



Appeal Decision

by **S A Hanson BA (Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 28 May 2021

Appeal Ref: APP/D3125/C/20/3262476

50 Richens Drive, Catherton, Oxfordshire OX18 3XU

- 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 Philip Caswell against an enforcement notice issued by West Oxfordshire District Council.
 - The enforcement notice, numbered 2020/11, was issued on 15 October 2020.
 - The breach of planning control as alleged in the notice is: *Without planning permission the erection of a single storey porch extension.*
 - The requirements of the notice are: *Within 4 months of the date on which this notice comes into effect (1) Remove the porch extension; and (2) Remove from the land all building materials deriving from the removal of the porch.*
 - The period for compliance with the requirements is 4 (four) months.
 - 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.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters

2. In light of the Covid-19 coronavirus pandemic, the consequent travel limitations, and following consideration of the basis of the appeal and the submitted evidence, I consider that this appeal can be determined without the need for a site visit. This is because I am able to reach a decision based on the information already available. Both parties were invited to comment on this matter and the appellant agreed to the appeal proceeding on this basis. No comments were received from the Council.
3. Since the submission of this appeal against the enforcement notice, a decision has been issued for the appeal against the Council's refusal of the s78 application¹ for the porch. That application was for a porch with smaller dimensions and an amended design. The appeal was dismissed on 13 April 2021². Prior to this, an appeal was dismissed for a s78 application³ for the porch as built⁴. I have had regard to both of these appeal decisions in consideration of this current appeal.

¹ LPA Ref 20/00016/HDD

² APP/D3125/D/20/3253839

³ LPA ref 17/03250/HDD

⁴ APP/D3125/D/18/3202448

The appeal on ground (a) and the deemed planning application

Main Issues

4. These are the effect of the development on i.) the character and appearance of the area and ii.) the living conditions of occupants of the neighbouring property, No 49 Richens Drive with regard to outlook and daylight.

Reasons

Character and appearance

5. The appeal site is a mid-terrace two-storey property in a staggered row of five dwellings. Properties in the row have either a flat roof canopy over the front door or a flat roof single storey element which incorporates the main entrance. The integral garage of the property has been converted to a habitable room, as has occurred at other properties. No 50 sits forward and is to the south of its neighbour No 49. Due to the layout of the properties in the row, No 49 is set back from the front elevation of the appeal property. This set back is exacerbated by the addition of the porch at No 50, which extends significantly beyond the front elevation of the original property.
6. Although the design features of the porch addition attempt to integrate it into its surroundings, its forward projection does not allow it to sit comfortably amongst its neighbours. The development results in a structure of disproportionate bulk and projection. It lacks architectural subtlety in its design and diminishes the character and appearance of the appeal property as well as appearing visually dominant in the street scene.
7. The development is overbearing in this position and represents an incongruous addition to the property. The harm caused to the character and appearance of the area conflicts with Policies OS2 and OS4 of the West Oxfordshire Local Plan 2031 (adopted September 2018) (the Local Plan) which seek to ensure new development complements and enhances the character and quality of the area and respects the architectural character of the surroundings.
8. The Council quoted Policy H2 in the reasons for issuing the notice. However, this policy refers to the delivery of new homes in the district and without explanation of how it relates to the appeal development, I shall have no further regard to the policy.

Living conditions

9. The front of No 50 projects well beyond No 49. Although the extension is single storey, the very close proximity of the development to the boundary with the neighbour and a window of a habitable room, creates a development that appears dominant and visually intrusive. I note that the previous Inspectors considered that even if the development did not impact on the light into the neighbours' windows and did not generate any harm with regards overlooking, the scale and massing of the extension was considered to have an overbearing impact. This was considered as being harmful to the outlook of the occupants of the neighbouring dwelling.
10. The degree of projection created by the depth of the porch extension onto a front elevation that already extends considerably beyond its neighbour's frontage will impact upon the outlook from No 49. The extent of that impact is

considered to harm the living conditions of the neighbouring occupants and as such conflicts with the general principles of Policy OS2 and Policy OS4 of the Local Plan which require that new development should not harm the use or enjoyment of land and buildings nearby including living conditions in residential properties.

Fall-back position/alternative scheme

11. The appellant argues that with alterations to its size, the development could fall within the permitted development provisions for a porch⁵. Various drawings have been provided to demonstrate this position and how such re-arrangements could impact the occupants of the neighbouring property. However, to my mind, none of the proposals put forward would suggest that such operational development would fall within the permitted development provisions for Schedule 2, Part 1, Class D of The Town and Country Planning (General Permitted Development) Order 2015 (the GPDO).
12. The GPDO does not define “porch” but, when applying its ordinary meaning, it would be a small covered structure positioned at a doorway entrance. In fact, the GPDO stipulates that, to benefit from permitted development, a porch is to be “outside any external door of a dwellinghouse”. I cannot see that the porch, as depicted on the drawings for potential alternative schemes, could fall within the meaning of “porch”. In these circumstances it is questionable whether it would be possible to alter the current porch so that, had it not been unauthorised development, it might otherwise have been permitted under Class D.
13. In reaching this finding, I note that compliance with the requirements of a notice does not prevent any future lawful development of the land.
14. Notwithstanding my view on the permitted development rights, as part of the appeal under ground (a) the appellant advanced alternative schemes to be considered. These plans show a reduction in the external measurements for the porch. However, none of these proposals suggest a reduction in the depth⁶ of the porch beyond that which formed part of the application to regularise the development, and which was subsequently dismissed by the previous Inspector in April 2021. In that appeal, it was found that the harm that would be caused by the forward projection (or depth of the structure) would be detrimental to both the character and appearance of the area and to the living conditions of the occupants of No 49. I find no reason to disagree with the Inspector’s decision with this matter.
15. Furthermore, I would question whether some of the alternative schemes would allow a person to access the house from the porch⁷. I acknowledge that enforcement action should be remedial rather than punitive. However, I consider that the alternative schemes proposed by the appellant would not satisfactorily overcome the harm to the living conditions of the occupiers of No 49 or to the character and appearance of the area as identified above.

⁵ Class D to Part 1 of Schedule 2 to the GPDO provides for the construction of a porch outside any external door of a dwelling subject to limitations.

⁶ Projection from the original front elevation.

⁷ Drawings CA 10721-7 and CA 10721-8

Other matters

16. I sympathise with the difficult position that has arisen for the appellant in his quest to make his living environment more conducive to his situation both now and in the future with the installation of the much needed ground floor w.c. I also note the conversation as to why an alternative position for the w.c. was not deemed acceptable. However, I am not convinced that the w.c. cannot be utilised without the porch extension by making changes to its access arrangements.

Conclusion on ground (a)

17. Overall, there are no material considerations to indicate a determination other than in accordance with the development plan. For the reasons given above, I conclude that the appeal on ground (a) should not succeed and I shall refuse to grant planning permission on the deemed application.

The appeal on ground (f)

18. An appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve the purpose of the notice. The purposes of an enforcement notice are set out in s173 of the 1990 Act and are to remedy the breach of planning control⁸ or to remedy injury to amenity⁹. Reading the notice as a whole, it is clear that the purpose is to remedy the breach of planning control.
19. I have already considered the alternatives put forward under ground (a) and found them to be unacceptable. There are no other lesser steps before me that would remedy the breach.
20. The appeal on ground (f) fails.

S A Hanson

INSPECTOR

⁸ s173(4)(a)

⁹ s173(4)(b)