



Appeal Decisions

Site visit made on 11 July 2023

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 August 2023

Appeal A Ref: APP/M1520/C/21/3285392

74 Clifton Avenue, Benfleet, Essex SS7 5QU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mr Mark Douglas against an enforcement notice issued by Castle Point Borough Council.
 - The notice was issued on 16 September 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the formation of a hip to gable roof and rear dormer addition.
 - The requirements of the notice are: (1) Remove the rear dormer and gable end roof and make good the roof in accordance with the permission granted under planning reference 19/0261/FUL. (2) Remove all roof tiles and replace with tiles to match the external appearance of the former roof of the dwelling.
 - The periods for compliance with the requirements are: (1) Six months. (2) Seven months.
 - The appeal is proceeding on the grounds set out in section 174 (2) (a), (c), (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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Appeal B Ref: APP/M1520/X/22/3295127

74 Clifton Avenue, Benfleet, Essex SS7 5QU

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Mark Douglas against the decision of Castle Point Borough Council.
 - The application ref 21/1026/CLP, dated 21 October 2021, was refused by notice dated 8 February 2022.
 - The application was made under section 192 (1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is formation of a hip to gable enlargement and rear dormer window.
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Decisions

1. Appeal A-The appeal is allowed insofar as it relates to the part of the hip to gable roof and rear dormer addition shown on drawing number PL01 Rev B attached to this decision 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 erection of that part of the hip to gable roof and rear dormer addition on the land at 74 Clifton Avenue, Benfleet, Essex SS7 5QU referred to in the notice, subject to the condition in the Schedule at the end of this Decision.

2. The remaining part of the appeal concerning the part of the hip to gable roof and rear dormer addition not shown on drawing number PL01 Rev B is dismissed, the enforcement notice is upheld and planning permission is refused in respect of the application deemed to have been made under section 177 (5) of the 1990 Act as amended for the erection of that part of the hip to gable roof and rear dormer addition on the land at 74 Clifton Avenue, Benfleet, Essex SS7 5QU.
3. Appeal B-The appeal is dismissed.

Preliminary Matter

4. Whether it was expedient for the Council to issue the enforcement notice in Appeal A is not a matter before me. A challenge to a Council's decision to take enforcement action on the grounds of expediency can only be made by way of judicial review.

Appeal A

Ground (c) appeal

5. The ground of appeal is that the matters alleged in the enforcement notice do not constitute a breach of planning control. It is for the appellant to show why their appeal on this ground should succeed, the relevant test of the evidence being on the balance of probability.
6. The appeal property contains an enlarged semi-detached bungalow which, like the attached bungalow, originated with a hipped roof. Planning permission was granted in June 2019 for demolition of the garage and construction of single storey rear and side extensions at the property¹.
7. The notice alleges the undertaking of works to the bungalow roof comprising the construction of a hip to gable enlargement and a rear dormer. The brown tiles that covered the pre-existing roof have also been replaced with the grey coloured tiles used on the roof works and the permitted side extension. There is no dispute that the hip to gable roof and rear dormer are in breach of planning control, the only matter at issue in this ground of appeal being the roof tiles.
8. The notice does not allege an alteration to the roof in respect of the tiles. In the context of a ground (c) appeal, this means that the tiles cannot be considered separately from the roof works in the allegation. Moreover, the available evidence suggests that the previous roof tiles were replaced at or around the same time as the roof works were undertaken, as opposed to having been a separate operation. Consequently, the tiles are part and parcel of and integral to the roof works. An enforcement notice can require the removal of any works, even where such works might if undertaken as a separate operation be permitted development, for the purpose of remedying the breach. The appeal on this ground is therefore misconceived.
9. As the matters alleged in the notice constitute a breach of planning control, the ground (c) appeal fails.

¹ Council Ref: 19/0261/FUL.

