



Appeal Decisions

Site visit made on 25 July 2022

by Roy Curnow MA BSc(Hons) CMS MRTPI

An Inspector appointed by the Secretary of State

Decision date: 30 August 2022

Appeal A Ref: APP/R0335/C/21/3279726

Land at Plot 2, White Gates, Mushroom Castle, Winkfield Row, Bracknell RG42 7PL

- 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 D Hodges of Kealay Construction Limited against an enforcement notice issued by Bracknell Forest Borough Council ('the Notice').
- The enforcement notice, numbered EN/21/00001/UBPC, was issued on 16 July 2021.
- The breach of planning control as alleged in the notice is without planning permission the installation of 2 no. dormers to the western roof slope of detached garage to plot 2.
- The requirements of the notice are: (i) remove the two dormers to the western slope of the detached garage as shown on the enclosed Location Plan and photographs; and (ii) Rebuild the roof plane as per approved plans T371/2 (Garage Plans) and T371/3 (Site Plan) as approved by planning application 18/01238/FUL.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.

Appeal B Ref: APP/R0335/W/21/3275465

Land at Plot 2, White Gates, Mushroom Castle, Winkfield Row, Bracknell RG42 7PL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr D Hodges of Kealay Construction Limited against Bracknell Forest Borough Council.
 - The application Ref 21/00012/FUL is dated 6 January 2021.
 - The application sought planning permission for Reserved Matters relating to appearance, scale and landscaping pursuant to outline planning permission 17/00318/OUT for the erection of detached dwellings and garages following demolition of existing outbuilding (plot 2) without complying with a condition attached to planning permission Ref 18/01238/REM, dated 25 April 2019.
 - The condition in dispute is No 1 which states that: "The development hereby permitted shall be carried out only in accordance with the following approved plans received by the Local Planning Authority: T371/3C - Proposed Site plan - LPA received 24.04.19; T371/A - Proposed House Plans and Elevations - LPA received 24.04.19; T371/2 - Proposed Garage Plans and Elevations - LPA re-stamp date 16.01.19; Energy Statement - LPA received 27.03.19; Bat Survey - LPA received 28.11.18; Design & Access Statement (materials) (December 2018) - LPA re-stamp date 16.01.19".
 - The reason given for the condition is: "To ensure that the development is carried out only as approved by the Local Planning Authority".
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Decisions

1. Appeal A - It is directed that the enforcement notice is corrected by replacing "18/01238/FUL" with "18/01238/REM" in requirement (ii) of section 5 of the Notice. Subject to the correction, Appeal A 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 installation of 2 no. dormers to the western roof slope of detached garage at Plot 2, White Gates, Mushroom Castle, Winkfield Row, Bracknell RG42 7PL as shown on the plan attached to the notice and subject to the schedule of conditions.
2. Appeal B is allowed and planning permission is granted for installation of 2 no. dormers to the western roof slope of detached garage at Plot 2, White Gates, Mushroom Castle, Winkfield Row, Bracknell RG42 7PL, in accordance with the application Ref 21/00012/FUL dated 6 January 2021 without complying with condition No 1 set out in planning permission Ref 18/01238/REM granted on 25 April 2019 by the Bracknell Forest Borough Council, but otherwise subject to the conditions in the schedule of conditions:

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall be carried out in accordance with the following approved plans: T371/2 Revision A and T371/3 Revision D, save with regards to compliance with any condition in this decision; and T371/A - Proposed Housed Plans and Elevations - LPA received 24.04.19, Energy Statement - LPA received 27.03.19, Bat Survey - LPA received 28.11.18, .Design & Access Statement (materials) (December 2018) - LPA re-stamp date 16.01.19.
2. The dormer windows hereby permitted shall be removed from the west roof slope of the garage and this west roof slope shall be rebuilt in accordance with drawings T371/2 and T371/3 approved by the Council in planning application 18/01238/REM within 3 months 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 of landscaping to be carried out along the north boundary of the appeal site, including a timetable for the work and details of management and/or maintenance, shall have been submitted for the written approval of the local planning authority. The landscaping works shall be carried out in accordance with the approved details in accordance with an agreed implementation programme. The completed scheme shall be managed and/or maintained in accordance with an approved scheme of management and/or maintenance.
 - ii) If within 5 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 maintained.

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.

Preliminary Matters

3. The second requirement in section 5 of the Notice referred to planning application 18/01238/FUL. I checked this with the parties who agreed that this should have read 18/01238/REM. As both referred to this in their submissions, I can correct this without causing injustice to either party.
4. The two appeals relate to the same development. Appeal A relates to an enforcement notice requiring the removal of two dormers; Appeal B is made against a refusal to grant permission for their retention. Given this, and that the reasoning that the Council has given for both is the same, the two appeals are addressed in a single decision letter.

