



Appeal Decision

Site visit made on 27 June 2023

by Stuart Willis BA Hons MSc PGCE MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 July 2023

Appeal Ref: APP/V3120/C/22/3299074

105 Northcourt Road, Abingdon, OX14 1NN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Nick Suckling against an enforcement notice issued by Vale of White Horse District Council.
- The notice was issued on 6 April 2022.
- The breach of planning control as alleged in the notice is without planning permission the erection of rear, side and front extensions and a new roof including the insertion of dormers to a dwelling house.
- The requirements of the notice are to:
 - i) Demolish or otherwise take down all the unauthorised development described in paragraph 3 above and reinstate the dwellinghouse, known as 105 Northcourt Road, to match in facsimile the dwellinghouse as it stood prior to the commencement of the unauthorised development described in paragraph 3 above and in conformity with the drawings attached to this notice, which were submitted under the planning application ref: P14/V1428/HH, and the photos taken on 10/04/2014 attached for purposes of illustration. The drawings and photos attached to this notice are listed in Table 1 below:

Table 1

Drawing Title	Drawing Number	Drawing Date
Existing Ground Floor Plan	W.02	Dec 04
Existing First Floor Plan	W.03	Dec 04
Existing Elevations	W.04	-
Section As Existing	CS.NS.5.02A	March 2014 Rev A 16.06.2014
Site Plan as Existing	CS/NS.5/04	March 2014
Photos	Photo Ref	Date of Photo
Photo 1	DSCF7342[1].jpg	10/04/2014
Photo 2	DSCF7343[1].jpg	10/04/2014
Photo 3	DSCF7344[1].jpg	10/04/2014
Photo 4	DSCF7346[1].jpg	10/04/2014
Photo 5	DSCF7349[1].jpg	10/04/2014
Photo 6	DSCF7350[1].jpg	10/04/2014
Photo 7	DSCF7351[1].jpg	10/04/2014

- ii) Remove from the Land all materials resulting from the works required by i), above.
- iii) Reinstate areas disturbed by the works required by i) and ii) above by the backfilling of any excavations using clean fill, the spreading of topsoil to levels commensurate with natural levels and fall of immediately adjoining lands.

Planning permission is deemed to be granted for the carrying out of these works.

- The period for compliance with the requirements is: Twelve (12) months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (d), (f) and (g) 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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Summary of Decision: The appeal is dismissed, and the enforcement notice is upheld with variations in the terms set out below in the Formal Decision.

Procedural Matters

1. The appeal form did not indicate the appeal was sought under ground (d), that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. However, the appellant's evidence put forward the case that the works subject to the notice were substantially complete more than 4 years prior to the serving of it. The Council has commented on the evidence relevant to this ground of appeal, and I am therefore satisfied that no injustice would be caused by considering the appeal under ground (d).

The Enforcement Notice

2. The plans referred to in paragraph 5 i) of the notice include a former detached garage at the site, which has been demolished and the two storey side extension erected in its place. As the re-erection of the garage would not be necessary to remedy the breach, I have included an option where the rebuilding of it would not be required.
3. In addition, paragraph 5 iii) of the notice refers to land levels being returned to their 'natural levels'. In the interest of clarity and precision, I shall vary the requirement to refer instead to 'the levels before the development took place'.
4. I am satisfied that the variations will not cause injustice to the appellant or the local planning authority.

The appeal on ground (d)

5. S171B(1) of the Act states that where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed. The test in this regard is the balance of probability and the burden of proof is on the appellant.
6. The appellant indicates that the rooms in the extensions are in use. Photographs provided by them stated to be from June 2018 and ones that formed part of their appeal statement for the previous appeal¹ at the site, show the external walls for the extensions, the roof and dormers in place. However, these show that there was no ground or first floor windows in part of the extensions.

¹ APP/V3120/D/19/3230406

7. Photographs from the Council said to be from February 2019 show the openings in the rear elevation of the single storey extension did not have windows or doors and the first floor opening on to the balcony was boarded up.
8. It is settled case law that if a building operation is not carried out, internally and externally, fully in accordance with the planning permission, the whole operation is unlawful. The whole of the alleged development must be substantially complete. The photographs in the evidence demonstrate that this is the situation here. As a matter of fact and degree, the development was not substantially complete at the date on which the notice was issued.
9. Therefore, the appellant has not discharged the burden of proof that is upon them. On the balance of probabilities, the Council was in a position to take enforcement action against the breach of planning control that has occurred. Consequently, the appeal on ground (d) fails.

The appeal on ground (a) and the deemed application

10. The appeal on ground (a) is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. With a ground (a) it is incumbent on me to consider whether planning permission should be granted for the whole or part of the matters stated in the notice in accordance with S177(1) of the Act.

