



Appeal Decisions

Hearing Held on 20 February 2024

Site visit made on 20 February 2024

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 March 2024

Appeal A: APP/K3605/C/23/3328934

Appeal B: APP/K3605/C/23/3328935

Land at 47 Thames Street, Weybridge, Surrey KT13 8JG

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Richard Jones (Appeal A) and Ms Michelle Jones (Appeal B) against an enforcement notice issued by Elmbridge Borough Council.
 - The enforcement notice was issued on 10 August 2023.
 - The breach of planning control as alleged in the notice is: Within the last ten years and without planning permission, the material change of use of a warehouse (B8) to a residential use (C3) and the raising of the height of the wall on the northern flank of the first-floor rear projection and the installation of an external plant on the ground floor.
 - The requirements of the notice are: 1. Cease the use of the property for residential purposes; 2. Remove all fixtures and fittings associated with the use of the premises as a residential dwelling, including the removal of all kitchens, all bathrooms, bedrooms and internal partitions and any other item associated with the unauthorised change of use; 3. Remove all external alterations and additions to the building associated with the use of the premises as a residential dwelling; 4. Permanently remove all constituent waste from the site.
 - The period for compliance with the requirements is 6 calendar months.
 - The appeals are proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Summary of Decisions

1. The appeals are allowed, the enforcement notice as corrected is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Application for Costs

2. An application for costs was made by Mr Richard Jones and Ms Michelle Jones against Elmbridge Borough Council. This application is the subject of a separate Decision.

The Enforcement Notice

3. The notice has been issued pursuant to s171B(3) of the Act, on the 10-year rule. However, the material change of use to a residential use (C3) and the operational development targeted, namely the raising of the height of a wall, and the installation of external plant, are breaches of planning control pursuant to s171B(2) and (1) respectively, on the 4-year rule. The external plant is then

situated on a rear wall, as opposed on the ground floor. Injustice to the parties however does not arise from making these corrections and were agreed during the Hearing.

4. Furthermore, given the notice targets 3 separate forms of development, as described above, it is necessary for the notice to require the cessation and removal of those 3 expressly identified forms of development. Injustice to the parties however does not arise from making these corrections and were agreed during the Hearing.

The ground (b) appeal

5. For the ground (b) appeals to succeed the onus is on the appellants to demonstrate, on the balance of probabilities, that the alleged breach of planning control, which is restricted in the appellant's submissions to the raising of the height of the wall on the northern flank of the first-floor rear projection, has not occurred as a matter of fact.
6. The appellants do not suggest that works have not been undertaken to the wall. However, whilst there are scaled drawings relating to the wall, given works have been undertaken over a period of time, they may not be sufficiently precise to demonstrate the full extent of the changes that have been undertaken. The photographs provided by interested parties then provide some visual evidence that the height of the wall has increased.
7. There is accordingly insufficient evidence to demonstrate on the balance of probabilities that the wall has remained at its original height. I also do not accept the Council advising they had no documentary evidence demonstrates the wall has not increased in height, given they also reserved the right to reinvestigate should evidence come to light.
8. The appellants also accept that the height of the wall has changed over time but contend that a planning permission has been granted for this. This is however a matter for a ground (c) appeal, which I shall accordingly assess below.
9. The appeal on ground (b) therefore fails.

The ground (c) appeal

10. For the appeals to succeed on ground (c) the onus is on the appellants to demonstrate, on the balance of probabilities, that there has not been a breach of planning control. This could be because the matters alleged do not constitute development, planning permission has already been granted for the matters alleged in the enforcement notice or they are permitted development. The appellant's submission in this regard relates to the material change of use of a warehouse (B8) to a residential use (C3) and the wall that has been enforced against.
11. In respect of the residential use, an application for prior approval was granted¹ for the change of use from storage (B8) to residential (C3). Condition 1 of that approval required that the development shall be completed on or before 3 years from the date of the decision, which thus would have been 19 March 2022.

