



Appeal Decision

Site visit made on 27 June 2023

by M. P. Howell BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 JULY 2023

Appeal Ref: APP/K3605/C/22/3304838

3 Meadway, Esher, Surrey KT10 9HG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Shea Simpson against an enforcement notice issued by Elmbridge Borough Council.
- The notice, numbered GH.PL.ENF.000818, was issued on 11 July 2022.
- The breach of planning control as alleged in the notice is (i) The enlargement of a dwelling house consisting of an addition or alteration to its roof which involved:
 - (a) the height of the highest part of the existing roof being exceeded; and
 - (b) the roof to extend beyond the plane of the existing roof slope which forms the principal elevation of the dwellinghouse and fronts a highway; and
 - (c) the cubic content of the resulting roof space to exceed the cubic content of the original roof space by more than 50 cubic metres.(ii) The enlargement, improvement or other alteration of a dwelling house which involved:
 - (a) the erection of a two-storey rear extension. The rebuilding of the single storey side extension (east side); and
 - (b) the roof pitch of the enlarged part is not, as far as is practicable, the same as the roof pitch of the original dwellinghouse; and
 - (c) the materials used in the exterior work is not of a similar appearance to those used in the construction of the exterior of the existing dwelling house (i.e. Rendering the property so as to materially alter the appearance to those materials used in the construction of the exterior of the existing dwelling house; and
 - (d) Cladding the front of the building in blocks thereby increasing the footprint of the building.
- The requirements of the notice are to:
 - (i) Remove all roof extensions and restore the roofs to their original condition (i.e to a state prior to the breach of planning control alleged); and
 - (ii) Remove the two storey and second storey rear extensions; and
 - (iii) Remove all render and block cladding; and
 - (iv) Remove the single storey extension on east side of the property; and
 - (v) Permanently remove from the land any waste resultant from the complying with the above (i) to (iv) steps.
- The period for compliance with the requirement is: Four (4) months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (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.

Summary Decision: The appeal is dismissed, and the enforcement notice is upheld with corrections and variations as set out below in the Formal Decision.

Matters Concerning the Enforcement Notice

1. It is incumbent upon me to get the allegation right. Although I am satisfied that all aspects of the unauthorised works are covered in the allegation, it is long and confusing rather than being a clear and concise allegation. Furthermore, as the appellant has plead on ground (a), the deemed planning application arising from

this ground of appeal is derived from the wording of the allegation. This means that if I were to allow the appeal on ground (a), planning permission would be granted for the development described in the allegation.

2. In the interests of clarity and conciseness, I am satisfied that this is an instance where I can exercise my power to correct the notice without giving rise to injustice. However, due to the significance of the change to the wording, both parties were consulted on the variation of the allegation. No concerns were raised by either party on the change to the wording.
3. Consequently, in paragraph 3, the wording of the allegation shall be deleted in its entirety and substituted with the words, 'without planning permission, the raising of the roof and altering of its pitch to form a mansard style roof, the erection of a two-storey rear extension with a flat roofed dormer, a first floor side extension (west), a single storey side extension with roof accommodation and balcony (east) as well as external block cladding and rendering of the property.'
4. In paragraph 5 (i), delete the words 'remove all roof extensions and restore the roofs to their original condition (i.e to a state prior to the breach of planning control alleged)' and substitute it with 'remove the roofs extensions and restore the roofs to their previous condition.' There is ambiguity with the use of 'original condition', whilst 'previous condition' is precise and provides clarity as a requirement for the appellant.
5. In paragraph 5 (ii), for consistency with the allegation, delete the words 'the two storey and second storey rear extensions', and substitute with 'two-storey rear extension with a flat roofed dormer and first floor side extension (west)'. In paragraph 5 (iii) delete the words 'remove all render and block cladding' and substitute with 'remove all external render and block cladding'. In paragraph 5 (iv), delete the words 'the single storey extension on east side of the property' and substitute it with 'single storey side extension with roof accommodation and balcony (east)'.
6. In paragraph 5 (v), delete the word 'permanently' as it is unnecessary. Also delete the words 'resultant from the complying' and substitute with the words 'resulting from compliance' as a grammatical correction.
7. The above-mentioned corrections do not fundamentally change the matters alleged or its requirements. As such, they would not cause injustice to the appellant or the Council.

