



Appeal Decisions

Site visit made on 13 January 2022

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 February 2022

Appeal A Ref: APP/F1610/C/21/3285573

Appeal B Ref: APP/F1610/C/21/3285574

Land at Rowan Gate, Mangersbury, Cheltenham, Gloucestershire GL54 1HP

- 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 Samuel Kwok Sing Li (Appeal A) and Mrs Yin Han Tsoi (Appeal B) against an enforcement notice issued by Cotswold District Council.
- The enforcement notice was issued on 30 September 2021.
- The breach of planning control as alleged in the notice is contrary to planning permission granted under reference 18/00190/FUL, the installation of dormer windows that are not in accordance with the drawings approved by the Council.
- The requirements of the notice are to remove the unauthorised dormer windows as constructed to the front and rear roofslopes on the land.
- The period for compliance with the requirements is six months.
- Appeals A and B are proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decisions: The appeals succeed in part and permission for that part is granted, but otherwise the appeals fail and the enforcement notice is upheld as varied in the terms set out below in the Formal Decision.

Appeals A and B-Ground (a) appeals

Main Issue

1. The main issue in this ground of appeal is the effect of the dormers on the character and appearance of the dwelling and its surroundings.

Reasons

Character and appearance

2. The appeal property contains a substantial detached dwelling, which I am given to understand originated in the 1970s. The dwelling occupies a spacious well-planted plot, set back from a tree-lined track. It is alongside land in open rural uses, adjacent to a loose-knit group of buildings in part of the village, many of which are in the Stow-On-The-Wold Conservation Area (CA). The property and the surrounding area are located in the Cotswolds Area of Outstanding Natural Beauty (AONB). The dwelling therefore has an attractive, rural context which strongly reflects local traditions in terms of building styles and external materials as well as in terms of its landscape setting.
3. Although unexceptional in terms of architectural merit, the dwelling nevertheless possesses visual attributes echoing some of the key qualities of Cotswold vernacular set out in the Cotswold Design Code (CDC), which forms

part of the Cotswold District Local Plan (LP). The dwelling has a steeply pitched roof form and a relatively simple elevational arrangement. Also, the window openings are of reasonably modest proportions, often incorporating features such as drip mouldings, stone surrounds and mullions. The above elements, together with the colours and profiles of the external wall and roof materials, reflect aspects of traditional local buildings. They all contribute to the dwelling having an unassuming quality in terms of its appearance which defers to and respects the local built and rural setting.

4. The Council granted planning permission for works to the dwelling including the addition of dormers on the front and rear roof slopes, in March 2018¹. The approved drawings show three dormers of traditional design and external materials incorporating hipped pitched roofs situated within the front roof slope. The approved front dormers are of reasonably modest scale. The approved scheme shows significant portions of the dwelling's front roof slope being retained. As built however, the front dormers are materially at variance with the approved scheme. They are significantly larger and have a differing external appearance, albeit with similarities in terms of the roof form and external materials. The lowest parts of the front dormers are situated close to the front eaves line of the dwelling and their front faces are almost in line with the principal elevation, whilst the roof apexes are slightly below that of the dwelling's main ridge line. There is little space between the dormers and the edges of the dwelling's roof or between the dormers themselves. Each dormer is around twice as wide as the remaining front roof slope on either side.
5. The front dormers are therefore of significant scale, both individually and cumulatively, occupying the majority of the dwelling's front roof slope. They are viewed as disproportionately large additions which dominate the front roof slope, significantly altering the dwelling's original roof form and giving the principal elevation an unbalanced, 'top heavy' appearance. This has upset the inherent visual qualities of the dwelling, giving it an appreciably greater sense of assertiveness, eroding its understated visual character. The front dormers are also entirely at odds with other dormers in the locality, which for the most part are fairly modest in scale and visually subordinate to their host building. Furthermore, the increase in the visual presence of the dwelling has given rise to a noticeably more built-up feel in the immediate vicinity, thereby eroding some of the rural aspect that contributes to the distinctive visual attributes of the locality. The above factors do not compare favourably with the approved dormers' modest scale and comfortable integration within the front roof slope.
6. The visual impact of the front dormers is quite localised, as the front elevation of the dwelling is mostly viewed in front of the property itself or from relatively short sections of the adjacent track. Maturing planting also assists in breaking up some of these views, whilst recent additional planting might further soften the visual impact of the front dormers in future. However, as such planting could become diseased or damaged, or be removed, its longer term benefits cannot be assured. Further, the effectiveness of some of the planting is likely to be reduced in the absence of leaf cover during the winter and early spring. Moreover, the availability of screen planting is not a good reason to permit otherwise unacceptable development, as it could be repeated.