Reasons

5. Outline planning permission was granted for the erection of 2 no. detached dwellings and garages following demolition of existing outbuilding, Council reference 17/00318/OUT, on 10 January 2018. Subsequently, a reserved matters application, Council reference 18/01238/REM, was approved on 25 April 2019. This reserved matters decision was subject to one condition, requiring compliance with a list of drawing numbers. Amongst these, drawing numbers T371/2 and T371/3 showed two flat roofed dormers to be erected on the eastern roof slope of a detached garage.
6. A large, detached dwelling has been erected on plot 2, together with a detached garage that has a room at first floor level. The garage is close to the north and east boundaries of the property. To the east is an area of open space with a children's play area and to the north are residential properties. The property's main garden area lies to the west of the garage, with open land beyond.
7. There are no dormers in the eastern roof slope of the garage. Two dormers of a similar design to those that were approved on the eastern roof slope have been constructed in the western roof slope. These are the subject of the allegation in the Notice.
8. Appeal A is made on ground (a), which is to say that planning permission should be granted for the development. Appeal B seeks planning permission to retain the development without compliance with a condition requiring compliance with specified drawings. The main issue in Appeal A is the effect of the development on living conditions of occupiers of properties to the north by reasons of outlook and privacy. The main issue in Appeal B is whether the condition is necessary having regard to the effect that the dormers that have

- been erected have on the living conditions of occupiers of properties to the north by reasons of outlook and privacy.
9. Although the garage is reportedly slightly out of position, the Council has found that it is not expedient to take action against this.
 10. The garage has a steeply pitched roof and, as a result, is quite a high building with large roof slopes. The dormers are not particularly large and only project to a limited degree from the roof slope.
 11. The direct view from the dormers is down the garden and across the open land. They also allow an acute view towards residential properties in Merlin Clove. The northern boundary to Plot 2 is formed of a high evergreen hedge in front of a timber fence. A large oak tree is present in this boundary, which is subject to a tree preservation order¹ (TPO). It appeared that this is not the common boundary with properties in Merlin Clove, as there is what might be termed a 'green corridor' between their respective boundary fences. As such, the Council tells me that the garage lies some 12m from the boundary with the nearest property.
 12. When I visited, the boundary planting provided a dense screen. The properties to the north were, however, seen from the dormer windows. Although the foliage meant that the properties were only glimpsed I could assess the relationship between the appeal building and those dwellings, which lie on slightly lower land. I visited Merlin Clove alone after my site visit, from where glimpses to Plot 2 were gained.
 13. The closest dwelling lies immediately to the north and is set at a very acute angle; this is illustrated in photographs submitted by a third party. The Council states that its first-floor window is 22m distant from the garage and this accords with the separation distance in the Bracknell Forest Council Design Supplementary Planning Document ('SPD'). The dormers allow a more direct view towards those dwellings to the northwest; however, the distance between them and the dormers in the garage is greater.
 14. Given the size of the dormers and their relationship with properties to the north and northwest, they could not reasonably be described as having an overbearing effect on those properties.
 15. The hedgerow, in particular, and protected tree mitigate the limited overlooking that might arise from people looking out from the dormer windows. I appreciate that the situation would be different when the tree has less, or no, leaf growth. However, the high hedge below the tree is evergreen and provides an effective screen in views to neighbouring properties from the first floor of the garage. Even were the tree and hedge not present, given the window-to-window distance between the dormers and windows in other dwellings, my finding is that the relationship would be acceptable. However, I saw how the views to other properties' private gardens are mitigated by the tree, seasonally, and most especially by the evergreen hedge. Given this, it is important that this screening is retained and maintained. Therefore, I have attached a condition requiring the submission of a landscaping scheme, to be approved by the Council, that could allow for this to occur. The wording of this condition has been agreed by the parties. Further, I find that the drawings

¹ TPO No 1358 – 'Land at Parkside, Mushroom Castle, Winkfield Row, Bracknell RG42 7PL – 2021'

condition and the application of those from the outline permission, suggested by the Council, to be necessary.

16. For the above reasons, and subject to the conditions I impose, I find that the dormer window does not cause significant harm to the living conditions of the occupiers of neighbouring properties by way of a loss of privacy or outlook.
17. The garage as constructed, and proposed in Appeal B, is of a high quality design, as required by 'saved' Policy CS7 of the Council's Core Strategy, February 2008, ('CS'), and would not have an adverse effect on the amenity of surrounding properties, in line with saved Policy EN20 of the Bracknell Forest Local Plan, January 2002, ('LP'). Despite their age, I find these policies to be broadly compliant with the Government's National Planning Policy Framework, ('the Framework'). Their terms are also reflected in the relevant part of the SPD, with which the development also accords.
18. Although not referred to in the Notice, the Council's statement refers to Policy CP1 of its Sites Allocation Local Plan. This, I am told, refers to the presumption in favour of sustainable development set out in the Framework and that applications that accord with the policies in the development plan for Bracknell Forest should be approved. Although I have not been given a copy of this, from what the Council says I find that the development accords with its terms.

Other Matters

19. I have addressed most of the comments made by third parties, above. Whether the dormers would not overlook any other property were they to face eastwards is not an issue in these appeals. I have to assess those that have been built and are proposed to be retained. Similarly, I cannot comment on whether a third party would have bought a property had the original scheme shown the dormers on the west elevation.

Conclusions

20. For the reasons given above, I conclude that Appeal A should succeed on ground (a) and the enforcement notice should be quashed. I shall grant planning permission, subject to conditions, for the installation of 2 no. dormers on the western roof slope of detached garage to plot 2 as described in the notice, as corrected.
21. Appeal B is allowed, and planning permission is granted subject to conditions.

Roy Curnow

Inspector