



Appeal Decisions

Site visit made on 18 October 2022

by **Stephen Hawkins MA, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 7TH NOVEMBER 2022

Appeal A Ref: APP/K0425/C/21/3275673

Appeal B Ref: APP/K0425/C/21/3275674

10 Avery Avenue, Downley, Buckinghamshire HP13 5UE

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. The appeals are made by Mr Oliver Trussell (Appeal A) and Mrs Peta Trussell (Appeal B) against an enforcement notice issued by Buckinghamshire Council.
 - The notice was issued on 14 April 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the construction of a box dormer to rear in connection with loft conversion.
 - The requirements of the notice are: 1) Demolish the dormer window in the rear elevation; and 2) Remove all debris occurring from step 1 of this notice from the land.
 - The period for compliance with the requirements is four months.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a), (c) and (f) of the Town and Country Planning Act 1990 as amended. 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. Since the prescribed fees have not been paid within the specified period for Appeal B, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Decisions

1. Appeal A-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 construction of a box dormer to the rear in connection with a loft conversion on land at 10 Avery Avenue, Downley, Buckinghamshire HP13 5UE referred to in the notice, subject to the condition in the Schedule at the end of this Decision.
2. Appeal B-The appeal is dismissed but the enforcement notice is not upheld.

Application for costs

3. An application for costs was made by Mr Oliver Trussell against Buckinghamshire Council. This application is the subject of a separate Decision.

Appeals A and B

Ground (c) appeals

4. The ground of appeal is that the matters alleged in the notice do not constitute a breach of planning control. It is for the appellants to show why their appeals on this ground should succeed, the relevant test of the evidence being on the balance of probability.

5. The appeal property contains a mid-terrace dwelling. The dwelling is mainly constructed in brick, with some vertical tile hanging on the front elevation. The front roof slope is covered with dark coloured concrete tiles.
6. The dormer has been erected on the rear roof slope of the dwelling. Erecting the dormer is a building operation and therefore amounts to 'development' as defined in s55(1) of the Act. Planning permission is required for the carrying out of any development of land, having regard to s57(1) of the Act.
7. The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) at Article 3, Schedule 2, Part 1, Class B, grants planning permission for additions or alterations to the roof of a dwelling. This is subject to the limitations in paragraph B.1, as well as the conditions in paragraph B.2, being satisfied.
8. The dormer is no higher than the tallest part of the existing roof and is situated on the rear roof slope. In my estimation, the dormer has a cubic capacity which does not exceed that of the original roof space by more than 40 m³. Therefore, the dormer satisfies the relevant size and locational limitations in paragraph B.1. The Council did not seek to argue otherwise.
9. To satisfy the condition in paragraph B.2(a), the external materials used must be of a similar appearance to those of the existing dwelling. Article 2(1) of the GPDO defines "existing" as existing immediately before the carrying out, in relation to that building, of the development described in the Order. The face and sides of the dormer are finished in light coloured horizontal timber weatherboard cladding. The finished colour of the cladding gives it an appearance that bears little resemblance to and is in complete contrast to the appearance of the roof tiles in situ immediately before the erection of the dormer, as evidenced from the similar tiles present on the front roof slope. This means that the cladding does not have a similar visual appearance to the existing dwelling. It is dissimilar in terms of colour and design to the materials used in the main roof of the dwelling when viewed from ground level.
10. Furthermore, the appearance of the cladding does not resemble the other external materials of the dwelling immediately before the dormer was erected. The subsequent application of timber cladding to the rear elevation of the dwelling makes little difference in this regard. Neither does recent case law referred to, largely concerned with measuring the height above ground level of a residential outbuilding, have any great relevance to what existed immediately before the erection of the dormer¹.
11. Accordingly, on the balance of probability the cladding does not have a similar appearance to the external materials of the existing dwelling, it does not reflect the relevant advice in the Government's Technical Guidance² and the condition at paragraph B.2(a) has not been satisfied. Whilst the other relevant condition at paragraph B.2 (b)(i) concerning the eaves has been satisfied, development that does not comply with the conditions in the GPDO is without planning permission. No grant of express planning permission following the submission of a planning application was drawn to my attention. At s171A(1)(a), the Act defines a breach of planning control as carrying out development without the required planning permission.

¹ *McGaw v Welsh Ministers* [2020] EWHC 2588 (Admin).

² Permitted development rights for householders Technical Guidance MHCLG September 2019.

12. Consequently, the appellants have been unable to show that the dormer does not constitute a breach of planning control; the available evidence indicates otherwise and the ground (c) appeals fail.

