. It conflicts with Policy H7 of the Chalfont St Peter Neighbourhood Plan which states that alterations and/or extensions to existing residential properties should maintain or enhance the design, character and quality of the building.
22. These policies are consistent with section 12 of the Framework and the development conflicts with paragraph 127 within that section. Taking into account paragraph 213 of the Framework I consider that full weight is to be given to the development plan policies cited above. In this case, there are no material considerations to indicate that the appeal should be determined other than in accordance with the development plan.
23. The development also conflicts with the Council's Residential Extensions and Householder Development Supplementary Planning Document which states that an important goal for any extension should be to harmonise with a building, striking a balanced visual relationship with its existing features and integrating in such a way that it does not adversely affect the character and appearance of the locality.

Conclusion – ground (a) appeal and deemed planning application

24. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal on ground (a) and the application for deemed planning permission should fail.

Ground (f) appeals – Appeal A and Appeal B

25. The ground of appeal is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
26. 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.
27. The notice does not specify which of the two purposes it seeks to achieve. Nonetheless, in requiring the demolition of all of the unauthorised development it is evident that the Council seeks to remedy the breach. The Courts have held that if there is an obvious alternative to total demolition which would overcome planning difficulties at less cost and disruption, then I should consider it.

28. There is dispute between the parties as to whether the 2016 permission is still extant. Even if, I agreed with the Council that this permission is not extant the Council have stated that in 2019 planning permission⁴ (2019 permission) was granted for the same scheme approved by the 2016 permission. There is no dispute that this permission is extant given its recent date. Given that the footprint of the development as constructed appears to match that of the 2019 permission I consider that there is an element of development common to both the permission and the enforcement notice.
29. This alternative would overcome the harm I have identified in the ground (a) appeal and the Council's concerns. There would also be less cost and disruption than total demolition, as the appellants would not have to rebuild the whole of the extensions again just to implement the extant scheme. In light of the extant 2019 permission which the Council granted and would have been subject to public consultation, I consider that complete demolition of the development is therefore excessive and unnecessary.
30. As such, under section 176(b) of the 1990 Act, I will vary the Notice to amend the requirements to require **either** the complete demolition of the development, **or** that the development shall be altered to comply with the terms and conditions of the 2019 permission. The appellants therefore have the choice of which course of action to take and I can carry out the variations without injustice to the parties.
31. The appeals on ground (f) therefore succeed to this extent.

Ground (g) appeals – Appeal A and Appeal B

32. Ground (g) is that the period specified for compliance with the notice falls short of what is reasonable. The notice states 6 months for compliance but the appellants have stated that 12-18 months is required in order to raise the funds to finance the building works, organise the contractors and carry out the works.
33. I note that even if the appellants choose to undertake the remedial works to complete the development in accordance with the 2019 permission those remedial works would be extensive. However, little evidence has been provided of the difficulties they may have in financing or completing the works. Moreover, there is a need for expediency in remedying the harm caused to the character and appearance of the area.
34. In the circumstances, I consider that the compliance period set out in the notice is reasonable and proportionate. Therefore, the appeals on ground (g) fail.

Formal Decision

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

- Deleting 'BT' at the end of the postcode within the address and replacing it with 'TG';

And varied by: -

- Before requirement 5.1 insert the word "***Either***";

⁴ Ref: PL/19/3117/FA

- At the end of requirement 5.3 insert the word "**or**";
 - After the word "**or**" add requirement 5.4 '*The Unauthorised Development shall be altered to comply with the terms of the planning permission, application no PL/19/3117/FA, dated 4 November 2019 including the approved plans which, include drawing No TS PA 02 rev F, and incorporating the conditions subject to which that permission was granted.*'
 - After requirement 5.4 add requirement 5.5 '*Remove from the land all debris and materials arising as a result of compliance with step 5.4 above.*
36. Subject to these corrections and variations 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.

D. Boffin

INSPECTOR