Ground (a) appeal

Main Issue

10. The main issue in this ground of appeal is the effect of the roof works on the character and appearance of the area.

Reasons

Character and appearance

11. An appeal against the Council's refusal of planning permission for the roof works was dismissed on 14 July 2021. The Inspector found that the roof works disrupted the symmetry of the pair of bungalows and appeared out of place and incongruous, thus having a harmful effect on the character and appearance of the area. The 'fallback' position of undertaking development under the GPDO did not affect their assessment². The previous appeal is an important consideration. Although I am not bound by that decision, there would have to be very clear reasons for me to reach a different conclusion.
12. The drawing in Appeal B, showing the proposed hip to gable roof and a rear dormer addition to the dwelling following demolition of the roof works, is also before me in this appeal. The Council accept that the proposal met the relevant size and locational limitations in the GPDO³ at Article 3, Schedule 2, Part 1, Class B paragraph B.1 and there is little which would lead me to conclude otherwise. Therefore, the proposal could be constructed following compliance with the notice. It is not unreasonable to anticipate that in the event the roof works were removed, the appellant would seek to replace that accommodation and preserve their property value as far as possible by constructing the proposal. There is little to indicate that such works would be prohibitively expensive for the appellant.
13. The proposal would not have a similar adverse effect on the character and appearance of the area as the roof works. The proposal would be of significantly less size and bulk and would not have such a disruptive effect on the symmetry of the pair of bungalows. It would not extend beyond the side wall of the original bungalow, it would not be contiguous with the roof of the permitted side extension and the expanse of roof form would be significantly reduced. Having regard to the differing scale and architectural style of properties in the locality, together with the prevalence of other roof enlargements, the proposal would sit more comfortably within its built context. Therefore, in relation to the totality of the roof works, I attach similar weight to the fallback position as the previous Inspector.
14. Nevertheless, in an enforcement appeal, whether permission should be granted for part of the matters stated in the notice can be considered, having regard to s177 (1) (a) of the Act. Also, as enforcement action is intended to be remedial, whether the planning difficulties could be overcome at less cost and disruption than total demolition of the roof works is highly relevant. On the basis of the proposal drawing, I am satisfied that it is feasible to alter and reduce the scale of the roof works to fall within the size limits of Class B. As so altered, the scale of the roof works would have little adverse effect on the character and appearance of the area compared to what could otherwise have

² Appeal Ref: APP/M1520/D/20/3265623.

³ Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

been achieved by implementing the proposal following compliance with the notice. The roof tiles are of a neutral colour. Their appearance is not markedly at odds with the varying shades of tiles, including brown as well as more orange hues, on the roofs of nearby properties. The alterations to the rest of the roof would be less extensive compared to the notice requirements. Therefore, altering and reducing the scale of the roof works to accord with the proposal represents an obvious alternative to the notice requirements. Moreover, demolishing the roof works would serve no useful purpose if a substantial part could be re-erected as permitted development immediately afterwards.

15. As a result, based on the alterations and reduction in scale described above being implemented and in the context of permitted development rights, the roof works would accord with Policy EC7 of the Castle Point Local Plan, in which the Council expects a high standard of design in relation to new buildings and extensions with particular regard to scale and design, amongst other things, with development being appropriate to its setting and not harming the character of its surroundings. In addition, the roof works would be consistent with the National Planning Policy Framework (the Framework), which at paragraph 130 advises amongst other things that developments should be sympathetic to local character, including the surrounding built environment.
16. The roof works would be inconsistent with the Council's Residential Design Guidance Supplementary Planning Document which at RDG7 advises that the roof of a dwelling, either built as new or as extended or altered, should be proportionate to the remainder of the dwelling and that the disruption or loss of symmetry to a pair or group of dwellings, both in terms of roof planes and/or roofscape, will be refused. However, in this instance I afford greater weight to what could otherwise be constructed at the property under the GPDO.

Conclusion-Ground (a) appeal

17. The roof works as altered and reduced in size would not cause unacceptable harm to the character and appearance of the area and accord with the Development Plan, also being consistent with the Framework.

