



Appeal Decisions

Site visit made on 15 August 2023

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 August 2023

Appeal A Ref: APP/X0360/C/22/3310836

Appeal B Ref: APP/X0360/C/22/3310837

112 Silverdale Road, Earley, Reading RG6 7LU

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. The appeals are made by Mr Zahir Butt (Appeal A) and Mrs Ashi Shabir Butt (Appeal B) against an enforcement notice issued by Wokingham Borough Council.
- The notice was issued on 12 October 2022.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a rear extension (shown in the approximate location hatched green on the plan attached to the notice) and the erection of a raised platform comprising decking, railings, supporting stilts and stairs (as shown in the approximate location hatched blue on the attached plan) on the land.
- The requirements of the notice are: (i) Remove the raised platform (shown in the approximate position hatched blue on the attached plan) including decking, railings, supporting stilts and stairs from the land. (ii) Demolish the rear extension on the land (shown in the approximate position hatched green on the attached plan) (ii) Remove any resultant materials from steps (i) and (ii) from the land.
- The period for compliance with the requirements is six months.
- Appeal A 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. Appeal B is proceeding on the grounds set out in section 174(2) (c) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) in Appeal B and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.

Decisions

1. Appeal A-The appeal is allowed insofar as it relates to the erection of the rear extension 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 the rear extension at 112 Silverdale Road, Earley, Reading RG6 7LU referred to in the notice. The appeal is dismissed and the enforcement notice is upheld for the erection of a raised platform comprising decking, railings, supporting stilts and stairs 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 a raised platform comprising decking, railings, supporting stilts and stairs at 112 Silverdale Road, Earley, Reading RG6 7LU.
2. Appeal B-The appeal is dismissed and the enforcement notice upheld.

Applications for costs

3. Applications for costs were made by Wokingham Borough Council against Mr Zahir Butt and Mrs Ashi Shabir Butt. These applications are the subject of separate Decisions.

Appeals A and B-Ground (c) appeals

4. 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 appellants to show why their appeals should succeed on this ground, the relevant test of the evidence being on the balance of probability.
5. The appeal property contains a semi-detached dwelling. A single storey extension and a raised deck have been erected at the rear of the dwelling. This has involved works falling within the definition of development set out in s55 (1) of the 1990 Act. Planning permission is required for carrying out any development of land, by virtue of s57 (1) of the 1990 Act. At s171A (1), the 1990 Act defines a breach of planning control as carrying out development without the required planning permission, or failing to comply with any condition or limitation subject to which planning permission has been granted.
6. Planning approval was given to erect a single storey side and rear extension to the dwelling in March 2019¹. Condition 2 required the development to be carried out in accordance with the approved drawings. It is not disputed that, as built, the extension is taller than that approved. With a height above ground level measured by the Council as about 3.8 m, the extension is up to around 0.6 m taller than in the approved scheme, with a consequential increase in its overall size. As a result, the extension deviates materially from the approved drawings and does not comply with condition 2.
7. The approved drawings show a level ground surface at the rear of the dwelling. In practice, it is highly likely that the ground levels sloped away towards the rear boundary prior to erection of the extension. Even so, those drawings are incorporated with the approval and also specified in condition 2. Therefore, undertaking development other than in accordance with the approved drawings cannot benefit from the approval and is unauthorised. There is no grant of planning approval for the extension as built.
8. It is not in dispute that the deck surface is more than 0.3 m higher than the ground level of the rear garden and is therefore not authorised by the GPDO² at Article 3, Schedule 2, Part 1, Class E. Given that an appeal against the Council's refusal of a planning application for the deck was dismissed on 4 January 2023, there is also no express grant of planning approval in respect of this part of the matters stated in the notice³.
9. Therefore, the extension and deck constitute a breach of planning control; the appellants have been unable to show otherwise. The ground (c) appeals fail.

Appeal A-Ground (a) appeal

Main Issue

10. The main issue in this ground of appeal is the effect of the extension and deck on the living conditions of occupiers of adjoining residential property, having regard to overbearing, natural light and privacy.

¹ Council Ref: 190048.

² Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

³ Appeal Ref: APP/X0360/D/22/3308609.

