



Appeal Decisions

Site visit made on 3 January 2024

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 January 2024

Appeal A Ref: APP/W0340/C/22/3306769

Appeal B Ref: APP/W0340/C/22/3306770

10 Alexander Road, Thatcham, Reading, Berkshire RG19 4QU

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by Mr Ken Miles and Appeal B by Mrs Judith Miles against an enforcement notice issued by West Berkshire District Council.
 - The notice was issued on 15 August 2022.
 - The breach of planning control as alleged in the notice is the erection of part of a three storey rear extension to the property on the land and shown shaded grey on the attached plan reference Plan A. The unauthorised part of the extension is shown outlined in red on drawing CP0101 attached to this notice.
 - The requirements of the notice are:
 - (i) Demolish the unauthorised part of the development constructed on the land as shown outlined in red on drawing CP0101 attached to this notice. The rear elevation of the dwelling shall be remodelled in accordance with the scheme approved under application 06/01369/HOUSE as shown on drawing CP0100 and highlighted yellow.
 - (ii) The two plans attached to this notice were submitted by Mr Miles under application 18/02856/HOUSE and the subsequent appeal as a true representation of the earlier approved scheme 06/01369/HOUSE. In the absence of the original plans on the planning file the Council accept these as an accurate reflection of what was previously approved and for the avoidance of doubt these are the plans that must be adhered to.
 - (iii) Remove from the land all building materials, debris and rubble arising from compliance with requirement (i) above, and restore all of the land to its condition before the breach took place by levelling the ground.
 - The period for compliance with the requirements is: 9 months.
 - The appeals are proceeding on the grounds set out in section 174(2)(b), (c), (d) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is varied by:

- In section 5, the deletion of requirements (ii) and (iii) in their entirety and substituting instead:

“(ii) Remove from the land all building materials, debris and rubble arising from compliance with requirement (i) above”.

2. Subject to the above variation, the appeals are dismissed and the enforcement notice is upheld.

Background

3. On the 14 August 2006 planning permission¹ ("the 2006 permission") was granted at 10 Alexander Road for a '*2 storey extension to provide garage and bathroom. Conversion of existing garage to gym and replacement of flat roof to pitched roof and conservatory*'. Condition 3 required the development to be carried out in accordance with drawing numbers BL002 Rev A and BP003, unless otherwise agreed in writing by the Local Planning Authority.
4. On the 8 February 2019 a retrospective planning application² ("the 2019 refusal") to '*extend rear first floor extension in order to utilise existing ground floor load-bearing wall and to provide clarity to two storey front elevation under original planning approval with reference to building side elevation in line of existing boundary wall*' at No. 10 was refused. A subsequent appeal³ ("the 2019 appeal") against that refusal was dismissed on the 30 July 2019.
5. Following the dismissal of the 2019 appeal, an enforcement notice was issued on the 8 December 2021. An appeal⁴ against the enforcement notice was allowed and the notice was quashed on legal grounds on the 23 June 2022. Under the '*second bite*' provisions of S171B(4)(b) of the 1990 Act a further enforcement notice was subsequently issued on the 15 August 2022, out of which these appeals arise.

Ground (b)

6. To succeed on ground (b) the onus is on the appellants to show that what is alleged in the notice has not occurred as a matter of fact.
7. The appellants claim that reference to a three-storey rear extension in the allegation is incorrect and such a development has not occurred. It is not disputed that an extension has been constructed on site. However, the appellants consider that as the ridge height of the extension does not exceed the ridge height of the original dwelling, and as the ceiling height in the upper-most room falls below the height set out in the Government's Technical Housing Standards⁵ (THS), it cannot be considered to be three storeys. In simple terms, what the Council consider to be the third-storey the appellants consider to be only an 'attic room'.
8. It was clear from my site visit that the ridge height of the extension does not exceed the ridge height of the original dwelling. I also saw that the upper-most room is accessed via an internal staircase in much the same fashion as the staircase which leads from the ground floor to the first floor. The ceiling height in the room itself was indeed low, and I was only able to stand when positioned towards the centre of the room underneath the ridge line. It is therefore highly probable that this room does not meet the standards as set out in the THS.
9. Nevertheless, any failure to meet the standards set out in the THS, which relates to internal space provided within new dwellings, is not necessarily fatal. In my view, the extension clearly has a third storey that is internally accessed via a staircase, and which could be used by occupants as additional living space

¹ Council Reference: 06/01369/HOUSE

² Council Reference: 18/02856/HOUSE

³ APP/W0340/D/19/3227901

⁴ APP/W0340/C/22/3290115

⁵ Department for Communities and Local Government: Technical housing standard – nationally described space standard (March 2015)

if so desired. I therefore find that the breach of planning control alleged in the notice has occurred as a matter of fact. Accordingly, the appeals on ground (b) fail.