Main Issues

11. The main issues are the effect of the development on:
 - The character and appearance of the area; and
 - The living conditions of the occupiers of 103 Northcourt Road (No 103), with particular regard to outlook and privacy.

Reasons

12. The appellant has put forward three options for me to consider under this ground of appeal. I consider each of the following options in turn:
 - i. To grant permission for the works subject to the notice,
 - ii. To grant permission for an alternative scheme for which plans have been provided, and
 - iii. To require a reversion to the 2014 permission².

Background

13. The surrounding area is made up of primarily residential properties with unbroken pitched roofs. This simplistic and relatively consistent roofscape helps reduce the mass of properties even where they have a relatively big footprint and contributes positively to the character and appearance of the area.

² P14/V1428/HH

Option i

Character and appearance

14. Although window design is matching and an element of a crown roof is retained, the height and form of the appeal property (No 105) as extended has resulted in a large flat roof section that stretches across much of the main roof. This gives a considerable uncharacteristic bulk to the roof. The presence of dormer windows on the front and back elevation, set high in the roof, adds to the dominant roofscape. The remaining outdoor space means that the increased footprint of the dwelling has not caused the plot to appear cramped. Nonetheless, along with the single storey extensions, the alterations and additions that have taken place mean the property is an incongruously substantial block of built form in comparison to nearby dwellings.
15. Despite being set back from the road, the discordant flat roof and dormers are obvious and prominent over the boundary landscape features on the approach to the site and from neighbouring properties. They are also clear in views from the access and glimpsed views through the existing boundary vegetation. While the 2014 permission also had a crown roof, it was smaller than the current one and would not have been as prominent or incongruous. The single storey extensions, while of lower height and prominence, add to the overall bulkiness of the dwelling and would also been seen in some public views from the street and private ones from nearby buildings.
16. There are some buildings near the site with flat roofs. However, these are not typical of the area, generally comprise large educational buildings or flattened developments of a clearly different design to No 105 and do not include dormer windows. As such, they are materially different to the appeal scheme.
17. The single storey extensions are individually relatively modest in scale. Moreover, they have matching materials and design to the main part of the dwelling and alone do not harm the character and appearance of the area. The roof of the single storey extensions is separate to the main roof. However, it runs along the whole of the rear elevation, across the balcony and adjoins the 2 storey side extension. As such, the single storey elements are not severable from the remainder of the works subject to the notice and permission could not be granted for them by themselves.
18. Therefore, the development significantly harms the character and appearance of the area. It is contrary to Policy CP37 of the Vale of White Horse Local Plan 2031: Part 1 where it requires schemes to respond positively to the site and its surroundings. Moreover, it fails to accord with the SPD³ where it states extensions should respect the character and appearance of the area. It is also contrary to the National Planning Policy Framework (Framework) where it requires schemes to be sympathetic to local character.

Living conditions

19. The side elevation of No 105 extends along a large portion of the rear garden of No 103 which is its main private outdoor space. There is also limited separation between No 105 and the shared boundary. These factors, along with the considerable height and bulk of No 105 make it an oppressive and imposing feature that dominates the outlook from the rear garden and the nearest rear

³ Supplementary Planning Document Joint Design Guide 2022

elevation windows of 103. This results in an uninviting and oppressive outlook from them.

20. Windows in the side elevation facing No 103 at first and second floor level would serve stairways rather than rooms likely to be occupied for any considerable time. Moreover, were the appeal to be allowed, a condition could be imposed to require them to be fitted with obscure glazing and restricted opening. This would prevent any unacceptable overlooking and loss of privacy at No 103. Views from ground floor openings are largely screened by boundary treatments and do not cause unacceptable overlooking.
21. Notwithstanding this, the development significantly harms the living conditions of the occupiers of 103 Northcourt Road with regard to outlook. It is contrary to Policy DP23 of the Vale of White Horse Local Plan 2031: Part 2 where it seeks to prevent adverse impacts on neighbouring uses in terms of dominance or visual intrusion. It also fails to accord with the SPD where it seeks to avoid unacceptable harm to neighbouring amenity and the Framework where it seeks a high standard of amenity for users.

