



Appeal Decisions

Site visit made on 30 January 2023

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 28 February 2023

Appeal A Ref: APP/M1710/C/21/3289090

Land at 53 Portsmouth Road, Horndean, Waterlooville PO8 9LN

- 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 Scott Tricker against an enforcement notice issued by East Hampshire District Council.
- The enforcement notice was issued on 24 November 2021.
- The breach of planning control as alleged in the notice is Without planning permission and within the last 4 years, unauthorised alterations to the roof comprising of three dormer windows to the front and a large dormer with Juliet balcony to the rear of the property.
- The requirements of the notice are: 1. Remove the three dormer roof extensions on the front roof slope; 2. Remove the larger rear dormer extension and Juliet balcony from the rear roof slope; 3. Remove all resulting debris from the Land.
- The period for compliance with the requirements is 6 months.
- The appeal 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. Since an appeal is brought on ground (a), an application for planning permission is deemed to have been made under s177(5) of the Town and Country Planning Act 1990.

Summary Decision: 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 Ref: APP/M1710/W/21/3286723

53 Portsmouth Road, Horndean, Waterlooville PO8 9LN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr S. Tricker against the decision of East Hampshire District Council.
- The application Ref 28126/004, dated 18 August 2021, was refused by notice dated 14 October 2021.
- The development proposed is described as 'Retention of front (northwest) dormers & rear (southeast) Juliet balcony door (Partial alternative to permission 28126/002).'

Summary Decision: Appeal B is allowed and planning permission is granted subject to the conditions set out below in the Formal Decision.

Preliminary Matters

1. Planning permission was granted¹ in 2021 for roof alterations to raise the ridge and construct front and rear dormers at the appeal property. The ridge was

¹ Ref: 28126/002 ('2021 Permission')

raised and dormer windows were constructed but since the dormers did not accord with the 2021 Permission plans, a retrospective application was submitted which was refused by the Council, resulting in Appeal B.

2. Although the description of development in the Appeal B retrospective planning application does not precisely replicate the allegation in the Appeal A enforcement notice, it appears that these relate to the same development; whilst the Appeal B description does not refer to the rear dormer window, this was shown on the application plan and it appears from the officer's report that this was considered as part of the development. I shall thus combine my assessment under Appeal B with the Appeal A ground (a) appeal and deemed planning application (DPA).

Appeal A - The appeal on ground (c)

3. The appeal on this ground is that the matters alleged do not constitute a breach of planning control. The onus is on the appellant to make their case on the balance of probability.
4. The appellant argues under this ground that the rear dormer window represents permitted development ('PD') under Schedule 2, Part 1 Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 ('GPDO'). The appellant's position is that following raising of the roof in connection with the 2021 Permission, this became the 'existing' roof for the purposes of Class B. It is argued then that, in view of the increased ridge height, no part of the dwellinghouse would exceed the height of the highest part of the 'existing' roof as a result of the dormer window works. Thus, the appellant argues, the rear dormer meets with all of the conditions and limitations in Class B.
5. On the evidence before me, the works involved in the construction of the raised roof and dormer windows were completed as a single operation. The 'existing' roof immediately before this operation was therefore the original roof as it was before the ridge was raised. Consequently, in my view, the appellant has not made their case that the existing rear dormer window represented PD when it was constructed.
6. Further, it is apparent that works have been completed at the appeal property which were not in accordance with the 2021 Permission and so were unlawful. As such, on the evidence before me, it appears that Article 3(5) of the GPDO applies. This disapplies PD rights in circumstances where building operations involved in the construction of the building² are unlawful. Consequently, Part B PD rights would not have been available at the time the rear dormer was constructed in view of the unlawful works carried out.
7. The appeal on ground (c) therefore fails.

Appeal A - The appeal on ground (a) and the DPA; and Appeal B

Main Issue

8. The main issue is the effect on the character and appearance of the appeal property and area.

² With 'building' in this context defined to include 'any part of a building' per Article 2 GPDO