10. The other representations put forward by the appellants under this ground relate to whether the development is in accordance with the 2006 planning permission. This matter is addressed in the ground (c) appeal below.

Ground (c)

11. For the appeals to succeed on ground (c) the onus is on the appellants to demonstrate that the matters alleged in the notice do not constitute a breach of planning control.
12. The appellants consider that the development does not constitute a breach of planning control as it is in accordance with the 2006 permission. Condition 3 of the 2006 permission expressly refers to BL002 Rev A in its list of approved drawings. The Council accepts that this drawing is missing from the planning file, and state that they have only been able to retrieve a limited number of documents including the 'original' drawing BL002 and the officers report.
13. Drawing BL002 is said by the Council to be the original drawing that was submitted prior to any amendments to the proposal being made. This drawing includes a two-storey side extension which extends marginally beyond the existing rear elevation of the host dwelling at first floor level. The proposed extension has a hip roof, with its roof ridge set below the ridge of the original dwelling. A dormer window is also shown at first floor level on the front elevation. The floor plans detail a ground floor and a first floor.
14. As part of their appeal submissions the appellants have provided a drawing titled 'BL002 Rev A' which they contend is the approved drawing referred to in condition 3 of the 2006 permission. This drawing appears to correlate with what has been built on site and shows an extension which extends significantly beyond the existing rear elevation of the host dwelling at first floor level. The extension also includes a gable end with its roof ridge running flush with the ridge of the original dwelling. There is no dormer window on the front elevation, and the floor plans include a 'second floor plan' in addition to the ground and first floors.
15. The Council do not accept that the version of drawing BL002 Rev A provided by the appellants to be that approved under the 2006 permission. There is therefore a dispute between the parties as to the status of this drawing, which shows a development which differs significantly from that shown on drawing BL002.
16. When seeking to resolve any ambiguity in relation to a planning permission, it was held in *Wood*⁶, *Kemball*⁷, and *University of Leicester*⁸ that a pragmatic approach can be taken and that all public documents comprised in the relevant planning permission can be considered. It is therefore permissible to look at extrinsic evidence, such as the application form, officers report, or other documents, depending on the circumstances of the individual case.

⁶ *Wood v SSCLG & the Broads Authority* [2015] EWHC 2369 (Admin)

⁷ *Kemball v SSCLG* [2015] EWHC 3338 (Admin)

⁸ *University of Leicester v SSCLG & Oadby & Wigston BC* [2016] EWHC 476 (Admin)

17. In this case, in addition to the decision notice and drawings provided by both parties, the officers report is also available. The report makes clear reference to amended plans being submitted during the application process, stating:

"Initial officer concerns were raised with regard to the design of the extension and the impact this will have on the character of the area. Amended plans were requested and received indicating the dormer to be removed from the front elevation of the extension thus overcoming previous officer concerns".

18. It is clear from the officers' report that amended plans were received, however the report only references the removal of the dormer from the front elevation (as shown on drawing BL002) of the extension. There is no mention of the other significant amendments to the development as shown on drawing BL002 Rev A provided by the appellants.
19. Given the scale of those amendments, which include the extension protruding significantly beyond the rear elevation of the host dwelling at first floor level, the raising of the roof ridge height, alterations to the design of the roof, and the inclusion of a 'second floor', I find it improbable that they would not be referred to in the officers' report.
20. In addition, unlike drawing BL002, the copy of drawing BL002 Rev A provided by the appellants does not include any date stamps detailing the date it was received by the Council. In the absence of a date stamp, or any other proof of submission, I cannot be certain that this plan was ever received by the Council.
21. When considering all available documents and evidence, I am not satisfied that the drawing provided by the appellants is the same drawing BL002 Rev A as approved under the 2006 permission. The development shown on the appellants drawing differs significantly from that shown on the original drawing BL002 and described in the decision notice and officers report.
22. Having regard to all these factors together, I therefore conclude that the appellants have not demonstrated that the development is in accordance with the 2006 permission. Since no planning permission has been granted for the development which exists on site, it amounts to a breach of planning control. Consequently, the appeals on ground (c) fail.

