



Appeal Decision

Site visit made on 2 March 2023

by Richard S Jones BA(Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 May 2023

Appeal Ref: APP/R3650/C/22/3292370

Clayton Cottage, Combe Lane, Wormley, Godalming, Surrey GU8 5TP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Scott Sinclair against an enforcement notice issued by Waverley Borough Council.
 - The notice, numbered EN/2022/01, was issued on 11 January 2022.
 - The breach of planning control as alleged in the notice is without planning permission the erection of a building ("the Building"). The Building is marked in the approximate position 'A' on the attached plan.
 - The requirements of the notice are to:
 - (i) Remove the Building marked in the approximate position 'A' on the attached plan.
 - (ii) Remove from the Land all materials resulting from the above step.
 - The period for compliance with the requirements is six 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 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. 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 Town and Country Planning Act 1990 Act as amended for the development already carried out, namely the erection of a building at Clayton Cottage, Combe Lane, Wormley, Godalming, Surrey GU8 5TP, as shown on the plan attached to the notice.

Preliminary Matters

2. The Council has confirmed that Policies D1, D4, D6 and D7 of the Waverley Borough Local Plan 2002, referred to in its reasons for issuing the enforcement notice, have been replaced by Policies DM1, DM4 and DM11 of the Waverley Borough Local Plan Part 2: Site Allocations and Development Management Policies (LP2), which was adopted March 2023. As my decision must be made on the basis of the development plan in place at the time of my decision, I offered the appellant opportunity to comment on that material change in circumstances.
3. It has been drawn to my attention that the appellant has made a formal complaint to the Council regarding its handling of the case. However, that is not a matter for this appeal, which I have considered afresh on the basis of the facts and evidence before me, and my own site visit.

The Appeal on Ground (c)

4. The appeal relates to an open fronted, detached double garage. To succeed on ground (c), the onus is on the appellant to demonstrate, on the balance of probabilities, that the erection of that building is not in breach of planning control.
5. The appellant's case is that the building is granted planning permission by Article 3 and Schedule 2, Part 1, Class E(a) of the GPDO¹ which, subject to limitations, provide permitted development rights for the provision within the curtilage of a dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such.
6. It is undisputed that the building is within the curtilage of the dwellinghouse and that it is required for purposes incidental to the enjoyment of the same. The limitation in dispute is E.1(c) which states that development is not permitted by Class E if any part of the building would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse.
7. MHCLG Technical Guidance² explains that *'in most cases the principal elevation will be that part of the house which fronts (directly or at an angle) the main highway serving the house (the main highway will be the one that sets the postcode for the house concerned). It will usually contain the main architectural features such as main bay windows or a porch serving the main entrance to the house. Usually, but not exclusively, the principal elevation will be what is understood to be the front of the house.*

There will only be one principal elevation on a house. Where there are two elevations which may have the character of a principal elevation, for example on a corner plot, a view will need to be taken as to which of these forms the principal elevation'.
8. In this case, the dwellinghouse is situated on a corner of Combe Way and Petworth Road. The appeal building is clearly sited forward of the elevation of the dwelling facing Petworth Road. The dispute lies in whether that is the principal elevation of the dwellinghouse for the purposes of the GPDO.
9. The Council has provided the approved drawings for the dwelling and argues they show that it was designed to have its principal elevation facing Petworth Road. Indeed, although the scan is not very clear, that north-east elevation appears to be annotated as the front elevation. It also appears to contain the main architectural features of the dwellinghouse, including a covered porch to the main entrance of the house under a cat slide roof. It is orientated towards and runs parallel to Petworth Road. Typically for a principal elevation the entrance opens into the main hallway and ground floor circulation to the various rooms, whereas the entrance on the opposite elevation comprises patio doors from the lounge and appears to be labelled as the rear elevation.
10. I saw that the dwelling as built, essentially reflects those key aspects of the elevations depicted in the approved plans and that the south-west elevation, compared to the north-east elevation, is largely devoid of architectural

¹ The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended

² Ministry of Housing, Communities & Local Government Permitted development rights for householders – Technical Guidance – September 2019

features, save for the conventional arrangement of windows and a patio door, typically found in a rear elevation.