Reasons

9. The area immediately surrounding the appeal property presents a very varied street scene with significant variety in architectural design features, building heights, roof forms, and window shapes and sizes. Front dormer windows of varying sizes and designs are visible in the street scene.
10. Prior to the appeal development, the appeal property itself also showed notable variation in design features in terms of window sizes and shapes, and roof forms, with the front porch extension having a flat-roofed design. The appeal building previously presented an asymmetrical appearance from the front elevation by reason of the two storey front projection on one side of the property. I note also that planning permission was granted pursuant to the 2021 Permission for front dormers, albeit of a different size, design and position, and this remains a fallback for the appellant.
11. As regards the appeal development then, I consider that the position and size of the larger front dormer window brings overall balance to the property in view of the additional bulk resulting from the two storey front projection. I find also that the flat roof design mirrors the roof form of the front porch below, bringing some cohesion in this respect. Although the front dormer windows are not aligned with the windows below, given the asymmetrical design and varied fenestration in the main front elevation, the absence of alignment and symmetry at roof level does not represent visually discordant or cluttered design. Whilst there are three front dormers, one of which is larger, much of the roof slope remains visible and their size does not therefore unduly dominate the roof slope or result in a harmfully top heavy appearance.
12. As such, and taking into consideration the variation in design of the front elevation of the appeal property and significant variation in the street scene, I do not consider that the front dormer windows result in any material harm to the character and appearance of the appeal property or area.
13. Whilst the rear dormer is very large in size and does visually dominate the rear roof slope, bearing in mind PD rights under Class B and prevalence of a variety of front and rear dormer windows in the surrounding area, I consider that this also is an acceptable form of development.
14. I conclude then on the main issue that the appeal development does not result in harm to the character and appearance of the appeal property or area. It accords in this way with saved Policy HE2 of the East Hampshire District Council Local Plan: Second Review (2006) and Policy CP29 of the East Hampshire District Council: Joint Core Strategy (2014) which require that alterations and extensions to buildings are designed to take account of the design, scale and character of the original building and its setting, that the roof form of any extension or alteration respects the form of the original building and that all new development respects the character and context of the district's towns, villages and countryside.
15. I find no conflict either with the requirements of the National Planning Policy Framework for good design that is sympathetic to local character. There is compliance also with the aims of the Council's Residential Extensions and Householder Development Supplementary Planning Document (2018) related to ensuring that roof extensions do not have a negative impact on the character of the property and its surroundings.

Other Matters

16. Concerns were raised during the course of the Appeal B application related to the impact of the appeal development on the living conditions of neighbouring occupants in relation to light pollution and privacy. The Council considered the appeal development to be acceptable in these regards and I do not consider there to be any material harm to living conditions bearing in mind the fallback positions pursuant to the 2021 Permission and PD rights under Class B.
17. Drawing these matters together, the Appeal A appeal on ground (a) succeeds and the appeal on ground (f) therefore does not fall to be considered. Appeal B succeeds also.

Conditions

18. The Council has put forward some proposed conditions which I have considered as regards development being permitted pursuant to Appeal A and Appeal B.
19. As regards Appeal A, a condition requiring the rear dormer window and Juliet balcony window to be obscure glazed and non-opening is not necessary bearing in mind mutual oblique overlooking in this location and that fallback PD rights under Class B would not require this.
20. As regards Appeal B, I shall not include a commencement condition as the application was retrospective. Conditions stipulating compliance with approved plans and external materials details are necessary in the interests of the character and appearance of the area. A condition requiring provision and retention of parking spaces is not necessary since there is no suggestion that the appeal development would generate a need for off-street parking.
21. In my formal decision on Appeal B, the description of development will be altered to include reference to the rear dormer which was shown on application plans and considered as part of the development in the officer's report. I shall also substitute the word 'retention' with the word 'construction' since retention does not represent development requiring planning permission under s55 Town and Country Planning Act 1990.

Appeal A Overall Conclusion

22. For the reasons given above, I conclude that Appeal A succeeds on ground (a). I shall grant planning permission for alterations to the roof comprising of three dormer windows to the front and a large dormer with Juliet balcony to the rear of the property as described in the notice. The appeal on ground (f) does not fall to be considered.

Appeal B Overall Conclusion

23. The appeal development accords with the development plan, read as a whole and there are no material considerations that warrant a decision other than in accordance with the development plan. For these reasons, and taking into account all other matters raised, the appeal succeeds.

Appeal A Formal Decision

24. 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 alterations to the roof comprising of three dormer windows to the front and a large dormer with Juliet balcony to the rear of the property at Land at 53 Portsmouth Road, Horndean, Waterlooville PO8 9LN as shown on the plan attached to the notice.

Appeal B Formal Decision

25. The appeal is allowed, and planning permission is granted for construction of front (northwest) dormers & rear (southeast) dormer including Juliet balcony door (Partial alternative to permission 28126/002) at 53 Portsmouth Road, Horndean, Waterlooville PO8 9LN in accordance with the terms of the application Ref 28126/004, dated 18 August 2021, subject to the following conditions:

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans and particulars: Application Form; Drawing No. CFA Full 01 Rev 01; Design and Access Statement.
- 2) The development hereby permitted shall be constructed in accordance with the materials specified within the approved details, unless details of other suitable materials are otherwise agreed in writing by the Local Planning Authority.

V Bond

INSPECTOR