¹ Council ref 2019/0187

12. The evidence before me, in the form of signed statutory declarations, is that the property has been residentially occupied since 1 February 2022. I afford this considerable weight. The evidence is that it also contained all the facilities required for day-to-day private domestic existence², even if these were basic.
13. The development the subject of the approval was the material change of use to the residential use. It follows that for there to have been the completion of this development, as required by condition 1, it is only the material change of use that must have been completed by 19 March 2022.
14. Whilst actual use is not required to trigger a material change of use³, in this case, there is sufficiently precise and unambiguous evidence of actual residential use as a dwellinghouse (C3) from 1 February 2022 onwards. Council Tax has also been paid from this date albeit backdated.
15. I appreciate there is photographic and other evidence that not all internal works were completed by 19 March 2022. However, condition 1 does not require this, it merely requires the development, which is the material change of use, to have been completed. The appellant's evidence of the residential occupation of the property then demonstrates as a matter of fact and degree it was properly recognisable as a dwellinghouse, even though there was a significant quantum of building materials and equipment and some of the fixtures and fittings were temporary installations at that time. However, even during my site visit the same could be said, but the residential use was nevertheless properly recognisable.
16. Whilst comparisons with other classes of prior approval have been brought to my attention, I do not find these determinative in light of my above findings. The wording of condition 1 is unambiguous in that the development referred to can only be the subject matter of the prior approval, namely the material change of use, as opposed any building works and/or operational development.
17. I also appreciate that there have been subsequent planning applications at the site, and there is not a building control certificate. However, other planning applications or the absence of building control certification does not contradict the evidence of actual residential occupation, and with it the completion of the material change of use, which is the relevant matter here.
18. It is then suggested that the works undertaken to the wall and installation of the external plant voids the prior approval⁴. However, the wall is a means of enclosure as opposed a building. The external plant is also not a building for the purposes of the GPDO⁵. These developments therefore do not void the prior approval and I do not find the case law brought to my attention otherwise undermines the consent arising from the prior approval.
19. Accordingly, as a matter of fact and degree, the appellants have demonstrated on the balance of probabilities that there has not been a breach of planning control in respect of the material change of use of a warehouse (B8) to a residential use (C3) owing to the prior approval and its lawful completion.

² *Gravesham BC v SSE & O'Brien* [1983] JPL 306

³ *Impey v SSE & Lake District SPB* [1981] JPL 363, [1984] 47 P&CR 157

⁴ *Emanating from RSBS Developments Ltd v SSHCLG* [2020] EWHC 3077 (Admin)

⁵ The Town and Country Planning (General Permitted Development) (England) Order 2015

20. In respect of the wall, the evidence of the appellants is that the height is shown on drawings submitted pursuant to a planning application⁶ as 4000mm at that time and at an agreed datum point. Planning permission was then granted to increase this to a height of 4400mm. It is contended that the final height of the wall is actually 3930mm. It however did not then prove possible for me to verify this figure during my site visit.
21. Whatever the height the wall was before works were initially undertaken, the appellants contend it is now 470mm lower than that approved. The Council and interested parties consider it could be some 500mm higher than that approved.
22. Either way, such a large difference is materially different from that approved and so is not permitted or covered by the planning permission that has been brought to my attention. The case law⁷ advanced by the appellants does not therefore assist them.
23. Accordingly, the appellants have not demonstrated on the balance of probabilities that there has not been a breach of planning control in respect of the wall.
24. The appeal on ground (c) however succeeds in respect of the residential use, only.

