



Appeal Decision

Site Visit made on 19 August 2021

by S Harley BSc(Hons) M.Phil MRTPI ARICS

an Inspector appointed by the Secretary of State

Decision date: 08 September 2021

Appeal Ref: APP/X0360/W/21/3270871

Riverwood Bungalow, New Mill Road, Finchampstead, RG40 4QT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 1, Class AA(b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.
 - The appeal is made by Mr Hitti against the decision of Wokingham Borough Council.
 - The application Ref 210097, dated 13 January 2021, was refused by notice dated 9 March 2021.
 - The development proposed is the enlargement of the dwelling house consisting of the construction of one additional storey, in accordance with Schedule 2, Part 1, Class AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr Hitti against Wokingham Borough Council. That application is the subject of a separate decision.

Preliminary Matters

3. Following the submission of further information relating to the construction of the building and cladding materials the procedure for the appeal was changed to enable consultations to take place. As a result the appeal reference was changed from APP/X0360/D/21/3270871 to APP/X0360/W/21/3270871. I have used the new reference number for this Decision Letter.
4. Under Article 3(1) and Schedule 2, Part 1, Class AA(b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO), planning permission is granted for the enlargement of a one storey dwelling house by the construction of one additional storey together with any engineering operations reasonably necessary for the purpose of that construction. This is subject to limitations and conditions set out in Paragraph AA.1 and Paragraph AA.2.

Background and Main Issue

5. Article 3(5) of the GPDO states the permission granted by Schedule 2 does not apply if "in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful". There is a substantial planning history on the site and some doubt about the accuracy of statements that were made historically in relation

to the appeal site. For this appeal a significant material consideration is the Certificate of Lawful Existing Use or Development for "the erection of Riverwood Bungalow with associated residential curtilage, stables and paddocks" Planning Ref 203260 granted in January 2021 (the CLD) under sections 191 and 192 of the Town and Country Planning Act 1990. This states no enforcement action could be taken in respect of these matters.

6. Permitted development rights apply to lawful operations and uses including those which are immune from enforcement action or are subject to a CLD unless there has been a subsequent breach of planning control or other material change in circumstances. No such change has been drawn to my attention and in these circumstances Article 3(5) does not apply.
7. Notwithstanding previous permissions for a mobile home on the site I conclude that permitted development rights could apply, provided all the conditions and limitations are met, although the CLD, in itself, does not demonstrate that such conditions and limitations are satisfied. Caselaw has found it is incumbent on the decision maker to establish whether a proposal meets all the conditions and limitations relating to permitted development rights.
8. The main issue in this appeal is whether the proposed development would benefit from permitted development rights under Class AA(b).

Reasons

9. The limitations at Paragraph AA.1 state that development would not be permitted if: (j) the development would include the provision of visible support structures on or attached to the exterior of the dwelling house upon completion of the development; or (k) the development would include any engineering operations other than works within the curtilage of the dwelling house to strengthen its existing walls or existing foundations. The latter narrows the engineering operations permitted to only the strengthening of existing walls and foundations. It is for the appellant to show these limitations are met.
10. Notwithstanding the Council's comments at "Part AA.3 Appraisal" of the Delegated Officer Report, it appears that relatively little information was provided with the initial application to the Council in relation to Paragraph AA.1(j) and (k) matters. Information had been submitted previously, notably with the CLD. However, it is for the appellant to supply the relevant information for each application rather than expecting the Council to extract this from previous cases. The Council, not unreasonably, sought advice from its Building Control team especially as it would appear that the building was constructed more than twenty years ago and, it seems, without the benefit of planning permission or approval under Building Regulations.
11. As part of the appeal emails from May 2021 were provided. In one of these bcsolutions indicated that, depending on the depth of the foundation, the sub strata it is bearing on, and the spacings of the studs in the walls the building may be suitable for carrying the load imposed by an additional storey; an engineer would need to be instructed to ascertain this. Alternatively it was suggested that a structural engineer could come up with an alternative design possibly making the upper level structurally independent of the ground floor.
12. On 14 May 2021 a Structural Engineer inspected the property and confirmed that the existing construction comprises a timber clad timber framed dwelling

with a raised ground floor of timber joists supported onto a brick perimeter low level wall and internal cross beams. The roof is formed with timber rafters and joists with a propriety roofing system. At my visit I saw that there are some intermittent supporting columns and beams in the space behind the one brick wide plinth and I saw into the roof space.