Background and Preliminary Matters

8. An accompanied site visit was scheduled with both parties, but in the absence of the Council's representative the appellant provided access and I undertook the site visit alone; as an Access Required Site Visit. The Council have not raised any concerns with the change to the type of arranged site visit.
9. It is acknowledged that part of the works alleged in the notice relate to a raising of the roof. Although the appellant accepts the roof has been enlarged, with a change to the pitch and style of the roof, they dispute that the roof height has been increased. Such a claim amounts to a hidden ground (b) or (c) appeal. These are legal grounds where the burden of proof rests with the appellant and the relevant test is the balance of probability.

10. Existing house elevation plans have been provided with the appeal evidence. These plans were submitted to the Council by the appellant in 2019¹ for alternative extensions and alterations, but the proposal was later withdrawn. Notwithstanding this, the existing plans, along with historical photographs, provide the most accurate representation of the dwelling in its previous condition.
11. The existing front and rear elevation plans, drawing references (PP) A201EX Rev A and (PP) A202EX Rev A respectively, include a 1:100 scale. These plans indicate that the eaves height and ridge height of the dwelling were approximately 5 metres (m) and 7.5m. The Council has no evidence of the built dimensions, but the appellant has provided eaves and ridge height dimensions of the dwelling as built as part of the appeal evidence. The built dimensions submitted by the appellant indicate that the eaves height at the front is 5.4m and to the rear its 5.5m whereas the ridge height is 8.09m at the front and 8.2m to the rear.
12. When comparing the scaled plans to the built dimensions, it appears reasonable for the Council to have alleged that the eaves and ridge height of the dwelling have been raised during the works.
13. It is noted that a separate existing elevation plan, drawing reference 16_21E-01-2 A, was included with the 2019 plans. This plan is annotated with levels at the damp course level and the roof ridge. The difference between some of the level points annotated at the lower and highest points suggest that the existing house was taller than shown on the scaled existing plan. However, not all of the level points annotated on the existing plan are legible, and the built plan drawings only include dimensions with no comparable levels data. In this respect, insufficient information has been provided to demonstrate that the roof eaves and ridge height have not been increased.
14. Therefore, based on the evidence I have before me, the appellant has failed to discharge the required burden of proof. An appeal on ground (b) or (c) would therefore fail in respect of the claim that an increase in roof height has not occurred or does not amount to a breach of planning control.

The Ground (a) Appeal and the Deemed Planning Application

15. The **main issues** in this appeal are:

- Whether the development would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework 2021 (the Framework) and any relevant development plan policies.
- The effect of the development on the openness of the Green Belt.
- The effect of the development on the character and appearance of the area.
- Whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.

¹ Council reference 2019/3015

Reasons

Inappropriate Development in the Green Belt

16. Paragraph 149 of the Framework sets out the categories of development which may be regarded as not inappropriate in the Green Belt. Paragraph 149 (c) indicates the extension or alteration of a building is not inappropriate, provided that it does not result in disproportionate additions over and above the size of the original building.
17. Policy CS7 of the Elmbridge Core Strategy 2011 (Core Strategy) sets out that the Green Belt and the wealth of natural assets within the area will continue to be protected. Policy DM18 of the Elmbridge Local Plan 2015 (Local Plan) permits the extensions and alterations of existing buildings in the Green Belt, subject to certain criteria. Extensions will be permitted provided they do not result in disproportionate additions over the size of the original building. It states that the extensions should be well designed to respond to the context of the site and the character of the area, do not result in an increase beyond 25% in volume and 25% in footprint and do not materially increase the overall height of the building.
18. The Framework defines the original building as a building as it existed on 1 July 1948 or, if constructed after 1 July 1948, as it was built originally. The Framework itself does not define 'disproportionate', as such, I have determined the use of the word in ordinary English. Dictionary.com indicates disproportionate as 'not proportionate; out of proportion, as in size'.
19. The Council claim that no plans exist of the original dwelling approved in 1954 but from an application in 1987, the original floorspace was 147.6 sqm. However, no plans from the 1987 application have been submitted, and the Council cannot confirm whether the single storey extension to the side (east) was part of the original building. The appellant, however, claims it is part of the original ground floor. Due to the uncertainty, and for the avoidance of doubt, I will include the single storey extension as part of the original dwelling.
20. Further to this, in 1998, a two-storey front extension, a single storey side (west) and a double garage to the front were granted planning permission². As these extensions were carried out after 1948, these must be omitted as part of the original dwelling. As part of a scheme dismissed at appeal in 2016³, it was determined that the floorspace of the dwelling in 1998 amounted to 195.5sqm. That floorspace was increased to 230.9 sqm by the implementation of the approved extensions.
21. The appellant accepts that the dwelling had been previously extended, and together with the extensions carried out, the dwelling exceeds the 25% footprint and volume limit set out in Policy DM18 of the Local Plan. Furthermore, based on the evidence before me, the height of the main roof and the eaves have been materially increased. As such, based on the criteria set out in the development plan policy, the dwelling is materially higher with disproportionate additions over and above the size of the original building, contrary to Policy DM18 of the Local Plan.
22. However, the appellant contends that a numerical limit should not be the sole determinant in assessing development within the Green Belt, and the development