Ground (d)

23. This ground is that the matters alleged took place more than four years prior to the issue of the enforcement notice and are therefore immune. The first issue is to determine when the four years begins. This notice was issued on the 15 August 2022, so the four-year period would begin on the 15 August 2018.
24. However, the Council explain that they are taking advantage of the 'second bite' provisions. The original notice was issued on the 8 December 2021 but was quashed on appeal. S178B(4) of the 1990 Act in effect allows a second notice to be served and run from an earlier date as long as on that date the Council 'purported to take enforcement action in respect of that breach'. The issue of an earlier enforcement notice is purporting to take such action. The Council can rely on the 'second bite' provisions and the four-year period runs from the 8 December 2017.
25. It is therefore for the appellants to show, on the balance of probability, that the development was substantially complete before the 8 December 2017. In

support of this, the appellants state that the development is immune as a period of four years since the structural completion of the rear extension has lapsed. Furthermore, they state that the extension had been 'completed to the first floor window sill height prior to April 2018'.

26. Given that the completion of the extension to 'first floor window sill height' would have still left works to the external walls, upper floors, and the entire roof of the extension outstanding, I find it highly unlikely that this would amount to the development being substantially complete. In any event, there has been no evidence provided to demonstrate that these works were completed prior to April 2018 as claimed, or crucially, that the development was substantially complete by the 8 December 2017.
27. As the evidential burden lies with the appellants, it follows that they have failed to show, on the balance of probability, that the development was substantially complete by the 8 December 2017. Accordingly, the appeals on ground (d) fail.

Ground (f)

28. For the appeals to succeed on this ground, I need to be satisfied that the steps required to comply with the requirements of the notice are excessive and lesser steps could overcome the breach of planning control, or as the case may be, the injury to amenity. In this case, the requirements of the notice are to demolish the unauthorised part of the development and remodel the rear elevation so that it is in accordance with the attached plan. The purpose of the notice must therefore be to remedy the breach of planning control that has occurred.
29. The appellants have suggested lesser steps which they consider would overcome any harm arising from the development. These steps consist of the replacement of the existing cladding with an alternative such as Cedral cladding, and the removal of the second-floor window on the rear elevation thus giving the extension the appearance of a two-storey extension. I observed during my site visit that this window had already been blocked up. Nevertheless, these are arguments which relate to planning merits.
30. However, where there is no appeal under ground (a) consequently there is no deemed application for planning permission, and as such there can be no arguments about the planning merits of the development under ground (f). The only consideration is whether the requirements exceed what is necessary to achieve the identified purpose, which in this instance is to remedy the breach of planning control.
31. The appellants have also raised concerns that the enforcement notice does not provide sufficiently accurate or precise details on what they are required to do to comply with the notice, and that the plans⁹ attached to it have never formed part of any planning approval and are inaccurate in detail.
32. On the contrary, I find that the plans attached to the notice are of assistance to the appellants as they provide clarity to what works are required. The annotated red line gives certainty to the appellants in terms of the part of the extension that is to be removed, whilst similarly the drawing highlighted yellow details how the rear elevation should subsequently be remodelled.

⁹ Drawing Numbers CP0100 and CP0101

33. Although it appears that these plans formed part of the 2019 refusal, I find that they set out more clearly the steps that the Council require the appellants to take. The alternative option for the Council would have been a requirement to demolish the extension in its entirety and return the property to its condition prior to the 2006 permission. This clearly would leave the appellants worse off with greater works to undertake. Furthermore, by virtue of S173(11) of the 1990 Act any works which the enforcement notice could have required to be removed, but did not do so, will subsequently benefit from planning permission via S73A of the 1990 Act. This permission is only granted and effective once all requirements of the notice have been complied with.
34. Requirement (ii) of the notice does not set out any steps that the appellants are required to do. Instead, it seeks to explain the rationale behind why the plans attached to the notice were considered necessary. This requirement is therefore superfluous and should be deleted.
35. Although not specifically referred to by the appellants, requirement (iii) of the notice requires the appellants to *'restore all of the land to its condition before the breach took place by levelling the ground'*. The notice however only relates to unauthorised development carried out at first floor level and above, and there is no evidence to suggest that there has been any change in ground levels.
36. This specific requirement of the notice, therefore, is excessive and goes beyond what is necessary to remedy the breach as described and should therefore be omitted. I consider that these variations can be made without causing injustice to the parties. The appeals on ground (f) succeed to that extent.

Conclusion

37. For the reasons given above I conclude that the appeals fail, except for a limited extent under ground (f). I have therefore upheld the enforcement notice as varied.

David Jones

INSPECTOR