



Appeal Decisions

Site visit made on 10 May 2022

by Mr J Whitfield BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 July 2022

Appeal A Ref: APP/M0933/C/22/3293807

Appeal B Ref: APP/M0933/C/22/3293808

Land at Monton, 10 Cart Lane, Grange over Sands LA11 7AB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the Act) as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Trevor Wilson (Appeal A) and Ms Louise Hadwin (Appeal B) against an enforcement notice issued by South Lakeland District Council (the LPA).
- The enforcement notice was issued on 18 January 2022.
- The breach of planning control as alleged in the notice is, without planning permission, unauthorised operational development including the erection of a roof dormer extension, which has occurred within the last four years.
- The requirements of the notice are:
 - A. Permanently remove from the Land, within the red line boundary on the attached plan, the unauthorised roof dormer extension.
 - B. Permanently remove from the Land all building materials, all rubble and associated materials arising out of compliance with (A).
 - C. Comply with (A) and (B) within 13 (thirteen) weeks from the date this Notice takes effect.
- The period for compliance with the requirements is 13 weeks.
- Appeal A is proceeding on the grounds set out in section 174(2)(c), (a) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
- Appeal B is proceeding on the grounds set out in section 174(2)(c) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decisions: Appeal A is allowed, the enforcement notice is quashed and planning permission is granted in the terms set out below in the Formal Decision. Appeal B is dismissed.

Preliminary Matters

1. The Land was subject to a previous enforcement notice issued in August 2017 alleging the construction of a dormer extension, amongst other things. The notice was upheld on appeal¹ in October 2018. The dormer extension subject of that notice was subsequently removed. The LPA accepts that the requirements of the previous notice were complied with. The dormer extension subject of the notice before me here is said to be a different development constructed post compliance with the previous notice and thus the provisions of section 181(1) of the Act do not apply.

¹ APP/M0933/C/17/3184315 & APP/M0933/C/17/3184316

Appeals A and B on ground (c)

2. An appeal on ground (c) is made on the basis that any breach of planning control constituted by the matters stated in the notice does not constitute a breach of planning control.
3. Section 171A of the Act states that a) carrying out development without the required planning permission; or b) failing to comply with any condition or limitation subject to which planning permission has been granted, constitutes a breach of planning control.
4. The appellants' case is largely predicated on the basis the dormer is said to be granted planning permission by Article 3(1) of the Town and Country (General Permitted Development) (England) Order 2015 (the GPDO) as it said to fall within the parameters of permitted development under Class B of Part 1 of Schedule 2.
5. Class B states that the enlargement of a dwellinghouse consisting of an addition or alteration to its roof is permitted development. Development is not permitted if it fails to meet the limitations within paragraph B.1. The main parties agree that none of those limitations would be met. On the evidence before me, I have no reason to conclude otherwise.
6. Paragraph B.2 of Class B set out conditions to which development permitted under Class B is subject to. The main parties are now in disagreement as to whether the development will meet two of those conditions. The first is paragraph B.2(b)(i)(aa) which states that the enlargement must be constructed so that the eaves of the original roof are maintained or reinstated.
7. The appellant accepts that in the construction of the previous dormer extension, new 70mm rafters were affixed on top of the original rafters. It is said that they were subsequently removed as part of the remedial works to remove the previous dormer. I note it was a requirement of the previous enforcement notice that the new timbers were removed. In contrast, the LPA states that additional timbers were in place at the time the notice was issued and as a consequence, the original eaves height has not been maintained or reinstated as the additional timbers have the effect of raising the eaves height.
8. A report by Lambert Smith Hampton dated 10 December 2019 on behalf of the LPA indicates that the eaves have not been maintained or reinstated as new "plant-on" rafters have been affixed to the top of what appears to be the original rafters, thus increasing the height. The report's author visited the Land on 3 September 2019 and was able to inspect the roof slope upon which the dormer is now constructed, with part of it having been exposed. The report is accompanied by two photographs which, whilst not entirely clear, appear to show new timber affixed on top of some of the older rafters on the south-eastern roof slope.
9. The appellant commissioned a building survey report prior to that, dated 29 July 2019. The report was based on an inspection dated 12 July 2019. The report concludes that the original timbers are in their original location and have not been raised or moved. However, the report does not dispute that the roof has been raised with the affixing of new timbers atop of the originals. Indeed, the report states that it was evident to the author at the inspection that new