Reasons

The extension

11. The Council's assessment, set out in the Officer delegated report for the above planning application, was that the approved extension would have had no significant overbearing impact on adjoining property at 110 Silverdale Road (No 110) or 114 Silverdale Road (No 114). The approval can no longer be implemented because, amongst other things, it has expired and so does not represent a realistic 'fallback' position. Nevertheless, it is not unreasonable to assess the extension as built in the context of the approved scheme. I was not made aware of any significant change in circumstances having occurred since that approval was granted. The Development Plan is the same, as is the Wokingham Borough Design Guide Supplementary Planning Document (SPD), whilst national policy concerning achieving well-designed places is similar.
12. No 114 attached to the dwelling has previously been enlarged at the rear by a single storey lean-to, beyond which is a pergola and a spacious, south-facing garden. As built, the width of the extension and its proximity to the boundary with No 114 corresponds with that on the approved drawings. In the context of the overall height in the approved scheme, the extension as built is not significantly taller, whilst the increase in scale is relatively modest. The size and massing of the extension is not appreciably greater in comparison with that approved. The extension is viewed as a single storey structure from No 114, similar to in the approval. Consequently, the extension is not perceived as a more dominant or oppressive built feature from No 114, nor has it given rise to any greater sense of enclosure in comparison with the approved scheme.
13. Given its depth, the extension as built protrudes slightly beyond a horizontal line taken at an angle of 45 degrees from patio doors at the rear of No 114. However, as the extension depth corresponds with that of the approved extension, this would equally have been true had the latter been built. Also, the height of the extension protrudes above a vertical line taken at 45 degrees from No 114's patio windows. Even so, as the portion of the extension protruding above the line exceeds the increase in height, this would also have been true of the approved extension. Consequently, neither of these factors point towards the extension as having further eroded levels of natural light enjoyed at No 114, compared to the approved scheme.
14. The extension is offset from the boundary with No 110, a semi-detached property, by around 0.8 m. In terms of its proximity to the boundary, as well as its depth, the extension as built is therefore similar to that in the approved scheme. The size and mass of the extension in proximity to the boundary with No 110 is not appreciably greater in comparison with that approved. The extension is viewed as a single storey structure from No 110, as in the approval. Moreover, the dwelling at No 110 is offset some distance from the boundary and its freestanding garage is parallel to a significant part of the extension. Together with the spacious rear garden, this assists considerably in reducing the visual impact of the extension from No 110. As a result, the extension is also not perceived as an over dominant or oppressive built feature from that property.
15. Accordingly, the modest increase in height and corresponding slightly greater scale of the extension compared to that in the approved scheme has had a limited effect in terms of either increasing the sense of overbearing

experienced by the occupiers of adjoining residential property or eroding levels of natural light previously enjoyed. In refusing a planning application for the extension in December 2022⁴, the Council nevertheless did not object on grounds of overlooking. There is no sound reason to disagree with the Council in that respect.

16. Therefore, the extension safeguards the living conditions of occupiers of adjoining residential property, having no adverse effects through overbearing, erosion in natural light or loss of privacy. This accords with criterion in Policy CP1 of the Wokingham Core Strategy (CS), as the high quality of the environment is maintained. There is also accordance with criterion in CS Policy CP3, as the extension is of an appropriate mass and height without causing detriment to the amenities of adjoining occupiers and their quality of life. By creating a high standard of amenity for existing and future users, the extension is consistent with paragraph 130 of the National Planning Policy Framework (the Framework). Furthermore, by responding positively and relating well to neighbouring properties, including by providing reasonable privacy levels, the extension is consistent with design principles at G1, R15 and R23 in the SPD.

The deck

17. This protrudes about 4 m beyond the extension, at the same level as the ground floor of the dwelling. The deck extends across the width of the extension, it is offset from the boundary with No 110 and adjoins the boundary with No 114. The deck is accessed from patio doors in the extension as well as via steps on the side nearest to No 110, which lead to the rear garden. Slatted timber screens have been erected along both sides of the deck apart from at the steps, which are unscreened. The sides of the screens facing towards Nos 110 and 114 have been covered with camouflage-style netting. Timber planters containing tall evergreen plants have been placed adjacent to the boundary with No 110 in the vicinity of the steps.
18. In the recent appeal the Inspector considered that, notwithstanding provision of the screens, the deck has significantly and harmfully eroded the privacy previously enjoyed by occupiers of Nos 110 and 114. They went on to find that incorporating frosted glass in the screens would not overcome the harm identified. The appeal decision is a material consideration. Although I am not bound by that decision, there would have to be sound reasons for me to depart from my colleague's conclusions. When stood on the outer edge of the deck, I experienced clear views into the neighbouring rear gardens. Views were available from the steps into the rear garden at No 110, notwithstanding the planting adjacent to the boundary. Whilst the level of overlooking might well reduce as the planting matures, I cannot reasonably be assured that an effective screen would be provided for the foreseeable future—for example, the planting could die or become diseased or damaged. Matters pertaining to whether screen structures on the deck overcome the harm to privacy were clearly and comprehensively dealt with in the previous appeal. Even with the netting, opportunity is afforded through the screens for overlooking of the neighbouring rear gardens.
19. Therefore, I share the previous Inspector's conclusions that the deck significantly and harmfully erodes the privacy enjoyed by occupiers of adjoining residential property, failing to comply with criterion in CS Policy CP3 on account