Conditions

18. After seeking the views of the main parties, I shall impose a single condition requiring the roof works to be altered and reduced in scale to comply with the proposal drawing. This is necessary to safeguard the character and appearance of the area. The condition also requires the fitting of a restriction to pedestrian access from the French doors in the rear dormer onto the roof of the rear extension. This is necessary to safeguard the privacy of occupiers of adjoining residential property. There is a strict timetable for compliance with the condition because permission is being granted retrospectively, and it is not possible to use a negatively worded condition to secure the approval and implementation of the required alterations before the development takes place. The condition will ensure that the development can be enforced against if the requirements are not met. For reasons similar to in the ground (g) appeal set out below, the timetable affords the appellant ample opportunity to arrange for and to have the required works completed.

Ground (f) appeal

19. The ground of appeal is that the requirements of the notice are excessive.
20. An enforcement notice can have the purpose of remedying the breach of planning control, by amongst other things making development comply with the terms, including conditions and limitations, of any planning permission granted in respect of the land, or by restoring the land to its condition before the breach took place. Alternatively, it can have the purpose of remedying any injury to amenity caused by the breach. The notice requires the roof works to be demolished and the bungalow roof to be made good to accord with the 2019 permission, as opposed to reducing the roof works in size. Therefore, although the notice does not state as such its purpose must be to remedy the breach of planning control.
21. Altering the roof works and reducing their scale as an alternative to demolition has been dealt with on ground (a). In the context of ground (f), a requirement which led to part of the roof works, including the tiles, remaining in situ would sustain part of the breach. It would neither make the roof works comply with the terms of a planning permission nor restore the property to its condition prior to the breach taking place and so would not achieve the purpose of the notice. No alternative requirement that stopped short of those specified in the notice would remedy the breach.
22. Accordingly, the requirements are not excessive; they are a proportionate remedy being the minimum works necessary to restore the property to its condition before the breach took place. The ground (f) appeal fails.

Ground (g) appeal

23. The ground of appeal is that the time allowed for complying with the notice requirements falls short of what is reasonable.
24. In the event the appellant opted to comply with the notice, the remedial works are not particularly complex and are reasonably modest in scale. In my estimation, the works are unlikely to take more than a few months at most to complete. It is unlikely that the use of specialist plant or equipment would be required. The works are likely to be a relatively straightforward job for a suitably experienced small building contractor. In all probability, there are a significant number of contractors with the relevant skills and expertise to undertake the works, who would also be available to do so given a reasonable period of notice. There is little firm evidence of a significant shortage of contractors in the wider area or of there being lengthy waiting times before building works can commence. Similarly, there is little to indicate that seeking any necessary professional advice or consents would lead to a significant delay in commencing the works. Although such works are likely to be costly, the timescale in the notice affords the appellant a reasonable opportunity to secure any necessary finance, including that required to cover any associated expenses.
25. I am uncertain exactly why the entire roof of the bungalow would need to be removed to undertake the works. There is little to indicate why the bungalow roof could not be enclosed in a scaffold with sheeting over as is commonly found in works to the roofs of properties, or that extensive damage to the interior would inevitably occur as a result. The effect on the living

accommodation of removing the hip to gable and rear dormer would largely be confined to the first-floor bedroom, the ground floor for the most part being unaffected. In terms of replacing the roof tiles, it is not untypical for residential properties to remain in occupation whilst such works, which are generally of limited duration in any event, are carried out. Therefore, whilst allowing for the possibility of inclement weather at times during the works there is no obvious reason the bungalow should be made uninhabitable. In any event, there is little firm evidence of an acute shortage of suitable property available for short-term rent in the immediate or wider area or that such accommodation would be unusually expensive.

26. Therefore, the seven months in total allowed for complying with the notice requirements strikes an appropriate balance between affording the appellant a reasonable amount of time in which to arrange for and to have the remedial works carried out, whilst also ensuring that the breach and the planning harm arising therefrom is remedied as soon as possible. Extending the period for compliance to twelve months on the other hand would perpetuate the breach and its associated planning harm.
27. Accordingly, the period for complying with the notice requirements is reasonable and not too short. The ground (g) appeal also fails.

Appeal B

Main Issue

28. The main issue in this appeal is whether the Council's refusal to grant an LDC was well-founded. This turns on whether the appellant has been able to show that, on the balance of probability, planning permission is granted for the proposal by Article 3, Schedule 2, Part 1, Class B of the GPDO.