- roof timbers had been installed in the south-east facing roof and that there were timbers of different ages with newer timbers set against older timbers.
10. The appellant's statement says that the additional rafters subject of the previous notice were removed and provides a drawing showing the rafters with and without the latter additions. However, no photographic evidence is shown nor is there any follow up surveyor report. Moreover, there is no documentary evidence of work done such as invoices or receipts.
 11. At my site visit, part of the fascia board had been removed to make the rafters visible. However, only a small part of the roof had been exposed and I was unable to ascertain due to the wall plate whether the original roof had been reinstated through the removal of the new rafters. In any event, what matters is what existed at the time the notice was issued, not at my site visit.
 12. Both of the surveyor reports postdate the 6 month compliance period for the previous notice which, with an appeal decision date of 2 October 2018, would have ended in April 2018. Thus, if the requirements of the previous notice were complied with in full as suggested by both parties, then the additional timbers would have been removed and the timbers evident to both the LPA and appellant's surveyors in 2019 would be new additions. On the other hand, if the additional timbers evident to both surveyors in 2019 were those subject of the notice issued in 2017, then the previous notice has not been complied with, contrary to the submission of the parties.
 13. Either way, in a ground (c) appeal the onus is on the appellant to demonstrate the alleged breach does not constitute a breach. In this instance, the evidence before me does not sufficiently demonstrate, on the balance of probabilities, that the dormer extension has been constructed so that the eaves of the original roof have been maintained or reinstated.
 14. The GPDO does not define the term eaves in respect of Class B of Part 1. The Permitted Development for Householders: Technical Guidance published by the then Ministry of Housing Communities and Local Government in September 2019 assists in interpretation of the GPDO. It states that the eaves of a house are the point where the lowest point of a roof slope, or a flat roof, meets the outside wall. Thus, whilst the original rafters and roof may have been maintained, the evidence before me suggests, on the balance of probabilities, that the eaves has not, since having new timbers fixed atop of the original rafters has raised the eaves height.
 15. There is also dispute between the parties as to whether condition B.2(c)(ii) of Class B will be complied with. It states that any window inserted on a wall or roof slope forming the side elevation of the dwellinghouse must be non-opening unless the parts of the window which can be opened are more than 1.7m above the floor of the room in which the window is installed. The LPA argues that a raised floor constructed within the dormer extension means the top openings of the windows within the dormer are less than 1.7m above floor level. In contrast, the appellants argue that the raised floor was subsequently removed and thus the development complies with the condition. I saw from my site visit that the raised floor no longer existed. However, what matters is what existed at the time the notice was issued.

16. Nevertheless, in any event, even were I to find in favour of the appellants on the matter of condition B.2(c)(ii), the development still fails to comply with the condition under paragraph B.2(b)(i)(aa).
17. Likewise, I note the submissions of local residents that the development fails to meet other limitations and conditions of Class B. However, given my findings above, such matters would not lead me to any different overall conclusion on the ground (c) appeal.
18. As a consequence, the development fails to comply with the conditions attached to the permission granted by Article 3(1) of the GPDO as set out at paragraph B.2 of Class B. Thus, at the date the notice was issued, the development subject of the notice would have been a breach of planning control.
19. The appeals on ground (c) therefore fail.

Appeal A on ground (a)

Main Issues

20. The main issue is the effect of the development on the character and appearance of the area, including the effect upon the setting of the Grange Conservation Area (the GCA) and the Grade II Listed Building 12 Cart Lane.

Reasons

21. The notice alleges that the scale, massing and position of the extension creates a visually harsh and discordant feature which does not maintain or enhance the appearance of the host building. It also states that the development does not reflect the prevailing local built settlement character and therefore causes harm to the character of the building and locality.
22. However, the LPA's submissions to this appeal in respect of the ground (a) do not argue that any harm arises from the development in respect of the listed building or the conservation area. Indeed, a letter from the LPA dated 24 November 2021 inviting an application for planning permission for the dormer extension, indicates to the appellant that such an application would be recommended for approval subject to a condition that the top openings in the windows were sealed down. I also note the previous Inspector found in favour of the former dormer extension on the same roof slope in respect of its effect on the GCA and Listed Building.
23. Monton is a post-war detached property of typical design for its era with a rendered finish. Architecturally it sits in stark contrast to the historical vernacular of the buildings within the GCA. The addition of the dormer window does little to change its individual character and thus, whilst visible from within the GCA, the addition has little bearing on the character or appearance of the GCA itself. Thus, it does not result in harm to its setting.
24. Moreover, whilst located to the rear of the garden of 12 Cart Lane, intervisibility is partially restricted by trees and vegetation. In any event, even where the development can be seen from the listed building, it is seen in the context of the existing modern house and those around it. Furthermore, the extension does not result in any change in land use, nor increase activity such that noise, light, odour or any other emission would be a significant factor that