⁴ Council Ref: 222981.

of the detriment to the amenities of adjoining occupiers and their quality of life, and; that it is inconsistent with the Framework at paragraph 130, as there is not a high standard of amenity for existing and future users. Also, the deck fails to accord with criterion in CS Policy CP1, as it does not maintain the high quality of the environment. There is no failure to accord with Policy CC01 of the Wokingham Managing Development Delivery Local Plan, which concerns sustainable development. However, by not responding positively to neighbouring properties, the deck is inconsistent with SPD design principle G1.

Other matters

20. I have had due regard to the Public Sector Equality Duty (PSED) contained in s149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation and to advance equality of opportunity and foster good relations between people who share a relevant protected characteristic and people who do not share it. A resident at the property has protected characteristics for the purposes of the PSED, having regard to their age and disability. The deck affords the resident suitable external access to the rear garden. It has not been shown however that suitable access cannot be provided in another way, or that the harm caused could be overcome by imposing conditions. Given these circumstances, upholding the notice and refusing to grant approval for the deck would be proportionate, and doing so is necessary to foster good relations in accordance with the PSED. In this respect also, there is no sound reason to differ from the previous Inspector's finding that the provision of suitable access for the resident did not outweigh the harm identified.

Conclusion-Ground (a) appeal

21. The extension accords with the Development Plan and is consistent with the SPD as well as the Framework. However, the deck does not accord with the Development Plan, it is inconsistent with the Framework and with the SPD. Therefore, the appeal on this ground can only succeed in part.

Conditions

22. I shall not impose any conditions. The side walls of the extension are finished in white painted render above brickwork, both materials being similar to the walls of the dwelling, whilst the timber cladding to be applied to the rear elevation of the extension would have a neutral appearance. These materials were specified in the previous approval. It is not unreasonable to anticipate that the appellant would clad the rear elevation in timber in accordance with the details previously approved. By doing so, the external materials would integrate the extension satisfactorily with the dwelling. Also, there is no firm evidence that installing, altering or replacing a chimney, flue or soil and vent pipe on the dwelling within the limits of the GPDO at Article 3, Schedule 2, Part 1, Class G would harm the living conditions of adjoining residential occupiers. Therefore, the Council's suggested conditions would not meet the tests of necessity and reasonableness set out in paragraph 56 of the Framework.

Appeals A and B-Ground (f) appeals

23. The ground of appeal is that the requirements of the notice are excessive.
24. An enforcement notice can have the purpose of remedying the breach, including by restoring land to its condition before the breach took place, or it

can have the purpose of remedying any injury to amenity caused by the breach. The notice requires the extension and deck to be removed, as opposed to their modification by, for example, a reduction in size. Removing the extension and deck would restore the property to its condition before the breach took place. Therefore, the purpose of the notice must be to remedy the breach. The notice states as such, at paragraph 4 (v).

25. Provision of frosted glass screens to the deck sides is relevant to the planning merits of the development and so has been dealt with in the ground (a) appeal. In the context of ground (f), any step that stopped short of requiring the removal of the extension and deck, such as reducing the height of the extension or requiring the deck to be screened, would leave part of the development sustaining the breach in situ and so would not restore the property to its condition prior to the breach taking place. This would not achieve the purpose of the notice. Since the previous approval has expired, the breach cannot be remedied by making the extension and deck comply with the terms, including conditions and limitations, of a planning approval granted in respect of the property.
26. To require the deck to be reduced to no more than 0.3 m in height would go beyond what is necessary to restore the property to its condition before the breach took place and so would be an excessive step. It is open to the appellants to erect decking within the limits of the GPDO once the notice has been complied with.
27. Therefore, the steps set out in the notice are not excessive; they are a proportionate requirement being the minimum necessary to restore the property to its condition prior to the breach taking place. The ground (f) appeals fail.

Conclusions

28. Appeal A-For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for one 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 1990 Act.
29. Appeal B-For the reasons given above I consider that the appeal should not succeed.

Stephen Hawkins

INSPECTOR