Other Matters

22. A fallback of permitted development for upward extensions has been suggested. However, there is no certificate of lawful development in place or plans before me of such a scheme. Therefore, I cannot be certain there would be a greater than theoretical possibility that the development might take place or that it would be more harmful than the appeal scheme. As such, I give this little weight.
23. The appellant contends that a further potential fallback is the 2014 permission. Photographs from the appellant show trenches for foundations in the approximate location of the approved 2 storey side extension said to be from 2016. Nonetheless, that permission had a stepped front elevation retaining the gable feature, so a different footprint to works subject to the notice. Furthermore, there is a different roof configuration and hip angle to that of the 2014 permission which also did not include the single storey extensions.
24. The photographs provided do not include any details to show the measurements of the works that had taken place to demonstrate they complied with the 2014 permission. On the evidence available to me, I conclude that on the balance of probabilities the 2014 permission was not commenced. Given the time that has passed, the permission has lapsed and does not represent a fallback position. This also means that I cannot consider it as a separate option iii) under ground (a).
25. The development provides additional accommodation at the property to allow multi-generational living of the appellant's family, including a child. It is the preference of the appellant for the child to continue going to their current school. It could be argued that it would be in the best interest of the child to continue in education at that school. However, it has not been shown that the current school is the only one available and that dismissing the appeal would prevent the child having access to education. Moreover, while the best interest of the child would be harmed, the evidence before me does not demonstrate there is a lack of suitable alternative accommodation or that the previous accommodation at the property was insufficient to meet the appellant's needs.

26. On the basis of the evidence before me, I am unable to conclude that the appeal scheme would be the only solution to meeting the appellant's needs and the best interest of the child. I give this moderate weight.
27. Even if I were to consider it a more efficient use of land in a location accessible to services and facilities, given it relates to a single property, and lack of detailed evidence to demonstrate that there is a wider need for larger properties, such benefits attract limited weight. The conduct of the Council is not a matter that affects my findings on the main issues. The lack of objection from neighbouring residents is not a reason in itself to allow development that is unacceptable.

Conclusion on Option i on ground (a)

28. I have identified significant harm to the character and appearance of the area as well as the living conditions of the occupiers of No 103. The development conflicts with the development plan when considered as a whole and there are no material considerations, either individually or in combination, that outweighs the identified harm and associated development plan conflict. It is proportionate for the appeal to fail on ground (a).

Option ii

29. Option ii would require granting permission for a different design to that which has been built. There is a current application at the site⁴ with the Council which is said to reflect this scheme. The details before me show rooflights rather than dormer windows in the main roof. There would also be the introduction of a front gable feature and change of the shape to the main roof. This would require considerable new works.
30. The appeal process should not be used to evolve a scheme. While the works would still include rear, side and front extensions and a new roof as referred to in the notice, the works go beyond part of the matters stated in the notice given the differences between them.
31. Therefore, it would be a new development and it is not within my powers to consider this option under ground (a).

The appeal on ground (f)

32. Ground (f) is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
33. Since the notice requires the removal of the extensions and restoration of the land, the purpose of the notice is to remedy the breach. As such, requiring the removal of the single storey extensions is not excessive to do this. As stated above, the 2014 permission does not represent a fallback position, having lapsed. Requiring a revision to that scheme would not remedy the breach. In ground (a) I have addressed that Options ii is not part of the matters stated in the notice and therefore cannot be considered under ground (f).

⁴ P22/V2712/HH

34. The plans referred to in the requirements of the notice include a detached garage that has been demolished. The garage is not necessary to remedy the breach and therefore I have varied the notice, so the appellant has the option of whether to erect this or not. The appeal succeeds to that extent on ground (f) as a result.

The appeal on ground (g)

35. Ground (g) is that any period specified in the notice for compliance with the requirements of the notice falls short of what should reasonably be allowed. The notice gives 12 months, while the appellant seeks 24 months. There is a need to balance the public interest of the requirements of the notice expeditiously against the private interests forming the subject of the notice.

36. The development causes harm as identified in my assessment under ground (a) to the character and appearance of the area and to the living conditions of the occupiers of No 103. I give these harms significant weight.

37. The appellant states that additional time would be required for members of their family currently living at the property to find alternative affordable accommodation. Further difficulties cited include the local housing market and desire to find a residence close to a child's school as well as personal and wider financial issues. Time for tenders, carrying out the works, labour shortages, and backfilling materials are also raised. Nevertheless, no substantive evidence is provided in relation to these considerations, why they could not be achieved within 12 months, or why 24 months would be more appropriate. As such, I give these considerations moderate weight.

38. Having regard to the harm the development causes and factors for extending the period, including the best interests of the child, it is reasonable not to extend the period for compliance. The appeal fails on ground (g).

Conclusion

39. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Formal Decision

40. It is directed that the requirements of the enforcement notice are varied by;

- inserting 'either with or without the detached garage' after 'for purposes of illustration' in paragraph 5 i) of the notice; and
- deleting 'natural levels' and inserting 'the levels before the development took place' in paragraph 5 iii) of the notice.

41. Subject to those variations, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Stuart Willis

INSPECTOR