could harmfully affect the setting of the listed building. As a result, I am satisfied that the setting of 12 Cart Lane will be preserved.

25. I conclude, therefore, that the development will not have a harmful effect on the character and appearance of the area, preserving as it will the setting of the GCA and the Grade II listed 12 Cart Lane. As such, the development complies with Policies CS1.1, CS8.2 and CS8.10 of the South Lakeland Local Development Framework Core Strategy (2010) which seek to safeguard the essential character and appearance of those buildings and sites that make a positive contribution to the special architectural or historic interest of the area; that development conserves the setting of conservation areas; and, the design, scale and materials of all development should be of a character which maintains or enhance the quality of the townscape.
26. In addition, the development complies with Policies DM1 and DM2 of the Local Plan Development Management Policies (2019) which state that development should ensure it responds appropriate to the sites local and settlement character and that developments should respond appropriately to local context, and built environment setting.
27. Finally, there is accordance with Section 2 and Section 12 of the National Planning Policy Framework insofar as it seeks to protect the built and historic environment and achieve well-designed places.
28. The enforcement notice cites the development as conflicting with CS Policy CS1.2. However, the policy relates to wider spatial strategy for development and is not relevant to the development before me.

Other Matters

29. I note the concerns of neighbouring residents regarding the potential concerns for loss of privacy and harm to outlook. The main parties agree that the potential for overlooking could be overcome by a condition requiring the glazing within the dormer extension to be obscurely glazed and non-opening. I am satisfied that such a condition would overcome any potential loss of privacy for neighbouring residents and thus such a condition is necessary. Details should be agreed with the LPA to ensure the correct levels of obscure glazing and non-opening techniques are obtained.
30. On my site visit I observed the appeal development from the rear garden of 12 Cart Lane, including standing adjacent to windows. I note the dormer extension is visible from several windows which serve habitable rooms. However, the extension is set a reasonable distance away from the rear of the property and views of it are partially obscured by trees and vegetation. Moreover, the dormer is set below the ridge height and back from the eaves such that it does not appear unduly dominant. As a result, I am satisfied that the development does not significantly harm the outlook from No 12. I am also satisfied that there will be no undue impacts on the living conditions of residents living in 14, 16 and 18 Cart Lane nor indeed any of the properties on The Orchard.

Conditions

31. Condition 1 is imposed to ensure that the obscure glazing and non-opening elements of the windows are implemented in accordance with a scheme to be agreed with the LPA so as to make the development acceptable in planning

terms. There is a strict timetable for compliance because permission is being granted retrospectively, and so it is not possible to use a negatively-worded condition to secure the approval and implementation of the outstanding matter before the development takes place.

32. The condition will ensure that the development can be enforced against if the required details are not submitted for approval within the period given by the condition, or if the details are not approved by the LPA or the Secretary of State on appeal, or if the details are approved but not implemented in accordance with an approved timetable.

Conclusions

33. For the reasons given above, I conclude that Appeal A should succeed on ground (a). I shall grant planning permission for the erection of a roof dormer extension as described in the notice.
34. The appeals on ground (f) do not therefore fall to be considered.
35. Appeal B fails on ground (c). However, the notice will be quashed as a consequence of my decision to allow Appeal A on ground (a).

Formal Decision

Appeal A

36. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a roof dormer extension at Land at Monton, 10 Cart Lane, Grange over Sands LA11 7AB as shown on the plan attached to the notice and subject to the following condition:

- 1) The development hereby permitted shall be demolished in full and all materials resulting from the demolition shall be removed within 28 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 2 months of the date of this decision a scheme for obscure glazing and details for openings of all windows contained in the dormer extension shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Appeal B

37. The appeal is dismissed. The enforcement notice is not upheld.

J Whitfield

INSPECTOR