² Council reference 1998/1988

³ Appeal reference APP/K3605/D/17/3169179

does not represent disproportionate additions to the original dwelling. Quantitative measurements are useful to assess whether extensions would result in additions that are disproportionate in floorspace, volume and height. However, I would agree that it is not the sole factor to be considered as part of this assessment, which requires consideration of the additional scale, bulk, massing, and height of the extensions to the property.

23. With the above in mind, the single storey side extension (east), is set back from the principal elevation and subservient to the main two storey section. The side extension (west) and rear extension are two storeys, but they are also relatively modest in width and depth. However, it must be noted that the footprint and volume of the original dwelling had already been extended in 1998. Furthermore, the increase in roof height and pitch to form the steeper mansard style roof significantly increases the size of the roof, as well as the scale, bulk, and massing of the dwelling. This is exacerbated by the increased eaves height, which results in a vertical extension of the wall and increased elevation mass.
24. As such, each separate element of the single storey and two storey extensions individually may not appear disproportionate. However, cumulatively, and particularly when considered with the extensions to the roof, the increase in floorspace, volume and size to the dwelling amounts to substantial additions, and ones which I find to be disproportionate to the original building. Accordingly, the proposal is inappropriate development, which, by its very definition, is harmful to the Green Belt and should not be approved except in very special circumstances. The extensions would be contrary to paragraph 149 (c) of the Framework, and the objectives of Policy CS7 of the Core Strategy and Policy DM18 of the Local Plan.

Openness

25. Paragraph 133 of the Framework states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. Openness has both a visual and spatial dimension and the absence of visual intrusion does not mean that there is no impact on the openness of the Green Belt.
26. The extensions result in an increase in the amount of built form on the site. The dwelling on site is materially larger by virtue of the additional footprint, floorspace, volume, and height, not just of the original dwelling but also of the previously extended dwelling. The taller and bulkier roof extensions would also be more visually prominent within the site and from public vantage points on the street. As such, based on the evidence before me, the extended dwelling has a greater impact on the spatial and visual openness on the site and the Green Belt than prior to the alleged works taking place.

Character and Appearance

27. The Elmbridge Design and Character Supplementary Planning Document 2012 (SPD) outline Esher residential areas as 'residential properties mainly consist[ing] of large, detached dwellings on spacious plots, which are often gated. There are a number of semi-private/private residential roads and estates with high quality architecture, landscaping and tree cover.'
28. Meadway is largely consistent with the SPD description, being a low-density residential location situated on a private road close to a wooded area. The dwellings are a mix of sizes, styles and finishes, but most are large, two storey

detached dwellings, within spacious plots, set back from the private road behind driveways and landscaped gardens. The roofs are largely hipped roofs, some with dormers and flat roof sections, providing accommodation. The wooded backdrop, coupled with the spacious plots, spacing between and landscaping provides a sense of space that positively contributes to the character and appearance of the area.

