



Appeal Decisions

Site visit made on 14 July 2020

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 May 2021

Appeal A Ref: APP/A3655/C/19/3228229

Appeal B Ref: APP/A3655/C/19/3228230

Oaklands, 521 Woodham Lane, Woking, Surrey GU21 5SR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mr Malcolm Gambold and appeal B is made by Mrs Mary Gambold against an enforcement notice issued by Woking Borough Council.
- The enforcement notice was issued on 3 April 2019.
- The breach of planning control as alleged in the notice is without planning permission the construction of a single storey rear extension measuring approximately 4.75m in height, 4.85m in depth and spanning the width of the property approximately 11.3m as shown in the approximate position hatched black on the Plan.
- The requirements of the notice are:
 - (i) Remove the single storey rear extension described at paragraph 3 above; and
 - (ii) Restore the property to its original condition to accord with the plan marked as '*Plan of Original Property*' received 14.01.2019; and
 - (iii) Remove from the land all materials, rubble and debris arising from compliance with requirements (i) and (ii) above.
- The period for compliance with the requirements is twelve months.
- The appeals are proceeding on the grounds set out in section 174(2)(a), (c) and (f) of the Town and Country Planning Act 1990 as amended. Since appeals have been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary Decisions: The appeals are dismissed and the enforcement notice is upheld in the terms set out below in the Formal Decision.

Preliminary Matters

1. I understand that the appellants intend to construct a raised patio to the rear of the extension. In determining the appeal, I need to consider the development as it existed at the time the notice was issued. As the raised patio was not constructed at that time, I will not take the raised patio into account in coming to my decision.

Application for Costs

2. An application for costs was made by Woking Borough Council against Mr Malcolm Gambold and Mrs Mary Gambold. Another application for costs was made by Mr Malcolm Gambold and Mrs Mary Gambold against Woking Borough Council. These applications are the subject of separate Decisions.

The Appeals on Ground (c)

3. An appeal on this ground is that “those matters” (the matters stated in the alleged breach of planning control) do not constitute a breach of planning control. The burden of proof for this ground is on the appellant, with the relevant test of the evidence being on the balance of probability.
4. There is no dispute that the single storey rear extension constitutes development within the meaning of Section 55 of the Act for which planning permission is required.
5. The appellant suggests that the extension is a larger home extension constructed in accordance with the Town and Country Planning (General Permitted Development) Order 1995 as amended (GPDO 1995). This set out a prior approval procedure for larger home extensions. Where a notification for prior approval was submitted and the Council determined that prior approval was not required, an extension constructed in accordance with both the submitted details and the requirements of the GPDO 1995 would have planning permission.
6. The appellant submitted a notification for prior approval under reference PLAN/2014/1381 dated 2 December 2014 in accordance with the requirements of the GPDO 1995. The Council confirmed that prior approval was not required for that extension. Taking account of the date of the prior approval notification of 2 December 2014 and that the appellant states that the development began in accordance with that prior notification, I have based my decision on the GPDO 1995 as it applied between 6 April 2014 and 14 April 2015.
7. The prior approval process set out in the GPDO 1995 required that a written description of the development be provided, including the maximum height of the enlarged part of the dwellinghouse and the height of the eaves of the enlarged part of the dwellinghouse. The prior approval notification states that the height of the eaves would be 2.77m and the maximum height of the extension would be 3m. I note that the appellant suggests the 3m was an approximate measurement. It is common ground that the height of the extension, including parapet wall, is at least 3.65m above ground level. That is higher than the maximum height given in the notification as required by the GPDO 1995. It is also more than could be considered approximately 3m. As the extension was constructed higher than that maximum height, it was not built in accordance with the submitted details.
8. I note that a number of other issues have been raised, but for those reasons the extension does not comply with the planning permission granted by the GPDO 1995.
9. Since no planning permission has been granted for the development constructed it thereby constitutes a breach of planning control.
10. For these reasons, I conclude that the appeals under ground (c) should fail.

The Appeals on Ground (a) and the Deemed Planning Applications

Main issues

11. The main issues are:

- the effect of the extension on the living conditions of neighbouring occupiers of 523 Woodham Lane with particular regard to outlook and privacy;
- the effect of the extension on the character and appearance of the surrounding area; and
- the effect of the development on flood risk, ecology and biodiversity.

