



Appeal Decisions

Site visit made on 11 December 2023

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 January 2024

Appeals A and B Refs: APP/J1535/C/23/3317537 & 3317538 25 Tomswood Road, Chigwell, Essex IG7 5QP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeals are made by Mrs Aisha Sahall (Appeal A) and Mr Ibrar Sahall (Appeal B) against an enforcement notice issued by Epping Forest District Council.
 - The notice was issued on 31 January 2023.
 - The breach of planning control as alleged in the notice is Without planning permission, the construction of a dwellinghouse.
 - The requirements of the notice are to:
 - i. Demolish the building shown outlined in blue at the approximate location on the attached plan.
 - ii. Remove all resultant debris arising from the actions taken at step (i) from the land.
 - The period for compliance with the requirements is: 3 months.
 - The appeal is proceeding on the ground[s] set out in section 174(2)(a), (b), (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.
-

Appeal C Ref: APP/J1535/W/22/3312324 25 Tomswood Road, Chigwell, Essex IG7 5QP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr I Sahar against the decision of Epping Forest District Council.
 - The application Ref EPF/1098/22, dated 11 May 2022, was refused by notice dated 20 September 2022.
 - The application sought planning permission for the demolition of existing bungalow and erection of a new house without complying with a condition attached to planning permission Appeal Ref: APP/J1535/W/19/3228905, dated 14 October 2019.
 - The condition in dispute is No 2 which states that: The development hereby permitted will be completed strictly in accordance with the approved drawings nos. GLA-1, GLA-2, GLA-3, GLA-4, GLA-5, GLA-6, GLA-7, GLA-8 and GLA-9.
 - The reason given for the condition is: "it is necessary that the development be built to accord with the submitted plans for certainty".
-

Appeal A and B Decision

1. The enforcement notice is quashed.

Appeal C Decision

2. The appeal is allowed and planning permission is granted for the demolition of existing bungalow and erection of a new house at 25 Tomswood Road, Chigwell, Essex IG7 5QP in accordance with the application Ref EPF/1098/22

dated 11 May 2022, without compliance with condition number No 2 previously imposed on planning permission Ref EPF/2806/18 (Appeal Ref APP/J1535/W/19/3228905) dated 14 October 2019 and subject to the conditions set out in the schedule at the end of this decision.

Preliminary Matters

3. I carried out an 'access required' site visit where the appellant makes the site available for the visit but does not attend themselves. The appellant's agent did follow me into the site after I had entered but we did not discuss the merits of the case. We did however discuss problems with access to parts of the site. I assessed that it was not safe for me to walk into rearward areas where slippery, clay-type soil has been deposited and the wooden planks placed to enable access were also very slippery. I could not therefore see everything that I needed to from within the site.
4. As an exception to normal practice, I explained to the appellant's agent that to avoid further delays with this case, I would knock on the doors of both adjoining neighbours' dwellings at No 23 and No 27 and ask if I could enter their rear gardens. When I did this, the appellant's agent was witness to my initial explanation of this with each neighbour. I then carried out the visits from both adjoining properties looking from the rear gardens and without discussing the case with either of the occupants of those houses. Because this was an unusual situation, all of the relevant parties were written to with an explanation of why I carried out the site visit in this way and giving them an opportunity to raise concerns. No concerns have been received.
5. Since the Council made its decisions, revisions to the National Planning Policy Framework (the Framework) have been published. I do not consider that there were changes material to the issues in these appeals. The Council has also confirmed that the Epping Forest District Local Plan 2011-2033 was adopted in March 2023 (EFLP) and supersedes the previous policies been referred to.
6. I note that when an appeal was considered in 2019 (Appeal ref APP/J1535/W/19/3228905 'the 2019 appeal decision') the Inspector accepted that because the proposal involved the replacement of an existing dwelling, it was unnecessary to consider the impact upon the integrity of the Epping Forest Special Area of Conservation (SAC). Similarly, I am only considering a different design for the replacement dwelling and do not need to consider the implications for the SAC.
7. With respect to Appeal C, the submitted plans show the extent of the differences between what was approved previously and how the proposal is intended for completion. What has been constructed on site therefore does not entirely comply with the plans that have been submitted. Given my overall decision, there will be issues to resolve in order to achieve compliance with the submitted plans. Furthermore, 2 plans have been submitted with the reference 'GLA-12'. One of these, dated 09/03/2022, shows hard and soft landscaping and the other, dated 14/07/2022, more importantly for the purposes of Appeal C, shows the side elevation of what was previously approved and what is now proposed. To clarify and prevent any ambiguity, I considered the proposal with respect to plan 'GLA-12' dated 14/07/2022 and have referenced this plan within the approved drawings condition.