Appeal A

Main Issue

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

Reasons

Character and appearance

14. The dwelling is located on a planned residential estate. Rows of properties having an appearance similar to the dwelling and using similar external materials occupy rectilinear plots laid out around communal space. These factors contribute significantly to the pleasant and cohesive suburban character and appearance in the environs of the property, which is also reflected for the most part in residential extensions including rear dormers in the locality.
15. The dormer has a box-like profile and on account of its scale, occupies almost the entirety of the dwelling's rear roof slope with a similar overall height. As a result, the dormer appears as a visually dominant feature significantly altering the dwelling's original roof form, eroding the rear roof slope and creating a top heavy appearance. This is given emphasis by the lower roof line of an adjoining dwelling. The contemporary finish of the cladding on the face and sides of the dormer is similar to that applied subsequently to the rear elevation of the dwelling. Even so, the appearance of the cladding does not sit easily with the darker colours of the tiling on the roofs of adjoining dwellings, accentuating the overall size of the dormer and reinforcing its lack of visual integration with the surroundings.
16. Nevertheless, it is also evident that a dormer of almost identical scale could have been erected at the property, having regard to the permission granted by the GPDO at Article 3, Schedule 2, Part 1, Class B. Moreover, the condition in paragraph B.2(a) would be satisfied in the event that the face and sides of the rebuilt dormer were to be finished with external materials similar to the dark coloured tiles on the dwelling's front roof slope. That would not rule out the use of dark coloured cladding on the rebuilt dormer face and sides because, as already noted above, the materials do not need to be the same as those of the existing dwelling, or to match exactly.
17. Furthermore, there is a significant likelihood of additional living space being required to meet the day-to-day needs of the appellant's family in the event of the dormer being removed. It is highly probable that the appellant would seek to provide an equivalent area of living space which replaced that which had been lost. Therefore, in the event that the appeal is dismissed and the dormer is removed there is a more than reasonable prospect of a structure of similar dimensions using a similar cladding material being re-erected almost immediately afterwards, in accordance with the limitations and conditions of Class B.
18. Given that enforcement action is intended to be a remedial measure, whether the planning difficulties can be overcome at less cost and disruption is a

relevant consideration. Having regard to the clear 'fallback' position identified above, there is no sound reason why a paint or stain in an appropriate dark colour similar to that of the roof tiles on the front roof slope and on adjoining dwellings could not be applied to the cladding, instead of removing the dormer. The application of such a paint or stain finish to the dormer face and sides would assist greatly in visually assimilating the dormer with the roof of the dwelling. It would also mean that the structure would sit much better alongside the roof materials of adjoining dwellings, considerably improving the sense of visual integration with the surrounding development as a result. The implementation of a scheme for applying an appropriately coloured paint or stain to the dormer could be secured by imposing a suitable planning condition. This represents an obvious alternative to the steps set out in the notice.

19. Consequently, assessed in the context of the development that could otherwise be achieved pursuant to the GPDO at Article 3, Schedule 2, Part 1, Class B and subject to the condition described above, the dormer causes no unacceptable harm to the character and appearance of the dwelling or its surroundings. There is no conflict with the placemaking and design quality requirements in Policy DM35 of the Wycombe Local Plan (LP), or LP Policy DM36 concerning extensions and alterations to existing dwellings.

Other matters

20. Granting permission based on the individual planning merits of the matter in the deemed application arising from the ground (a) appeal does not create a precedent for unacceptable development.

Conditions

21. I have imposed a condition requiring the submission to and approval by the Council of a scheme to paint or stain the face and sides of the dormer an appropriate dark colour and the implementation of that scheme within a set timetable. The condition is necessary to safeguard the character and appearance of the dwelling and the surroundings. The condition is drafted in the form set out below because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the implementation of the required modification works, because the development has already taken place. The purpose and effect of the condition is therefore to ensure that the dormer may only remain if the appellant complies with its requirements.

Conclusion

22. For the reasons given above I conclude that Appeal A should succeed on ground (a) and planning permission will be granted for the construction of a box dormer to the rear in connection with a loft conversion. The appeals on ground (f) in Appeal A and Appeal B do not therefore need to be considered.

Stephen Hawkins

INSPECTOR

CONDITIONS SCHEDULE

- 1) Unless within three months of the date of this decision a scheme for the painting or staining of the timber cladding on the external face and sides of the dormer is submitted in writing to the Local Planning Authority for approval, and unless the approved scheme is implemented within three months of the Local Planning Authority's approval, the dormer shall be demolished and all of the resulting demolition materials removed from the site.

If no scheme in accordance with this condition is approved within six months of the date of this decision, the dormer shall be demolished and all of the resulting demolition materials shall be removed from the site.

Upon implementation of the approved scheme specified in this condition, the dormer shall thereafter be maintained with external finishes in accordance with the approved details.

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.