29. The extensions to the property coupled with the finishes have produced a dwelling with a distinctly different external appearance when compared to its previous condition. Despite this, the extended dwelling remains to be a large, detached two storey property that sits comfortably in a spacious plot, set behind a driveway with landscaping and accommodation in the roof. Adequate spacing is also maintained between the adjoining neighbours which ensures that the change in height does not appear significant or harmful to the street scene. As such, the property is consistent with the shared characteristics of properties in the area and does not appear as an overdeveloped plot.
30. The cladding and white rendered finish together with a larger roof structure does differ to the brick finishes and the shallower hipped roof of the immediate neighbour's properties. However, this is not unusual on the private road, which comprises a variety of dwellings with different roof styles, heights and external finishes. The spacing between the properties and the variety of roofs and finishes within the private road means the development does not result in visual disharmony within the streetscape.
31. Accordingly, the extensions and alterations to the property are acceptable in respect of the character and appearance of the area. In this regard, the proposals are compliant with the aims and objectives of Policies CS7 and CS17 of the Core Strategy and Policy DM2 and criterion a (i) of DM18 of the Local Plan as well as the guidance in the SPD (including the companion guide for home extensions). These policies and guidance seek to ensure that development enhances the local character of the area and has regard to local distinctiveness. Extensions must be well designed and respond to the context of the site and its surroundings.
32. The local plan policies are largely consistent with design policies set out within section 12 of the Framework, which seek to secure high quality design in development.

Other Considerations

33. I turn now to address other considerations that might clearly outweigh harm arising from inappropriate development in the Green Belt, to provide the very special circumstances required to justify a grant of planning permission.
34. The submitted evidence refers to the fact that the extended dwelling would be acceptable in terms of character and appearance. It also indicates permitted development rights for extensions that could be carried out in line with the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). The appellant indicates that consideration should be given to a realistic fallback position in terms of how the site could be developed. Reference is made to Case Law⁴, which established that the fallback position does not necessarily need to have been implemented if there was a realistic prospect of its implementation. It is contended that the permitted extensions would result in a similar increase in

⁴ Mansell v Tonbridge and Malling BC [2017] EWCA Civ 1314

footprint and volume but with a different configuration, which would lead to a sprawl of buildings within the site and awkward extensions that have a greater impact on the openness of the Green Belt.

35. I have had regard to the details set out in paragraphs 6.36 to 6.59 of the Statement of Case, which indicate a first-floor extension to the side, a rear single storey extension and a two-storey rear extension that could be carried out under Class A of the GPDO. Furthermore, it indicates works for a side to rear dormer that could be carried out under Class B of the GPDO.
36. The extensions set out in the Statement of Case have not been formally determined as part of any Certificate of Lawfulness application. There are written explanations of the extensions with some rough sketch plans, but they are not accompanied by detailed plans of the works. There is limited evidence to show how these extensions would comply with the requirements, and conditions of the GPDO. For instance, there are no height dimensions or elevation details for Extensions A, B or C, and no site plan has been provided to detail distances to relative boundaries on a site plan. With respect to the roof alterations, there are dimensions and a rough plan, but it lacks detail on the resultant volume and finishes.
37. As such, most, if not all, lack the necessary detail to confirm with any certainty that the works would be permitted, and have a realistic prospect of being implemented. Furthermore, it is not clear if all permitted extensions could be implemented collectively. For example, it would not be possible to implement the rear section of the dormer if a two-storey rear extension with a pitched roof was already in place, or vice versa.
38. The lack of certainty means I am not able to determine whether the extensions would result in a greater impact on the spatial and visual openness of the Green Belt than the development before me. As such, I can only attribute limited weight to the fall-back position and its realistic prospect of being implemented. I would also expect the scheme to be acceptable in respect of the character and appearance of the area. Consequently, this is a neutral factor and not a benefit of the scheme.

Green Belt Balance and Conclusion on Ground (a) the Deemed Planning application

39. In considering the substantial weight given to the harm to the Green Belt⁵, to my mind, the benefits and fallback position outlined above do not clearly outweigh the harm to the Green Belt. Therefore, I find that the other considerations in this case do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist and the development would conflict with the Framework and the relevant policies of the development plan outlined above.
40. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the Notice with corrections and variations and refuse to grant planning permission on the deemed application.