Appeals A and B on grounds (b) and (c)

8. To succeed on ground (b), the onus is upon the appellant to demonstrate that the breach has not occurred, as alleged. On ground (c) the onus is again on the appellant, to demonstrate that alternatively, if what is alleged has occurred, that it does not constitute a breach of planning control.
9. The appeal site currently includes an unfinished building. Although a substantial amount of the structure is in place, building works have been suspended before the upper storeys and roof have been constructed. The appellant does not dispute that what is on site would eventually be a dwelling if it were completed. It is however very clear that the building as exists and as existed when the notice was issued, is not a dwelling as alleged as it is not weather-tight and does not contain viable facilities to be used as a dwellinghouse. There may be physical building works which form a partially constructed dwelling but that is not what is alleged. At least to that extent, the appeal on ground (b) must succeed although that may not be the end of the matter as I do have powers to correct defects, errors or misdescriptions where it would not cause injustice to the Council or to the appellant. I will return to that matter below.
10. The planning permission given by the 2019 appeal decision is not referred to on the enforcement notice. The Council has said within their appeal statement relating to Appeals A and B, that they consider the planning permission has lapsed. They do not give any substantial reasoning for that position. I have no evidence or submissions from the Council that relate to whether they have considered if the planning permission may have been initiated within the meaning of s56(2), (3) and (4) of the Act. They do not explain whether material operations had been undertaken in compliance with the 2019 appeal decision planning permission. In practice, little is needed for development to be begun under s56(2). It is necessary to understand whether works done are in accordance with the planning permission and if they were material to it, as a matter of fact and degree.
11. The description of the development allowed in 2019 included "demolition of existing bungalow" and that at least has been undertaken and it is not disputed that this was in 2021. In itself that could potentially, in my view, have involved a material operation sufficient for the development as approved to have been initiated by reason s56(4)(aa). Other works have also been undertaken such as the digging out of material from the ground and construction of walls.
12. The discrepancies between what was approved and what has been constructed relate primarily to the height of the ground-floor and the length of the building which projects further forward than what had been approved previously and also further to the rear. However, there are also similarities that I can see from the approved plans and those submitted with the proposals. For example, the side walls are shown in a similar position with respect to both side boundaries on the previous and current plans. It has been found that it is possible to commence a development for the purpose of s56 of the Act, thereby meeting a deadline within a time-limiting condition of a planning permission, only to then later deviate from the permitted works in a manner that does not interfere retrospectively with the commencement of the development.
13. In this case, there is no suggestion by the Council that there has been a breach of any conditions that would interfere with the ability to implement the 2019

planning permission. The only condition that states that something needed to be undertaken “prior to commencement of development” is No 6 relating to ‘tree protection’. From the information I am provided with, it is not clear whether tree protection measures were carried out before development was commenced as required. However, the only trees that I could see, which are also indicated on the plans including the arboricultural report, the Tree Preservation Order plan and which are shown on submitted photographs, are towards the very rear boundary of the appeal site, a substantial distance from the position of the building works. Even if there had been commencement without the required tree protection being implemented, given the position of the trees a substantial distance from construction works, the Council could have taken action to secure protection measures. Although tree protection is important, I do not consider that the condition goes to the heart of the planning permission granted by the 2019 appeal.

14. It is not therefore correct for the reasons above, to allege the “construction of a dwellinghouse” without planning permission. Furthermore, planning permission in my view was initiated in accordance with planning permission granted by the 2019 appeal. It would have been more appropriate to consider whether the non-compliance with the approved plans was in some way of breach of planning control due to conflicts with the planning permission. Had it been so, I could consider correcting the notice to allege a different breach. However, there has been no breach of conditions including No 2 specifying the approved plans, because that requires the completion of the development in accordance with the plans. Clearly that stage has not been reached. As such, despite the differences between what was approved and what had been constructed by the time the notice was issued, there has not been a breach of planning control.

15. The appeal on grounds (b) and (c) therefore succeeds.

Appeals A and B conclusion

16. For the reasons given above, I conclude that the appeals should succeed on grounds (b) and (c). The enforcement notice will be quashed. In these circumstances, the appeals on grounds (a), (f) and (g) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act do not fall to be considered.

Appeal C

Further background and main issue

17. Given my conclusions in relation to Appeals A and B, I am not considering the planning merits of the breach of planning control alleged on the enforcement notice. I therefore only have the appeal against the refused application to carry out development without complying with condition 2 of the 2019 appeal decision. That relates to the approved plans. Given that I consider the planning permission has been commenced, I can go on to consider this as a proposal to carry out the development without complying with the condition previously imposed. The principle of a replacement dwelling is agreed and the planning permission given by way of the 2019 appeal is extant. The general design approach of the revised proposal is very similar as that previously approved.

