



Appeal Decision

Site visit made on 26 January 2021

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 February 2021

Appeal Ref: APP/P0119/C/20/3259682

Land at 10 Hunters Way, Filton, South Gloucestershire BS34 7EW

- 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 Scott Cole against an enforcement notice issued by South Gloucestershire Council.
- The enforcement notice was issued on 17 August 2020.
- The breach of planning control as alleged in the notice is without planning permission the erection of a two storey front, side and rear extension and one rear dormer.
- The requirements of the notice are: 1. Remove the two storey front, side and rear extensions, rear dormer window and all associated materials from the land. 2. To make good the existing building once the extensions have been removed, with materials to match the existing building.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with variations.

Preliminary Matter

1. The terms of the deemed planning application arising from an appeal pursuant to s174 (2) (a) of the Act are derived from the description of the alleged breach of planning control in the enforcement notice. The Act at s177 (1) (a) does not provide for granting planning permission where it is other than for the whole or part of the matters alleged in the notice. A material change of use of the appeal property to four flats is not part of the alleged breach. Therefore, the planning merits of that use cannot be considered in the ground (a) appeal.

Ground (e) appeal

2. At s172 (2), the Act requires a copy of an enforcement notice to be served on, amongst other persons, the owner of the land to which it relates. The appellant is the owner of the property. A copy of the notice addressed to the appellant was delivered to the property on 17 August 2020. The Council were aware that the appellant did not reside at the property when they served the notice. Although a copy of the notice was also served on another interested party, unlike in the case of a previous (since withdrawn) notice no copy was served on the appellant's last-known address. Therefore, service of the notice did not take place in accordance with one of the methods specified in s329 (1) of the Act and the appellant was not served as required by s 172 (2).
3. At s176 (5), the Act provides for disregarding a failure of service where persons do not suffer substantial prejudice as a result. There is likely to have

been a delay in the appellant obtaining a copy of the notice, meaning that he had less than the 28 days required by s172 (3) in which to make his appeal. Even so, the appellant was still able to make an appeal before the notice took effect. Moreover, they were able to present a comprehensive case at appeal, on several grounds. The Council could have made enquiries prior to serving the notice to establish where the appellant was residing, for example by issuing a Planning Contravention Notice. However, not doing so has had limited practical consequences for the appellant. Therefore, there was no firm evidence which might have shown that the appellant was prejudiced by the failure of service. Neither was there any suggestion that other persons might have been prejudiced.

4. Consequently, on the balance of probability I am not persuaded that there has been substantial prejudice and the ground (e) appeal fails.

Ground (a) appeal

Main Issues

5. The main issues in this ground of appeal are:
 - The effect of the development attacked by the notice on the character and appearance of the dwelling and that of the surrounding area.
 - The effect on the living conditions of existing and future occupiers of adjoining residential property, having regard to outlook.

Reasons

Character and appearance

6. The property contains an end of terrace dwelling, probably originating in the mid-20th Century. The dwelling has bay windows at the front and prior to the development, had a hipped roof. The dwelling is located in an established residential area, largely made up of properties of similar age and architectural style. Properties in the locality generally have a balanced appearance, are neatly arranged in short terraces or pairs and they occupy linear plots, with ample spacing between groups of dwellings. Hipped roofs are a distinctive feature of end of terrace and semi-detached properties in the vicinity. The above has all given the environs a well-ordered and pleasantly spacious suburban character and appearance.
7. On 30 November 2015, planning permission was granted for two storey side and single storey rear extensions at the property¹. The approved drawings show a two storey extension at the front/side of the dwelling, with a hipped roof. This extension is shown as projecting beyond the rear elevation of the dwelling, with a single storey rear extension projecting a similar distance adjacent to the common boundary with the adjoining mid-terrace property, 12 Hunters Way (No 12). Although having a similar footprint, what has been built deviates significantly from the approved drawings. Foremost amongst the deviations are the use of a gabled roof form on the front/side extension, a two storey rear extension with a gable roof across the rear elevation of the extended dwelling and a dormer erected across the extended rear roof slope.