Reasons

29. The proposal entails constructing a hip to gable enlargement and rear dormer on the bungalow. The proposal would meet the relevant limitations in paragraph B.1 of Class B. The appellant confirmed that the condition at paragraph B.2 (a) requiring the use of external materials similar to the existing dwelling would be complied with. The other conditions in paragraph B.2 would also be complied with.
30. Even so, at the time of the application the unauthorised roof works in Appeal A were already in existence. Article 3 (5)(a) of the GPDO provides that the planning permission granted by the Order shall not apply where, in the case of permission granted in connection with an existing building, the building operations involved in its construction are unlawful. In Article 2 (1) of the GPDO, the definition of a 'building' includes part of a building, whilst 'existing' in relation to a building means existing immediately before the carrying out of development. Therefore, Article 3(5)(a) applies to an existing building which, as in this case, has been enlarged unlawfully. Where building operations involved in the construction of any part of an existing building are unlawful, the rights granted by the GPDO in connection with that building cannot apply.
31. The application is predicated on the proposal being implemented following removal of the roof works in Appeal A. However, the starting point for determining whether planning permission is granted by the GPDO has to be the existing bungalow at the time of the application, not its theoretical condition at

some subsequent date. There is no provision in the Act for determining the lawfulness of a development that, as in this appeal, is contingent on other prospective works being undertaken at some future date before it can commence. At s192 (2) the Act provides that whether the operations described in the application would be lawful '*if instituted or begun at the time of the application*' is relevant when determining whether an LDC should be issued. Also, the Planning Practice Guidance advises that when determining an application for a prospective development under s192 of the Act, the relevant question is whether, if the proposed operation had commenced on the application date, it would have been lawful for planning purposes⁴.

32. The bungalow as it existed at the time of the application incorporated the unauthorised roof works. Those works would have to be removed before the works in the proposal could commence. Approaching the application as if the unauthorised roof works had already been removed would not reflect pertinent facts in this case, as a part of the existing bungalow would effectively be put to one side when considering the lawfulness of what is proposed. Consequently, at the time of the application part of the existing bungalow was not lawful and Article 3 (5)(a) prevented the proposal from benefitting from the planning permission granted by the GPDO.
33. Accordingly, the appellant has been unable to show that the proposal is granted planning permission by the GPDO at Article 3, Schedule 2, Part 1, Class B. It follows that the proposal would not be lawful if its erection had commenced at the time of the application.

Conclusions

34. Appeal A-For the reasons given above I conclude that the appeal should succeed in part only, namely for part of the hip to gable roof and rear dormer addition, and I will grant planning permission for this part of the matter the subject of the enforcement notice, but otherwise I will uphold the notice and refuse to grant planning permission on the other part. The requirements of the upheld notice will cease to have effect so far as they are inconsistent with the permission which I will grant by virtue of s180 of the Act.
35. Appeal B-For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the formation of a hip to gable enlargement and rear dormer window was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in s195 (3) of the 1990 Act as amended.

Stephen Hawkins

INSPECTOR

⁴ Paragraph: 009 Reference ID: 17c-009-20140306.

SCHEDULE OF CONDITIONS

Appeal A:

- 1) The hip to gable roof and rear dormer addition shall be totally demolished and all of the resulting demolition materials removed from the site unless within seven months of the date of this decision:
 - a) The hip to gable roof and rear dormer addition have been altered and reduced in size, with no part attached to the roof slope of the single storey side extension, to accord in all respects with drawing number PL01 Rev B attached to this decision, and;
 - b) A Juliet balcony or a similar barrier has been fitted across the French doors in the rear elevation of the dormer shown on drawing number PL01 Rev B, in accordance with details submitted to and approved in writing by the Local Planning Authority;

Following fitting the Juliet balcony or a similar barrier shall thereafter be retained.

In the event of a legal challenge to this decision, the operation of the time limit specified in this condition will be suspended until that legal challenge has been finally determined.