18. The main issue is therefore the effect of varying the details showing a different way of completing the development, on the living conditions at the neighbouring property, No 23 Tomswood Road with respect to light and outlook. I will therefore consider whether the existing condition remains necessary as well as meeting the other tests for conditions which are set out in the Framework.

Reasons

19. The appeal site previously contained a bungalow which was much smaller in terms of the floor area, height and depth than the building then approved by the 2019 appeal decision. The approved dwelling would be a large, detached building, with 3 storeys above ground along with a basement. That would be set back behind the line of the fronts of both of the 2 adjoining dwellings at Nos 23 and 27. At the rear, the previous approval would not be as deep in its plot as the rearward extent of No 27 but it would go further back relative to the rear of No 23.
20. The current proposal would be further forward on the plot and in-line with both adjoining dwellings where they face towards Tomswood Road. The revised proposal would also result in the rear elevation being further to the rear. The dwelling would therefore be longer than what was previously approved. The Council's reasons for refusing the application do not express concerns about any impacts at the front with respect to either neighbouring property. I agree that the proposed changes would not have any significant impact upon either of the degree of enclosure experienced within the external areas to the outside at the front of either adjoining property or any rooms within those dwellings.
21. The level of the ground-floor has been raised on site and this was noticeable when I viewed from the garden of No 23. The single storey element currently protrudes above the height of the fence between the appeal site and No 23, but with the reduction in height proposed, would not have an imposing impact when looking out of the ground floor rear windows of No 23 or when those residents are using the patio and rear garden. The first-floor increase in depth that I saw, and which would remain in place, would not substantially add to the bulk of the dwelling as perceived from the patio of No 23 or from inside that dwelling. It would not therefore bring about an increased sense of enclosure for the adjoining occupiers.
22. The plans show that the outlook from the larger of the windows in the rear first-floor of No 23 would not be impeded to any significant extent. Although the smaller window nearer to the boundary would have the angle of view infringed somewhat by the increased depth of the dwelling at that level, that would be a very minor incursion of the 45 degree angle of view from the centre of that window. The increased depth of the building at that level would not seriously affect the outlook from these or the higher roof-level windows which are more centrally positioned within the rear elevation of No 23.
23. The appellant has submitted a Daylight and Sunlight Assessment (DSA), the findings of which are not disputed. This confirms that the 'vertical sky component' changes within No 23, in other words the amount of sky that can be seen from the stated locations, would be very minor due to the revised details. As such, this helps to show that the development would not have an imposing impact upon the neighbours at No 23 when inside the property. Furthermore, the DSA confirms that the effect of the development upon

daylight within the rooms of No 23 would be very minor when compared to what had previously been approved.

24. The rear of the building faces the south-west. The DSA has also confirmed that there would be no change to direct sunlight reaching the external amenity areas at No 23 between what was approved previously, and the current proposal. Similarly, the light reaching the windows of No 23 would not be significantly affected as the sun tracks through the sky from east to west.
25. In relation to the main issue, varying the details as proposed would not have a harmful impact upon the living conditions at the neighbouring property, No 23 Tomswood Road with respect to light and outlook. The development would satisfactorily take account of the amenity of the occupiers of neighbouring dwellings and would therefore comply with EFLP Policy DM9.

Other matters and overall balance

26. The dwelling would not extend beyond the rear of No 27. This position would mean that the changes in size of the proposal and the changed ground levels, would not cause adverse impacts upon the light or outlook affecting the occupiers of that adjoining dwelling. The submitted plans do appear to have some discrepancies with labels and the proposed cross-section on plan GLA-9 does not match the adjoining proposed rear elevation. The elevations however clearly show what is proposed with some critical specific measurements being also shown as well as the front elevation drawing showing the building relative to the adjoining properties. I have understood what is proposed and the plans are sufficiently clear for members of the public to understand as well. I have no evidence of poor quality of workmanship and party wall matters are of little weight in my overall decision.
27. I therefore consider that these other matters do not outweigh my conclusion on the main issue and the compliance with the development plan overall.

Conditions

28. I have been provided with suggested conditions which are similar to those imposed previously. I have re-consulted both main parties regarding the detailed wording of some of these conditions and some need to be changed due to the context of development having been already commenced.
29. It is important that there is clarity about which plans need to be adhered to and so I have attached a condition specifying those including the published dates on the plans to prevent confusion with plans approved on the previous planning permission. External materials are shown on the submitted plans and so the condition relating to them just needs to require compliance with the approved plans.
30. I am only asked explicitly to review condition 2 and so consistent with previous planning permissions, I will attach a condition removing permitted development rights (GPDO¹ schedule 2, Part 1) relating to the various classes involving the enlargement, improvement or other alteration of the dwellinghouse (classes A, B and C). I do not consider that it is reasonable to extend the scope of this condition to remove further permitted development rights relating to the construction of an additional storey (class AA) as no such restriction was in

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

place on the original planning permission. Planning Practice Guidance also makes it clear that removal of freedoms to carry out small scale domestic and non-domestic alterations that otherwise do not require planning permission, are unlikely to meet the tests of reasonableness and necessity.