The ground (a) appeal

Main Issue

25. The main issue is the effect of the development on the living conditions of neighbouring occupiers.

Reasons

26. The development now before me relates to the raising of the height of the wall on the northern flank of the first-floor rear projection and the installation of an external plant on the external rear wall.
27. In respect of the wall, the appellant contends that it is 470mm lower than granted by a previous planning permission. The Council and interested parties consider it could be some 500mm higher.
28. Whilst I accept that the wall may have always been relatively imposing, even if it is of the height suggested by the Council and interested parties, the wall the subject of the notice and which I observed during my site visit would not unacceptably change or harm the outlook of neighbouring occupiers or result in a further harmful loss of daylight or sunlight. The wall is at its highest where the depth of the adjoining gardens on Portmore Park Road are greatest.
29. In respect of the external plant, this is located within the rear courtyard and relates to heat pumps. A noise impact assessment has then been submitted which concludes that subject to mitigation in the form of an acoustic enclosure, noise emissions would not have an adverse impact on the nearest residential receivers.

⁶ Council ref 2020/2821

⁷ R (on the Application of Midcounties Co-Operative Limited) v Wyre Forest District Council [2009] EWHC 964 (Admin)

30. Accordingly, subject to a suitably worded planning condition, the external plant would protect the amenity of adjoining occupiers and so would not result in unacceptable living standards.
31. I conclude the development is not harmful to the living conditions of neighbouring occupiers and so accords with Policies DM2, DM5 and DM8 of the Elmbridge Local Plan Development Management Plan, 2015. These policies, amongst other things, require development to protect the amenity of adjoining occupiers, demonstrate in respect of noise that it is compatible and will not result in unacceptable living standards and are appropriate. I then find no conflict with Policy CS17 of the Elmbridge Core Strategy, 2011, as this relates to local character.

Planning Conditions

32. Given the wall is substantially complete, no planning conditions are required in this regard. The main parties have then agreed a condition in respect of noise from the external plant. I agree this is relevant and necessary in the interests of the living conditions of neighbouring occupiers. There are then no other relevant conditions in respect of the development that remains before me.

Conclusion

33. For the reasons given above I conclude that the appeal on ground (a) should succeed and planning permission will be granted for the wall and external plant.

Overall Conclusion

34. I will correct the notice so that it has been issued pursuant to the 4-year rule and so that the requirements mirror the alleged breaches of planning control. There is then partial success on ground (c), and I have granted planning permission on ground (a) for the remainder of the development before me, for the reasons given above. In these circumstances the appeals on grounds (f) and (g) do not therefore need to be considered.

Formal Decision – Appeals A and B

35. It is directed that the enforcement notice be corrected by:

- substituting the words '*four (4) years*' and '*external rear wall*' within section 3 of the notice
- deleting requirement 5.3. in its entirety
- inserting the following words in section 5 of the notice:

'3. Reduce the wall on the northern flank of the first-floor rear projection to its original height.

4. Remove the external plant on the external rear wall.'
- renumerate the last requirement in section 5 as '*5.*'
- deleting the words '*the material change of use of a warehouse (B8) to a residential use (C3) and*' from section 3 of the notice

- deleting requirements '5.1. and 5.2.' in their entirety and renumerate the remaining requirements as '5.1., 5.2. and 5.3.'
36. Subject to these corrections, the appeal is allowed, the enforcement notice is quashed 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 development already carried out, namely the raising of the height of the wall on the northern flank of the first-floor rear projection and the installation of an external plant on the external rear wall on land at 47 Thames Street, Weybridge, Surrey KT13 8JG referred to in the notice, subject to the following condition:
1. The details of an acoustic enclosure as detailed in the Noise Impact Assessment by DAA Group dated 4 September 2023 shall be submitted to the Local Planning Authority for approval in writing within 3 months of this appeal decision. The approved noise mitigation scheme shall be carried out in accordance with the approved details within 3 months of approval and shall be maintained as such at all times.

Paul T Hocking

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr M Cole Agent
Mr R Jones Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr P Brooks Elmbridge Borough Council
Ms A Bernard Elmbridge Borough Council

INTERESTED PERSONS:

Mr D Watts
Mr P Lacey
Mr M Freeman

DOCUMENTS:

1. Photograph provided by the Council
2. Building Control information provided by the Council
3. Photographs provided by Mr Watts
4. Photographs provided by Mr Freeman
5. Suggested revised conditions wording provided by the Appellant