The Appeal on Ground (f)

41. The appeal on ground (f) is that the varied requirements of the notice exceed what is necessary to achieve the purpose of the notice. In this case the notice requires

⁵ Paragraph 148 of the Framework.

that the extensions are removed, and the property returned to its former condition. I therefore consider that the purpose of the notice is to remedy the breach of planning control under s173(4)(a) of the Town and Country Planning 1990 Act.

42. In pleading ground (f), the onus is on the appellant to state the precise details of any lesser steps, otherwise it is not possible to judge whether the Council's requirements are excessive or not. If I were to allow the appeal on ground (f) then I would also need to vary the requirements of the notice in a way that unambiguously sets out what needs to be carried out.
43. The appellant has suggested that the requirements are excessive as a two-storey extension could be carried out to the rear provided it did not include a dormer and third floor accommodation. Furthermore, the render and cladding could be retained as they do not impact on the Green Belt or character and appearance of the area, as such it is excessive to require their removal.
44. Limited supporting information is provided on how the works to form this permitted extension and retain the render and cladding would be achieved, and what the lesser steps would involve. Furthermore, due to the way the development has been carried out, in my judgement the rear two storey and first floor extensions are inextricably linked to the roof extensions, cladding and render finishes. As such, it is difficult to separate the different elements of the extensions to allow parts of the allegation to be retained and some removed.
45. Accordingly, in my judgement it is not excessive for the Council to require the removal of all of the works alleged in the Notice to remedy the breach of planning control. Also, based on the information provided, I am unable to consider whether lesser steps would be sufficient to remedy the breach and, therefore, I am not able to vary the requirements in this manner.
46. The steps required by the notice do not exceed what is necessary to remedy the breach of planning control and the appeal on ground (f) fails.

The Appeal on Ground (g)

47. This ground of appeal is that any period specified in the Notice falls short of what should reasonably be allowed.
48. The period for compliance with the requirements is within four months of the notice taking effect. The appellant contends that additional time is required due to the extensive building works listed in paragraph 5 of the notice and the fact the extensions took several years to complete. Also, the appellant would have to arrange alternative accommodation while the works are being carried out. Consequently, a period of eighteen months to comply with the requirements of the notice is requested.
49. Having regard to the potential disruption to the family home and how long the works took to complete, I consider that a period of time in excess of four months can be justified. However, extending the period of compliance to 18 months would be excessive, particularly given the identified harm to the Green Belt, and the potential disruption to neighbours over this extended period.
50. On this basis, I consider that a period of 12 months for the appellant to comply with the corrected notice would be reasonable. This time frame would strike an appropriate balance between having to minimise disruption to neighbours and time

to find a contractor, alternative accommodation and complete the works. To this limited extent, the appeal on ground (g) succeeds. I shall vary the terms of the notice accordingly.

Overall Conclusion

51. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the notice with corrections 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

52. It is directed that the notice is corrected and varied by:

In paragraph 3 of the Notice, the deletion of the wording of the allegation in its entirety and substituted with the words, 'Without planning permission, the raising of the roof and altering of its pitch to form a mansard style roof, the erection of a two-storey rear extension with a flat roofed dormer, a first floor side extension (west), a single storey side extension with roof accommodation and balcony (east) as well as external block cladding and rendering of the property.'

In paragraph 5 (i), the deletion of the words 'remove all roof extensions and restore the roofs to their original condition (i.e to a state prior to the breach of planning control alleged)' and substitute with the words 'remove the roofs extensions and restore the roofs to their previous condition.'

In paragraph 5 (ii), the deletion of the words 'the two storey and second storey rear extensions', and substitute with the words 'two-storey rear extension with a flat roofed dormer and first floor side extension (west).'

In paragraph 5 (iii) delete the words 'remove all render and block cladding' and substitute with the words 'remove all external render and block cladding'.

In paragraph 5 (iv), the deletion of the words 'the single storey extension on east side of the property' and substitute with the words 'single storey side extension with roof accommodation and balcony (east).'

In paragraph 5 (v), the deletion of the word permanently. Also delete the words 'resultant from the complying' and substitute with the words 'resulting from compliance'.

In paragraph 6, specifying the time for compliance, the deletion of the word 'four' and substitute with the word 'twelve'.

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

M. P. Howell

INSPECTOR