¹ Council Ref: PT15/4162/F.

8. The gabled roof on the front/side extension has largely eroded the hipped roof of the dwelling and introduced a roof form which is uncharacteristic of most other end of terrace and semi-detached properties in the locality. Additionally, the gabled roof has significantly increased the overall scale of the front/side extension, thereby upsetting the balanced appearance of the dwelling and that of the terrace. Furthermore, the increased scale of the front/side extension due to the gabled roof has considerably added to the erosion of the sense of space about the dwelling, thus creating an appreciably more built-up feel in the street scene. The above is all entirely at odds with the inherent characteristics of the dwelling and the prevailing pattern of local development and results in the front/side extension appearing as an alien feature in the surroundings.
9. The two storey rear extension is of substantial scale, with a considerably greater size and overall bulk than that of the approved scheme. The shallow roof profile and rear facing gable both fail to reflect the appreciably steeper pitch and hipped roof form of the dwelling, features which are reiterated in surrounding development. Due to these factors, the rear extension appears as an awkward and incongruous addition to the dwelling. The large elevational openings fail to reflect the more modest proportions of such openings in the dwelling and nearby properties, emphasising the rear extension's lack of integration with the built context. The dormer is set back slightly from the rear eaves line, the overall height being just below the ridge line of the dwelling's roof. Occupying most of the extended rear roof slope, the dormer further substantially erodes the dwelling's original roof profile and appears as a large-scale, prominent addition. As a result, the dormer is seen as a somewhat ungainly built feature, which fails to relate well visually to the dwelling and surrounding development. The visual harm caused by the rear extension and dormer is apparent in views from nearby streets as well as from the back gardens of adjoining residential property and the private lane at the rear.
10. Reference was made to other residential extensions in the locality. This included two storey extensions at the side and rear of properties, as well as dormers. From what I saw, by and large those extensions are consistent with the overall characteristics and appearance of their host dwellings and have resulted in little discernible alteration to the pattern of local development. As a result, the visual impact of the development does not compare favourably with that of other extensions in the vicinity.
11. For the above reasons, individually as well as cumulatively the extensions and dormer have caused a significant and unacceptable erosion of the inherent characteristics and overall appearance of the dwelling and they are viewed as unsympathetic and disproportionate additions. Also, the extensions and dormer have failed to have sufficient regard to and resulted in an appreciable erosion of, the visual qualities exhibited by local development. It follows that the development has unacceptably harmed the character and appearance of the dwelling and that of its surroundings.
12. Consequently, the development does not accord with criterion in Policy CS1 of the South Gloucestershire Local Plan: Core Strategy, as its form, scale, height and mass does not respect the character, distinctiveness and amenity of the property and its context. The absence of a demonstrable understanding of or constructive response to buildings and characteristics that make a particularly positive contribution to the distinctiveness of the locality fails to accord with Policy PSP1 of the South Gloucestershire Local Plan: Policy, Sites and Places

Plan (PSP). Additionally, the development does not accord with criterion in Policy PSP38, as it does not respect the form, scale, proportions, window shape and architectural style/detailing of the street and surrounding area. Furthermore, by failing to take the opportunities available for improving the character and quality of the area the development is inconsistent with advice in chapter 12 of the National Planning Policy Framework (the Framework).