31. I have included a condition requiring adherence to the Arboricultural Impact Appraisal dated 16 January 2019, and also that tree protection is carried out in compliance with plan 'TWR/TPP01/SK' prior to any further work on site.
32. Details of landscaping have previously been submitted to the Council pursuant to conditions imposed on the previous planning permission and some details are shown on the submitted plans. The details have not addressed the matters referred to in the Council's partial refusal of EPF/0717/22 and so I have attached a condition requiring the submission of further hard and soft landscaping, notwithstanding what is shown on plan 'GLA-13 dated 09/03/2022', in particular. As there is a need for further details and as it is not possible to word this condition negatively to require further submissions prior to development commencing as development has commenced. The wording is rather more complex therefore than that suggested by the Council. The condition is worded to ensure that the details are submitted, approved and implemented in accordance with a strict timetable and to ensure that enforcement action can take place if any stage is not adhered to.
33. Other conditions are as previously imposed.

Appeal C conclusion

34. For the above reasons I conclude that the appeal should be allowed. I will grant a new planning permission with the substitution of the plans set out in the condition below and I have reviewed the other conditions in order that they fit with advice within the current Planning Practice Guidance and context of the circumstances of the case.

Andy Harwood

INSPECTOR

Appeal C Schedule of conditions:

- 1) The development hereby permitted shall be carried out and retained strictly in accordance with the following approved plans: gla-1 dated 14/07/2022; gla-2 dated 14/07/2022; gla-3 dated 14/07/2022; gla-4 dated 14/07/2022; gla-5 dated 14/07/2022; gla-6 dated 14/07/2022; gla-7 dated 14/07/2022; gla-8 dated 14/07/2022; gla-9 dated 14/07/2022; gla-10 dated 14/07/2022; gla-11 dated 14/07/2022; gla-12 dated 14/07/2022; gla-13 dated 09/03/2022; and gla-14 dated 09/03/2022.
- 2) The materials to be used in the construction of the external surfaces of the building shall be carried out in accordance with details shown on the approved plans.
- 3) Prior to the first occupation of the development the proposed windows in the side elevations shall be glazed with obscure glass with a minimum Level 3 obscurity and shall be permanently retained as such thereafter and shall have fixed frames to a height of 1.7 metres above the floor of the room.

- 4) Notwithstanding the provisions of the Town and Country Planning General Permitted Development Order 2015 as amended (or any other order revoking, further amending or re-enacting that order) no development generally permitted by virtue of Schedule 2 Part 1, Classes A, B and C shall be undertaken without the prior written permission of the Local Planning Authority.
- 5) The development shall be carried out in accordance with the submitted Tree Survey/Arboricultural Method Statement reports and tree protection shall be installed as shown on Arb 3 Innovations Tree Protection Plan number 'TWR/TPP01/SK' dated 15th January 2019, prior to any further work towards the approved development being undertaken on site, following this decision.
- 6) Unless within 3 months of the date of this decision a scheme for the hard and soft landscaping works including an implementation programme, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 3 months of the local planning authority's approval, the occupation of the dwelling shall cease until such time as a scheme is approved and implemented. If no scheme in accordance with this condition is approved within 9 months of the date of this decision, the occupation of the dwelling shall cease until such time as a scheme approved by the local planning authority is implemented. Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.
- 7) If any tree, shrub or hedge shown to be retained in the submitted Arboricultural reports is removed, uprooted or destroyed, dies, or becomes severely damaged or diseased during development activities or within 3 years of the completion of the development, another tree, shrub or hedge of the same size and species shall be planted within 3 months at the same place, unless the Local Planning Authority gives its written consent to any variation. If within a period of five years from the date of planting any replacement tree, shrub or hedge is removed, uprooted or destroyed, or dies or becomes seriously damaged or defective another tree, shrub or hedge of the same species and size as that originally planted shall, within 3 months, be planted at the same place.
- 8) The landscaping works shall be carried out in accordance with the approved details/scheme, including the implementation programme. Any trees or other plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species. The boundary treatments shall be retained for the duration of the occupation of the development.
- 9) All construction/demolition works and ancillary operations, including vehicle movement on site which are audible at the boundary of noise sensitive premises, shall only take place between the hours of 08.00 to 18.30 Monday to Friday and 08.00 to 13.00 hours on Saturday, and at no time during Sundays and Public/Bank Holidays unless otherwise agreed in writing by the Local Planning Authority.