



Appeal Decisions

Site visit made on 4 January 2023

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 February 2023

Appeal A Ref: APP/D1835/C/22/3299212

Appeal B Ref: APP/D1835/C/22/3299226

Land at 7 Cove Gardens, Worcester WR3 7DJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by Mr D Philips and Appeal B is made by Mrs Philips against an enforcement notice issued by Worcester City Council.
 - The notice was issued on 19 April 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission, operational development has occurred on the land. This includes the construction of the canopy structure adjoining the garage to the rear and the porch on the side elevation.
 - The requirements of the notice are to: i) Remove the canopy structure attached to the garage rear elevation in its entirety. ii) Demolish and remove the unauthorised section of the porch subject to the retrospective planning application 21/00295/HP.
 - The period for compliance with the requirements is: 3 (three) 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. Since an appeal, which is fee exempt, has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that:

- i). the breach of planning control at section 3 of the notice be deleted and substituted with "Without planning permission, the erection of a canopy structure to the rear of the garage and the erection of a single storey extension to the porch."
- ii). step ii) of the requirements at section 5 of the notice be deleted and substituted with "ii) Demolish and remove the single storey extension to the porch."

2. Subject to these corrections, the appeal is allowed in part and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for part of the development, namely the single storey extension to the porch on land at 7 Cove Gardens, Worcester WR3 7DJ, referred to in the notice, subject to the conditions in the schedule of conditions below.

3. Otherwise the appeal is dismissed and the enforcement notice is upheld as corrected. Planning permission is refused on the application deemed to have been made under S177(5) for the canopy structure to the rear of the garage.

Preliminary Matters

4. A planning application Ref. 21/00295/HP for a front single storey garage extension, side garage extension and first floor rear extension was refused by the council by notice dated 31 January 2022. This is the subject of a separate decision Ref. APP/D1835/D/22/3295621.
5. The single storey extension to the porch was not the subject of planning application Ref. 21/00295/HP therefore the wording of the requirements at section 5 of the notice should be corrected. Furthermore, I find that the breach of planning control is awkwardly worded. I consider that under my powers pursuant to s176(1) of the Act, I can make these corrections with no injustice being caused to either party.

Ground (a) and the deemed planning application

Main Issues

6. The main issues are the effect of the development proposal on the character and appearance of the host property and its surroundings, including the setting of the adjacent Riverside Conservation Area (RCA), and the living conditions of the occupiers of neighbouring properties.

Reasons

7. The appeal site is situated in an established residential area. Cove Gardens is 'no-through' estate road which features nine detached dwellings positioned close together. The two-storey property is of brick and render construction with a tiled pitched roof and a double gabled façade and rear elevation. The property has similar design features to neighbouring properties within the road although there is some variety in size and detailing. To the rear there is a small garden immediately adjoining the house and, divided by a tarmacked public right of way (PROW), a larger garden which slopes down towards the banks of the River Severn along which runs another PROW. The tarmacked footpath which separates the property's private open space is at a lower level to the rear garden. A high level brick wall defines the boundary.
8. The property is partially located within the RCA which incorporates the River Severn and land and properties either side. The RCA boundary runs along the edge of the rear garden adjacent to the house incorporating the tarmacked PROW and the separate sloping garden. The house and garage are not within the confines of the RCA. The significance of this section of the RCA is derived in part from open spaces within the Severn's flood plain, fringed with built development diverse in style and development pattern with the juxtaposition of different materials, forms and uses being part of what gives the Riverside townscape its character. Having regard to my duty under s72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of the RCA.
9. There are views of the rear of the appeal property from public vantage points within the RCA. Close up from the PROW immediately to the rear of the property and from the river and its banks where the PROW is at a much lower level. While those views are possible only from a limited part of the CA, they are nonetheless a positive component of it, and contribute to its significance.