13. The Engineer, in May, proposed a light steel frame be installed within the existing footprint onto small pad foundations or the existing concrete sub base. However, this was caveated as "...*subject to further investigation*". Then a steel ring beam could be designed onto the posts to support the new external stud wall over; the ring beam could then be utilized to support the new timber first floor. The Engineer adds "*The new external stud wall would support a new timber roof over either cut timbers or prefabricated trusses with internal walls then being non-load bearing.*" Again there is a caveat that the structural design would need to satisfy the Building Regulations.
14. Given the reference to a new external wall supporting a new timber roof, I cannot confidently conclude that the development would not include the provision of *visible support structures on or attached to the exterior* (my emphasis) of the dwelling house. Therefore I cannot confidently conclude that the limitation at Paragraph AA.1(j) would be met in full.
15. Despite the Council considering that demolition might be necessary, the Engineer suggests that the external walls and timber ground floor could be retained. Although the Engineer would not envisage any problems with obtaining approval under the Building Regulations, given the stated need for further investigations and for any structural design to satisfy Building Regulations, I consider that insufficient information has been provided for me to confidently conclude that the development would not include any engineering operations other than works within the curtilage of the dwelling house to strengthen its *existing walls or existing foundations* (my emphasis). Therefore I cannot confidently conclude that the limitation at Paragraph AA.1(k) would be met.
16. For the above reasons, and in line with Paragraph AA.3(3), the application should be refused as insufficient information has been provided to establish that the proposed development complies with the specified limitations.
17. The exterior of the building comprises dark, overlapped, rough finished timber cladding. Paragraph AA.2(2)(a) requires materials to be used in exterior work to be of a similar appearance to those of the existing exterior. Based on the submitted site plan the Council took the view that the side of the building was adjacent to the boundary and that a combustible material such as timber cladding could not be used in such a position. Accordingly the Council concluded that the external material likely to be used would appear different so the condition would not be met. I acknowledge the concerns of the appellant about scaling from a 1:1250 plan but it was open to the appellant to also provide a larger scale plan to show the distance from the boundary.
18. There is a line of tall conifer trees along the edge of the appeal site. It is clear that one side of these trees has been heavily trimmed and no longer overhangs the appeal site. As a result there is a clear strip some 2m wide between the side of the building and the boundary. On this basis I see no reason why timber cladding would not meet the requirements of the Building Regulations. Accordingly the condition at Paragraph AA.2.(2)(a) could be met.

19. I have found insufficient information to confidently conclude the proposed development complies with the relevant conditions, limitations or restrictions at Paragraphs AA.1(j) and (k) so I conclude that the proposal does not benefit from permitted development rights under Class AA(b). On this basis it is unnecessary and inappropriate for me to proceed to further consider whether prior approval should be granted.

Other Matters

20. An application for prior approval under Class AA must be considered in the light of the circumstances at the time so whether or not the appellant has the right to change the appearance of a building before making such an application carries little weight in the consideration of this appeal. The existing elevation plans do not match the appearance of the building on the site. Had the proposal been otherwise acceptable I would have sought clarification on this matter.
21. Although the appellant's agent asked whether further information was required, the Council did not seek any during the course of considering the application as allowed for under Paragraph AA.2(3)(a). However, the Council are not obliged to do this. Moreover, although permitted development rights may be intended to simplify the planning process, they are specifically subject to safeguarding limitations and conditions. Given the planning history this case is not straightforward and, in my view, a full structural survey may well be the most appropriate way of demonstrating whether or not compliance with Paragraphs AA.1(j) and (k) could be achieved.
22. From the brochures provided with the appeal, both the Rockpanel Woods and Kaycan naturetech non-combustible products would appear to be much smoother with a more engineered finish and would, in my view, be unlikely to be similar in appearance to the existing cladding. However, given my conclusion regarding the distance of the building to the boundary this attracts little weight in this appeal.
23. My attention has been drawn to other prior approval cases where the appellant asserts the Council did not consult the Building Control team. However, it is not clear that site conditions for these would be the same as the appeal site and each case must be considered on its own merits.
24. Matters relating to the lawfulness or otherwise of Riverside House is not a matter for this appeal. Nor does the appellant's expressed dissatisfaction with the Council, including their response to Freedom of Information requests, alter the relevant matters for consideration in this appeal.

Conclusion

25. For the reasons given above, I conclude that the appeal should be dismissed

S Harley

INSPECTOR