¹ Council Ref: 18/00190/FUL.

7. For the above reasons, the front dormers are viewed as alien and obtrusive features which cause unacceptable harm to the character and appearance of the dwelling and its immediate surroundings. By not being in keeping with the dwelling in their placement scale and design, the front dormers do not conform with the CDC at paragraph D.67 criterion 1 (I), whilst their failure to respect the character and distinctive appearance of the locality does not accord with LP Policy EN2. Furthermore, the front dormers are not visually attractive, nor sympathetic to the surrounding built environment and landscape setting and do not maintain a strong sense of place or reflect local design policy, being inconsistent with the National Planning Policy Framework (the Framework).
8. The approved drawings also show a hipped pitched roof dormer situated on part of the rear roof slope. The rear dormer shares significant similarities with the roof form, design, siting and size of the rear dormer in the approved scheme. It is only slightly larger than the approved rear dormer and apart from a wider eaves and flashing below the cill, the detailed design and external materials are similar. The distance the rear dormer is set back from the rear eaves line and the side of the dwelling is also not appreciably different to that of the approved scheme. Although the window opening is larger than the first floor window, that was also a feature of the approved rear dormer. In addition, the rear dormer is clearly subordinate in terms of its scale to the prominent two storey outrigger at the rear of the dwelling.
9. As a result, the rear dormer does not appear bulky or overly large on the rear roof slope nor does it dominate the rear elevation, being of a suitable size and design that respects the character and appearance of the dwelling and its surroundings. The visual consequences of the rear dormer are thus entirely different to those of the front dormers. It does not necessarily follow that because a dormer of a certain size and design is visually acceptable on one elevation of a building, similar dormers are acceptable on another. The differing conclusions I have reached in relation to the visual impacts of the dormers on the respective elevations are therefore entirely consistent. As the rear dormer conforms to the relevant CDC criterion, it also accords with LP Policy EN2 and is consistent with the Framework.

Other matters

10. I am given to understand that the front dormers provide natural light and ventilation to a bedroom and ensuite in the loft space, the middle front dormer also providing the necessary internal height for the staircase from the first floor. In addition, I understand that sufficient internal height could not have been achieved in the approved scheme and that moving the staircase to ensure continued internal access to the roof space would probably involve extensive internal works. However, this matter carries limited weight.
11. The Council did not seek to argue that the dormers do not conserve the landscape and scenic beauty of the AONB. On the evidence before me and on balance, I do not disagree with the Council's assessment, having regard to the dormers' localised visual impact. Consequently, the dormers do not conflict with LP Policy EN5. However, the absence of harm in the above respect is a neutral factor, which neither weighs in favour nor against granting permission. Also, the Council did not seek to argue that the dormers failed to preserve the character or appearance of the CA or its setting. In respect of the rear dormer, I find no sound reason to disagree with the Council and hence no conflict with

LP Policy EN11. Again, this is a neutral factor. The front dormers are for the most part viewed from within the CA; the outer boundary of the CA aligns with the principal elevation of the dwelling. Even if I had been minded to not share the Council's conclusions on this matter in respect of the front dormers, ultimately it would have made little difference to the outcome of these appeals.

Conclusion on Ground (a)

12. The front dormers unacceptably harm the character and appearance of the dwelling and that of its surroundings, being contrary to the Development Plan and inconsistent with the Framework. However, there is no such harm and thus no conflict with local and national policy arising from the rear dormer. Therefore, the ground (a) appeals will succeed in part, i.e., the rear dormer, but otherwise fail. It is not necessary to impose any planning conditions on the permissions that will be granted by virtue of the partial success on ground (a).