Living conditions

13. The effect of the rear extension is that two storey built form projects outwards a significant distance from the rear elevation of the original dwelling, adjacent to the common boundary with No 12. The rear extension is in proximity to ground floor and first floor windows serving habitable rooms at the rear of No 12, as well as a significant part of its rear garden. Although of a depth similar to that of the approved single storey structure, the addition of a first floor has meant that the rear extension has a considerably greater size, height and overall bulk adjoining the common boundary with No 12, compared with the approved scheme. In consequence, the rear extension is seen as a rather dominant and oppressive built feature in outward views from rear facing windows and in part of the rear garden of No 12, appreciably eroding the more open aspect previously enjoyed by occupiers and creating a much greater sense of enclosure. This has caused a significant and unacceptable reduction in the quality of outlook that the existing and future occupiers of No 12 might otherwise reasonably expect to enjoy.
14. Reference was made to two terraced residential properties in the area where planning permission was recently granted for two storey rear extensions. However, neither extension has an overall size and bulk identical to that of the rear extension in this appeal and in both cases the adjoining properties had previously been extended at the rear, unlike No 12. As a result, I am not convinced that either extension has a similar effect on the living conditions of occupiers of adjoining properties to the rear extension in this case. Although reference was also made to other rear extensions in the locality, given the limited details available it is not possible to make a meaningful comparison. In any event, the development falls to be considered on its individual merits.
15. Therefore, the development does not accord with Policy PSP8, as there is an unacceptable impact on the residential amenity of occupiers of nearby property, having regard to overbearing and dominant impact. There is also failure to accord with criterion in Policy PSP38, as the amenities of neighbours have been prejudiced. Furthermore, the failure to create a high standard of amenity for existing and future users is inconsistent with advice in the Framework chapter 12.

Other matters

16. In the absence of firm evidence to indicate otherwise, I am not convinced that a hip-to-gable extension and a dormer similar in scale to those in the development would have satisfied the relevant limitations and conditions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) at Article 3, Schedule 2, Part 1, Class B, had they been erected following substantial completion of the approved scheme. That scheme included considerable additions to the roof of the dwelling. Therefore, permitted development rights do not represent a valid fall-back position. A

hip-to-gable extension and dormer at a nearby property have no bearing on this matter.

17. Whether the works in the 2015 permission were begun is a matter relevant to the notice requirements. Recent amendments to the GPDO Part 1 incorporating Class AA, which subject to certain limitations and conditions permits the construction of additional storeys to dwellings, might well indicate the Government's direction of travel. However, I do not take that to mean that development which, as in this case, requires express permission, should be considered other than on its individual merits.

Ground (a) conclusion

18. The development has caused unacceptable harm to the character and appearance of the dwelling and that of its surroundings, as well as the living conditions of existing and future occupiers of adjoining residential property. This is in conflict with the Development Plan and is inconsistent with the Framework. Therefore, the ground (a) appeal does not succeed.

Ground (f) appeal

19. The ground of appeal is that the requirements of the notice are excessive.
20. At s173 (4), the Act provides that an enforcement notice can have two purposes. These are (a) to remedy the breach of planning control, which can include restoring the land to its condition before the breach took place, or; (b) to remedy any injury to amenity caused by the breach.
21. The purpose of the notice is not specified. However, total demolition of the development is required, as opposed to for example, reducing the size of the extensions and the dormer to an extent that amenity is no longer adversely affected. Therefore, the purpose of the notice must be to remedy the breach by restoring the property to its condition before the breach took place. Given the above context, nothing less than total demolition is required to remedy the breach. The notice requires no more than the removal of the extensions and dormer and restoration of the dwelling to its condition prior to development being carried out. Accordingly, the notice requirements are not excessive for their purpose.
22. Nevertheless, as enforcement action is intended to be remedial and not punitive, whether the planning difficulties could be overcome at less cost and disruption than total demolition must be considered. Where, as in this instance, there has been significant deviation from approved drawings, it is also possible to remedy a breach by making the development comply with the terms (including the conditions and limitations) of an extant planning permission granted in respect of the land.
23. There were no pre-commencement conditions attached to the 2015 permission. Condition 1 required development to be commenced within three years, i.e. prior to 30 November 2018. At s56 (2), the Act provides that development shall be taken to be begun on the earliest date on which any 'material operation' comprised in the development is carried out. The definition of a material operation at s56 (4) includes the digging of a trench to contain the foundations or part of the foundations of a building. The appellant's evidence showed that by early October 2018, foundation trenches had been excavated at the front, side and rear of the property. The positions of the foundation

trenches substantively correspond with the external walls of the front/side and rear extensions shown on the approved drawings, as do considerable parts of the external walls of the front/side extension up to eaves level and the external walls of the rear extension at ground floor level. This means that a considerable part of the development is substantially useable in the approved scheme. The Courts have confirmed that whether a material operation is comprised in the development does not depend solely on differences between what was approved and what has been built; similarities and the degree of compliance with approved plans are also relevant, together with the extent to which the works are substantially useable in building in accordance with the permission². Additionally, subsequent deviations from approved drawings cannot retrospectively alter the fact that a development has begun for the purposes of s56 (2)³.