Reasons

Living conditions

12. The extension is located close to the boundary with the neighbouring property at 523 Woodham Lane. It extends some distance to the rear of the existing house and the rear elevation of the neighbouring property. It comprises a single storey with a parapet roof.
13. The parapet roof means that the extension is of substantial height with the highest part closest to the boundary with the neighbouring property. The majority of the extension comprises a blank brick wall, with a single window in the centre and a thin layer of tiles below the top brick course. Taking account of these factors, the extension dominates the rear garden of the neighbouring property, particularly that part closest to the house.
14. The window in the side of the extension is located above the top of the fence on the boundary between the properties. If clear glass were used in that window, it would result in overlooking of the neighbouring property from occupiers within the extension. If the glass were opaque, occupiers of the neighbouring property would have a sense of being overlooked when in their garden. This adds to my conclusion that the extension harms the living conditions of occupiers of the neighbouring property.
15. The dormer window is located directly above the flat roof contained within the parapet roof. Access could be provided through that window onto the roof and, were that to be used as a balcony, it would increase the potential for overlooking from the extension to the neighbouring property. Nevertheless, I do not consider it likely that this would occur and, in any event, it could be controlled by condition were I to allow the appeal. Consequently, this factor adds little weight to my conclusion on this main issue.
16. For these reasons, I conclude that the extension harms the living conditions of occupiers of 523 Woodham Lane with regard to the effect on outlook and privacy. As such, it is contrary to Policy CS21 of the Woking Borough Council Core Strategy (CS) and the National Planning Policy Framework (the Framework) that seek to achieve a satisfactory relationship between adjoining properties and avoid a significant harmful impact, including in terms of outlook and privacy.

Character and appearance

17. The original dwelling comprises a bungalow with a large dormer in the roof at the rear. The rear elevation of the dwelling is visible over the canal and garden from the canal towpath. As a result, this is a prominent rear elevation. Other houses visible over the canal vary in size and design, although mostly have pitched roofs. A number of those other dwellings are of similar depth to the dwelling with the extension.
18. The extension comprises a single storey with a parapet roof above and, given the slope of the rear garden, the floor level at ground floor is above the garden level at the rear resulting in a tall rear elevation. Consequently, the extension appears substantial in size in comparison with the modest size of the original dwelling. The detailed design, including the symmetry of the slightly deeper central section, windows and modest cornice on the parapet roof, is attractive. Nevertheless, it is such a substantial extension that is visible in public views from the opposite side of the canal that it appears somewhat incongruous on the rear of this modest dwelling.
19. For these reasons, I conclude that the extension harms the character and appearance of the surrounding area. As such, it conflicts with Policies CS21 and CS24 of the CS, Policy DM4 of the Development Management Policies Development Plan Document (DMPDPD) or the Framework. These policies seek development to make a positive contribution to the character of the area in which they are situated, including conserving and enhancing the character of the area in the vicinity of Basingstoke Canal.

Flood risk, ecology and biodiversity

20. Oaklands is located within Flood Zone 1 where there is a low probability of river flooding.
21. The Basingstoke Canal to the rear of the property is a Site of Special Scientific Interest (SSSI) and a controlled waterway. Discharge from the building into the canal could affect the water quality of the canal. This could increase the risk of flooding, particularly as land levels to the south of the canal banks are lower. It could also affect ecology and biodiversity within the SSSI that is designated for its rare habitat that is affected by the chemical characteristics of the water in the canal.
22. As a result, drainage from the extension would need to be controlled through an attenuation scheme prior to discharge, or to the surface water sewer that joins the Rive Ditch. The Rive Ditch has a history of surface water flooding. Consequently, there is a medium risk of surface water flooding, and additional development in this location may increase the risk of flooding elsewhere.
23. It is possible that an attenuation scheme would overcome the issues relating to flooding, ecology and biodiversity. However, no such scheme has been presented. If I were to allow the appeal, a condition to require the submission, agreement and implementation of a scheme may overcome this issue.
24. Nevertheless, in the absence of a suitable attenuation scheme I conclude that the extension increases the risk of flooding and harms the ecology and biodiversity in the area. As such, it is contrary to Policies CS7 and CS9 of the CS and Policy DM4 of the DMPDPD that seek to reduce the risk from surface water flooding and mitigate the impact of development on the integrity of

nature conservation interests, including where this may be affected by flooding, affect ecology and biodiversity within the SSSI or within the vicinity of Basingstoke Canal.