11. Moreover, whereas the north-east elevation faces towards the main road, the main visual and functional focus of the south-west elevation is towards the main garden space. The shallower garden space lies in front of the Petworth Road facing elevation, which further points towards it being the main principal elevation. Nevertheless, I saw no path or other physical connection with Petworth Road.
12. The highway serving the house is Combe Lane, which the appellant explains sets its postcode. Indeed, Combe Lane is referred to in the enforcement notice, rather than Petworth Road. However, the part of the house which primarily faces Combe Lane, at an angle, is the north-west side elevation, not the south-west elevation.
13. Although both of those elevations can be seen in public views from the main entrance on Combe Lane, the driveway clearly runs to and focusses on the north-west side elevation, rather than the south-west elevation. The side elevation incorporates an attached garage, and a kitchen door with feature canopy over. I saw that functions as the main entrance to the dwelling and has a doorbell and letterbox, whilst the door facing Petworth Road is unused and blocked-off internally by furniture.
14. Bringing the above together, it is clear that architecturally the principal elevation of the dwelling is that which faces north-east, towards Petworth Road. Functionally, the principal elevation is the north-west elevation. The south-west elevation is neither functionally nor architecturally the principal elevation.
15. For the purposes of the GPDO, I find the principal elevation to be the north-east elevation facing Petworth Road. As part of the building is situated on land forward of that principal elevation, it is in breach of Class E limitation E.1(c) and does not benefit from planning permission granted by Article 3 of the GPDO. Express planning permission is required and is not shown to have been obtained. Moreover, even if I had found the principal elevation was the north-west side elevation, the building would still be positioned entirely forward of that elevation.
16. I have noted that the appellant states that he completed an online Permitted Development advice sheet which indicated the building was permitted development. However, no evidence is provided to that effect.
17. On the balance of probabilities, the building is in breach of planning control. The appeal on ground (c) fails.

The Appeal on Ground (a)

Main Issues

18. The main issues are:
 - whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (NPPF) and relevant development plan policies;
 - the effect on the viability of a tree; and

- if the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the development.

Reasons

Whether the building is inappropriate development

19. The site lies within the Metropolitan Green Belt. Policy RE2 of the Waverley Borough Local Plan Part 1: Strategic Policies and Sites (February 2018) (LP1) states that the Green Belt will continue to be protected against inappropriate development in accordance with the NPPF. The NPPF explains that a local planning authority should regard the construction of new buildings as inappropriate in the Green Belt³.
20. Although paragraphs 149 and 150 of the NPPF set out a number of exceptions, they do not include specific reference to ancillary outbuildings within the curtilage of a dwelling or other buildings. On that basis the appellant accepted that the building would amount to inappropriate development within the Green Belt.
21. However, exception 149(c) is *the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building*. It was held in *Warwick DC v SSLUHC, Mr J Storer & Mrs A Lowe* [2022] EWHC 2145 (Admin)⁴ that paragraph 149(c) '.... is not to be interpreted as being confined to physically attached structures but that an extension for the purposes of that provision can include structures which are physically detached from the building of which they are an extension.'
22. On that basis, it would be unlawful to find that an outbuilding should not be treated as an 'extension' for the purposes of paragraph 149 (c) solely on the basis that it is not attached to another building. As that judgement was made post final comments on the appeal, I offered the parties opportunity to comment on it.
23. Whether a detached structure would amount to an extension of the existing dwelling is a matter of fact and degree. As the building is used as a garage to the dwelling, it can reasonably be considered as a normal domestic adjunct to it. It is also used for purposes clearly related to and incidental to the occupation of the dwelling and is sited relatively close to it and is seen in conjunction with it. Therefore, for the purposes of paragraph 149(c) of the NPPF, I am satisfied that the building can be considered as an extension to the dwelling, despite not being physically attached to it.
24. The next step is to consider whether it would result in disproportionate additions over and above the size of the original building. In that regard, and in response to the *Warwick* judgement, the Council has confirmed that it does not consider the garage to be a disproportionate addition to the size of the original dwelling. On the basis of my own observations, I find no reason to disagree.

³ Paragraph 149

⁴ Paragraph 52

25. I therefore find that the building falls within the exception at paragraph 149(c) and for the purposes of the NPPF and LP1 Policy RE2, is not inappropriate development within the Green Belt.
26. Where development is found to be not inappropriate, it should not be regarded as harmful either to the openness of the Green Belt or to the purposes of including land within it. Consequently, the building does not conflict with those same policies, which state, amongst other things, that proposals will be permitted where they do not conflict with the exceptions listed in national planning policy.

Tree viability

27. The building has been erected in close proximity to the base of a mature horse chestnut tree, which is substantial in size and prominently positioned towards the front corner of the site and the junction between Petworth Road and Combe Lane. It is an attractive specimen and makes a positive contribution to the visual amenity of the site and its surroundings.
28. I note the arguments made by the appellant, but I have no evidence, such as an arboricultural impact assessment, which demonstrates that the health of the tree has not been adversely impacted, that the construction of the garage may have saved the tree which had previously been affected by honey fungus, or that the tree is in better health than it was prior to the garage being constructed.
29. Given the proximity of the tree, it is highly likely that the garage building has been constructed within its root protection area (RPA). The majority of tree roots are in the top 600mm of soil and fully mature trees may die if 5-10% of their roots are damaged. Damage can be caused by cutting the roots or by compaction of the soil structure through the siting of heavy items under the tree canopies, through compaction of surface materials and through vehicular movements and parking. Soil compaction can in turn adversely affect drainage, gas exchange, nutrient uptake and organic content, thereby serving to impede or restrict root growth.
30. I saw that the timber garage has a hipped tile roof and has been constructed on a brick plinth with blockwork foundations. Damage may therefore have been caused by cutting the roots during construction and by soil compaction through the siting of the garage and the parking of cars.
31. The appellant asserts that vehicles were parked on the same spot for over a decade beforehand with no effect on the health of the tree. Indeed, a pre-existing photograph shows one vehicle in the general vicinity of the garage building, with another parked in front of the attached side garage. However, I am mindful that the garage building results in two cars being parked close to the tree, along with the associated effects of building within its RPA.
32. I have no evidence of the tolerance of the tree to root disturbance or damage or that it can remain viable. Nor have any mitigation measures been proposed to improve the soil environment that is used by the tree for growth and maintenance requirements.
33. The appellant refers to the ground having been dug deeper than 60cm within 6m of the tree by the Council outside the curtilage of the property for signage