Ground (f) appeals

13. The ground of appeal is that the requirements of the notice are excessive.
14. An enforcement notice can have two purposes. Firstly, it can remedy the breach of planning control, including by making development comply with the terms of any planning permission which has been granted in respect of the land, or by restoring the land to its condition before the breach took place. Secondly, it can remedy any injury to amenity caused by the breach. The notice requires total removal of the dormers, rather than their modification in some way so that there is no longer an injury to amenity. Therefore, the purpose of the notice must be to remedy the breach.
15. The notice will cease to have effect concerning the rear dormer, as permission will be granted in that respect. Otherwise, the requirement to restore the property to its condition prior to the breach taking place is reasonable, not excessive, having regard to the purpose of the notice. Not removing the dormers would fail to restore the property to its pre-breach condition. No alternative to removing the front dormers that would restore the property to its pre-breach condition was suggested and, in my view, there is none.
16. Nevertheless, as enforcement action is intended to be a remedial measure, whether the planning difficulties could be overcome at less cost and disruption than total removal of the front dormers is a relevant consideration. The appellant asserted that the approved scheme had been implemented; the Council did not disagree and there is no sound reason to conclude otherwise. As it is also possible to remedy the breach by making development comply with the terms of a planning permission, an extant approval is an important factor. Where, as in this instance, what has been done differs significantly from an approved scheme with the result that the development as a whole is unauthorised, it is appropriate to provide the alternative of making the development comply with the terms of the relevant planning permission in order to remedy the breach. The differences between the front dormers and the approved scheme are clearly documented and the remedial works that would be required to comply with the approval are therefore readily apparent. As a result, such a requirement would be sufficiently precise.
17. Therefore, whilst the requirements are not excessive, I shall vary the notice to provide the alternative remedy. The ground (f) appeals succeed to that extent.

Ground (g) appeals

18. The ground of appeal is that the time for complying with the requirements of the notice falls short of what should reasonably be allowed.
19. The removal or rebuilding of the front dormers are likely to be relatively small-scale and straightforward operations for a suitably experienced small building contractor. Such works are also likely to be of limited duration, perhaps taking a few months to complete. Reference was made to general shortages in materials and labour attributed to factors including the ongoing COVID-19 pandemic and Brexit. However, no specific details were advanced concerning any difficulties currently being encountered in terms of securing the services of suitable local contractors, or of extensive delays in their availability to undertake work. Furthermore, the next six months would provide ample opportunity for the remedial works to be undertaken during the spring or early summer, when weather conditions are likely to be more favourable.
20. Therefore, the time for compliance is reasonable. It follows that extending the compliance time to twelve months would do little other than to perpetuate the breach and the associated planning harm. The ground (g) appeals fail.

Conclusion

21. For the reasons given above I conclude that the appeals should succeed in part only, namely for the rear dormer, and I will grant planning permission for this part of the matter the subject of the enforcement notice, but otherwise I will uphold the notice with a variation and refuse to grant planning permission on the other part, namely installation of the three front dormer windows contrary to planning permission granted under reference 18/00190/FUL. The requirements of the upheld notice will cease to have effect insofar as they are inconsistent with the permissions which I will grant by virtue of s180 of the Act.

Formal Decisions

22. Appeals A and B-it is directed that the enforcement notice be varied by at the end of paragraph 5 inserting the following requirement:

"Alternatively, make the development comply with the terms (including conditions and limitations) of the planning permission granted on 15 March 2018 (Application Ref 18/00190/FUL) within 6 months from the date this notice takes effect".

The appeals are allowed insofar as they relate to the rear dormer window and planning permission is granted on the applications deemed to have been made under section 177(5) of the 1990 Act as amended, for the rear dormer window on land at Rowan Gate, Mangersbury, Cheltenham, Gloucestershire GL54 1HP. The remaining part of the appeals insofar as they relate to the installation of dormer windows contrary to planning permission granted under reference 18/00190/FUL are dismissed, the enforcement notice is upheld as varied and planning permission is refused in respect of the applications deemed to have been made under section 177(5) of the 1990 Act as amended.

Stephen Hawkins

INSPECTOR