Other Matters

25. My attention has been drawn to the personal circumstances of the occupants of the dwelling. In considering this matter, I have taken into account the appellants' human rights, in accordance with the Human Rights Act 1998, particularly Article 6 (the right to a fair and public trial) and Article 8 (the right to the home). I accept that the extension would meet the needs of the appellants and that there would be significant costs if I were to conclude that the extension should be removed. However, it is not clear that the appellants' needs could not be met in another way.
26. I note the reasons given for revising the design of the roof from that proposed in the prior approval submission under reference PLAN/2014/1381 and that this reflects discussions relating to Building Regulations requirements. However, these matters do not affect my conclusions on the main issues.
27. Reference is made to *South Lakeland DC v SOS for the Environment and Rowbotham* [1991] JPL 440 and *Leominster DC, ex p Potheary* [1998] JPL 335(CA). These refer to situations where the requirements to remove buildings would incur additional costs and disruption and that these matters are material considerations to be taken into account in applying planning legislation. In *Newport BC v Secretary of State for Wales* [1998] JPL 377(CA) it was accepted that the planning system does not operate on the basis that development can proceed only if harm can be guaranteed never to occur. These cases indicate that there should be a balance between the benefits of development, including costs and disruption to the developers, and any adverse effects. I have, therefore, sought to balance these factors against my conclusions relating to the main issues in coming to my decision.

Conclusion

28. I have found that the proposal would meet the needs of the appellants and would lead to substantial additional costs and disruption to their living conditions. However, those factors are not sufficient to outweigh the harmful effect the extension as constructed has on the living conditions of neighbouring occupiers, character and appearance of the surrounding area, the ecology and biodiversity in the area and increasing the risk of flooding. Given that results in conflict with development plan policies, I conclude that the proposal would be contrary to the development plan as a whole. The appeals on ground (a) therefore fail.

The Appeals on Ground (f)

29. An appeal on this ground 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. In this case, the requirements seek to remove the single storey rear extension, in order to restore the land to its condition before the breach took place. Clearly, therefore, the purpose of the notice requirements is to remedy the breach of planning control.

30. In this case, the requirements of the notice go no further than remedying the breach of planning control, so are not excessive.
31. The appellant suggests that the notice should be varied to enable the roof of the extension to be demolished and reconstructed in line with the requirements of the prior notification under the GPDO 1995. Under the GPDO it is not possible for development to become permitted development retrospectively. It would be necessary, therefore, for the extension to be completely removed prior to undertaking any new construction that might benefit from a planning permission granted by the GPDO.
32. However, case law including *Tapecrown Limited v First Secretary of State and Vale of White Horse DC* [2006] EWCA Civ 1744 has established that enforcement procedures should be remedial rather than punitive and that in some circumstances consideration can also be given to any apparent 'obvious alternative' remedy. Such a scheme would need to be considered as being part of the matters alleged in the notice and whether it could be implemented without resulting in other potential harmful impacts. My attention has been drawn to the scheme subject of the submission under the GPDO 1995. This was in the same area as the development constructed and would have had a flat roof with pitched sides, but the walls could have been part of the matters alleged in the notice.
33. Whilst such a scheme may be technically achievable, there are no detailed plans and drawings of such a scheme before me, such that it is not possible to assess its effect on the character and appearance of the area. Given the depth of the extension and height of the eaves, even taking account of the revised design of the roof, the height of such an extension would be likely to dominate the part of the rear garden closest to the neighbouring dwelling. In addition, the side window referred to above would be likely to remain and no suitable attenuation scheme has been provided to overcome the issues relating to flooding, ecology and biodiversity. On that basis, it is not clear that the alternative design solution would overcome the conflicts with the development plan and the scheme does not offer the necessary degree of precision in order for me to conclude that it is a viable alternative.
34. As a result, I conclude that the requirements of the notice do not exceed what is necessary in order to remedy the breach of planning control. As such, the appeals fail on ground (f).

Formal Decision

35. The appeals are 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.

AJ Steen

INSPECTOR