24. Therefore, as a matter of fact and degree I find that material operations comprised in the development were carried out and that the works authorised by the 2015 permission were begun. It follows that the 2015 permission has not lapsed and development can be carried out in accordance with its terms and conditions. As there is no material deviation from the footprint of the approved scheme, vehicle parking can be provided at the property in compliance with conditions 4 and 5.
25. For the above reasons, requiring that the development complies with the terms of the 2015 permission is an alternative method of remedying the breach. As the differences between the development and the approved scheme are clear, the works needed to comply with the 2015 permission are readily apparent and the alternative remedy would be sufficiently precise. As far as I have been made aware, other than adoption of the PSP there has been no material change in circumstances since the 2015 permission, so varying the notice as set out above would not cause the Council injustice.
26. Consequently, whilst the requirements are not excessive, I shall nevertheless vary the notice as set out above as an alternative remedy to the breach and the ground (f) appeal succeeds to that extent.

Ground (g) appeal

27. The ground of appeal is that the timescale for complying with the notice requirements is unreasonably short.
28. During my visit I observed that although largely weathertight, the development was incomplete externally and required fitting out internally. In normal circumstances, there is unlikely to be a significant delay in arranging for the remedial works to be carried out. Moreover, undertaking the works is likely to be a relatively small-scale and straightforward matter for a suitably experienced small building contractor, not requiring particular expertise or involving specialist equipment. As a result, usually I would not have anticipated the works taking much longer than three months to complete and I would regard any longer period as simply perpetuating the breach and its associated planning harm.
29. However, at the present time the effects of the COVID-19 pandemic and the associated measures aimed at reducing social contact and restricting travel are

² *Commercial Land Ltd v SSTLR & Kensington & Chelsea RBC* [2002] EWHC 1264 (Admin).

³ *Hussain v SSCLG* [2017] EWHC 687 (Admin).

highly likely to present some practical problems in arranging for and carrying out the works in a timely fashion. Likely problems may include workers being unavailable at short notice and/or for extended periods, due to either their own illness or that of close family members, as well as difficulties experienced in accessing services related to the works, such as waste collection and disposal. Given the ongoing nature of the pandemic, there is potential for such problems to arise well into the future.

30. Therefore, in my view a compliance period of five months would be more reasonable. This would strike a realistic balance between remedying the planning harm caused as soon as practicable, allowing the appellant sufficient time to arrange for and have the works carried out, whilst affording a contingency period in the event of unforeseen delays caused by the pandemic. In reaching this conclusion, I am also mindful that s173A (1)(b) of the Act gives the Council power to extend the compliance period, should they consider that the circumstances at the time make it appropriate to do so.
31. For the above reasons I conclude that the period for compliance falls short of what is reasonable. The appeal under ground (g) also succeeds to that extent.

Conclusion

32. For the reasons given above I shall uphold the enforcement notice with variations and refuse to grant planning permission on the deemed application.

Formal Decision

33. It is directed that the enforcement notice be varied by:

- At the end of paragraph 5 after steps 1 and 2 inserting step 3 as follows:
"As an alternative to steps 1 and 2 above, alter the two storey front, side and rear extensions and remove the rear dormer to make the development comply with the terms (including the conditions and limitations) of the planning permission granted on 30 November 2015 (Application Ref PT15/4162/F)".
- At paragraph 6 replacing *"three months"* with *"five months"*.

Subject to these variations the appeal is dismissed, 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 as amended.

Stephen Hawkins

INSPECTOR