and by others for drainage, sewage, roadworks. However, it has not been shown that such activities have taken place within the RPA.

34. In the absence of evidence to the contrary, I find it more likely than not that the construction of the garage building (and its use) is harmful to the viability of the horse chestnut tree and thus is contrary to LP1 Policies SP1 and NE2 and LP2 Policies DM4(vii) and DM11. Those policies state, amongst other things, that development should adequately protect trees during all phases of development to avoid damage including activities causing soil compaction or severance of roots.

Other Matters and Planning Balance

35. The Council has highlighted that the site is in the vicinity of and visible from Grade II listed King Edward's School War memorial and Grade II listed King Edward's School. However, given the intervening distance and the boundary screening to the appeal property, I am satisfied that the garage building has a neutral effect on the setting of those designated heritage assets, thereby preserving the same.
36. The site is located within the Surrey Hills Area of Outstanding Natural Beauty and an Area of Great Landscape Value. Due to the boundary vegetation, views of the building from outside of the site are largely screened or heavily filtered, save for a gap close to the junction and at the main vehicular entrance. The Council's authorisation report opines that the building appears subordinate to the main dwelling and that the timber finish does not appear incongruous in the street scene. It is also noted that once weathered, the timber finish will better match the verdant character of the local area.
37. For those reasons, the Council found the development to accord with LP1 Policies TD1 and RE3. However, those conclusions appear to be contradicted in the reasons for issuing the enforcement notice, insofar as conflict is cited with the same policies.
38. In any case, I find no reason to disagree with the above stated effects and that the building respects the character of the landscape in which it is located and is not harmful to the character and appearance of the area. The building is not therefore in conflict with LP1 Policies RE3 and TD1 or LP2 Policy DM4 taken as a whole, or paragraph 130 of the NPPF. Those policies state, amongst other things, that the Council will ensure that the character and amenity of the Borough are protected by requiring new development to be of a high quality and inclusive design that responds to the distinctive local character of the area in which it is located.
39. The Council's authorisation report states that as a garage, the building is not likely to result in a significant increase in the number of people permanently residing on the site and therefore would not have a likely significant effect on the integrity of the Wealden Heaths Special Protection Area, in accordance with LP1 Policy NE1. I agree.
40. Due to its relationship with the nearest residential properties, the garage has no material effect on living conditions of the occupants of the same. Moreover, I have not found the development to be inappropriate development in the Green Belt.

41. Identified harm is therefore restricted to the likely adverse effect on the viability of the horse chestnut tree. However, the tree has been afforded no protection so its roots could have been severed in any event. That amenity harm therefore carries little weight.
42. The Council accepts that the building could lawfully be re-erected within the curtilage in a position not forward of the principal elevation, subject to adherence to all other relevant Class E limitations. I consider that to be a likely fallback scenario given the appellant has suggested under his ground (f) appeal that it could be relocated elsewhere in the site. I am mindful that doing so may result in further work in the vicinity of the RPA, as well as additional harm arising from removing the existing building, as per the requirements of the notice.
43. Therefore, whilst I have found that the proposal would conflict with LP1 Policies SP1 and NE2 and LP2 Policy DM11, material considerations in this case indicate that the deemed planning application should be allowed, thereby justifying a decision not in accordance with the development plan.

Conditions

44. The Council has requested a condition be imposed removing Class E permitted development rights in order to provide safeguards against further harm to the openness of the Green Belt.
45. However, for the reasons explained, I have found that the building is not inappropriate development and as such should not be regarded as harmful either to the openness of the Green Belt or to the purposes of including land within it.
46. Moreover, the appellant's evidence shows that the Council has granted other applications for the erection of detached garages and outbuildings without such a condition, despite identifying Green Belt harm.
47. In the circumstances, the condition is unreasonable and unnecessary.

Conclusion

48. For the reasons given above, the appeal succeeds on ground (a). I shall grant planning permission for the development as described in the notice.
49. The appeal on ground (f) does not therefore fall to be considered.

Richard S Jones

INSPECTOR