10. The extension to the side of the property at the front extends what was the porch area. The development when complete would be an extension to a room within the house rather than the porch as it would not contain an external door. Nevertheless, for consistency, I shall refer to this as the single storey extension to the porch. The addition extends to the boundary with the neighbouring property, being in line with the existing porch building. When complete it would have a mono-pitch roof clad with tiles to match the existing. The extension would be set back fractionally from the front elevation of the house and its built form would be modest.
11. While the extension would be constructed up to the boundary with the neighbouring property, this property is set back from the boundary with the appeal site. The extension would not create a terracing effect and due to its limited size and design, I consider that it would be an acceptable addition to the host dwelling. Furthermore, I am satisfied that its position within proximity of the neighbouring property would not impinge on its occupiers. In this respect, there is no conflict with Policy SWDP 21 of the South Worcestershire Development Plan (February 2016) (SWDP).
12. To the rear of the garage is a partially constructed open sided store area. This structure spans almost the width of the garage. The tiled pitch roof has a wider roof angle than the garage and lower ridge and eaves. Its roof form extends towards the footpath to the rear of the site and is level with the outer side of the rear boundary wall. It is an awkward addition to the garage and is visually incongruous. The bulk of the structure and its projection over the wall draw the eye and interrupt the extended open views along the footpath. This is significantly more noticeable due to the ground level of the appeal site being considerably higher. While any negative impact of the structure on the living conditions of the occupiers of neighbouring properties would be limited, I do consider that this addition has a negative effect on both the appearance of the host dwelling and the character of its immediate setting.
13. Overall, I find the canopy structure to the rear of the garage conflicts with Policy SWDP 6, Policy SWDP21 and Policy SWDP 24 of the SWDP. These policies seek to conserve and enhance the significance of heritage assets, including their setting. Moreover, the generic design principles of Policy SWDP 21 require that all development should integrate effectively with its surroundings, complementing the character of the area, responding to surrounding buildings and the distinctive qualities that contribute to the visual and heritage interest of the townscape, streets and quality of the local area. This is consistent with the aims and objectives of the National Planning Policy Framework.

Other Matters

14. According to mapping records the formal line of the public footpath cuts across the rear garden of the appeal property. However, the actual footpath and route in use lies outside the rear garden. It appears that the formal line of the public footpath was not formally diverted onto the new route at the time of construction of Cove Gardens. Nevertheless, nothing in the works permitted obstructs the Definitive Map route or the route in current use.

Planning Conditions

15. The conditions set out in the accompanying schedule are based on those suggested by the Council. Where necessary, I have amended the wording of the suggested conditions, in the interests of precision and clarity, and in order to comply with advice in the Planning Practice Guidance.
16. As the development has commenced, therefore a commencement condition is not necessary. A condition specifying approved plans/documents is necessary for the avoidance of doubt and in the interests of certainty. The condition to ensure that the development is implemented and retained in accordance with the submitted Water Management Statement is necessary to ensure that an appropriate sustainable drainage system is provided to serve the development. Conditions restricting deliveries of construction materials, plant and machinery and removal of spoil from the site is necessary to protect the living conditions of nearby residents. Likewise, as the extension to the porch is only partially constructed, a condition restricting construction working hours is also considered necessary to protect the living conditions of nearby residents.

Conclusion

17. For the reasons given, the appeal should succeed in part only, and I will grant planning permission for the works to the side, namely the single storey extension to the porch. I will uphold the notice and refuse to grant planning permission for the canopy structure to the rear of the garage. Section 180(1) of the 1990 Act provides that the requirements of the upheld notice will cease to have effect so far as inconsistent with the permission granted.

S A Hanson

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall be carried out and completed in accordance with the following approved plans and associated documents and the specifications and recommendations contained therein, except where otherwise stipulated by conditions attached to this permission: Block Plan MAB1; Proposed Floor Plans MAB3[A]; Proposed Elevations Plan MAB4[A] insofar as they relate to the addition of a single storey extension to the porch.
- 2) Prior to the first use/occupation of the development hereby permitted, the details set out in the submitted Water Management Statement shall be fully implemented and remain thereafter.
- 3) No work relating to the construction of the development hereby approved (including deliveries of construction materials or plant and machinery; removal of any spoil; demolition; and site preparation) shall take place on the premises before 0730 on Mondays to Fridays and 0800 on Saturdays nor after 1800 on Mondays to Fridays and 1300 on Saturdays, or at any time on Sundays or on Bank or Public Holidays.

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