



Appeal Decisions

Site visit made on 15 February 2024

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 April 2024

Appeal A Ref: APP/K0425/C/22/3312287

14 Shelley Road, High Wycombe, Buckinghamshire HP11 2UP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Ivan Boonzaaier against an enforcement notice issued by Buckinghamshire Council.
 - The notice was issued on 4 November 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a two storey rear extension and engineering operations to the rear garden resulting in level changes, including the erection of steps and retaining walls.
 - The requirements of the notice are to:
 1. Demolish the two storey extension as shown circled by the black line on photo 1.
 2. Return the land to the ground levels which existed prior to the unauthorised development.
 3. Remove the steps as shown in photo 8.
 4. Remove the retaining walls as shown in photo 9.
 5. Remove all materials and debris resulting from complying with steps 1 to 4 of this Notice from the land.
 - The period for compliance with the requirements is: Nine months.
 - The appeal is 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). 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/K0425/W/22/3312285

14 Shelley Road, High Wycombe, Buckinghamshire, HP11 2UP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Ivan Boonzaaier against the decision of Buckinghamshire Council.
 - The application Ref 22/07127/FUL, dated 31 July 2022, was refused by notice dated 26 October 2022.
 - The development proposed is level alterations to rear garden, erection of timber fence to sides and fence to rear and associated landscaping alterations.
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Decisions

Appeal A

1. It is directed that the enforcement notice is varied by:
 - In section 5 the deletion of requirement 1 in its entirety.
2. Subject to the above variation, the appeal is allowed and the enforcement notice is quashed insofar as it relates to the two storey rear extension.

3. The appeal is dismissed and the enforcement notice is upheld in respect of the engineering operations to the rear garden, including the erection of steps and retaining walls.

Appeal B

4. The appeal is dismissed.

Procedural Matters

5. Since the appeals were lodged, a revised version of the National Planning Policy Framework (the Framework) was published (December 2023). However, the parts of the Framework most relevant to the appeal have not substantially changed from the previous iteration. Consequently, it has not been necessary for me to seek further comments from the main parties in this respect. I have determined the appeals accordingly.
6. In relation to Appeal B, I have taken the description of development from the Council's decision notice and the appellant's appeal form as they more succinctly and accurately describe the development.
7. The appellant's appeal submission for Appeal B refers to an alternative scheme, which includes a reduction in the raising and levelling of the garden along with the erection of boundary fencing. I am mindful however that it is not the purpose of the appeal process to evolve a scheme, and it is important that what I consider is essentially what was considered by the Council.
8. I have considered the alternative scheme in accordance with the principles set out in *Wheatcroft*¹ and refined in *Holborn*². In my view, the alternative scheme materially alters the proposal resulting in a "substantial difference" or "fundamental change" to what was proposed in the application. Furthermore, there is no evidence that the alternative scheme has been subject to any form of public consultation, potentially prejudicing interested parties. As such, I have determined the appeal on the basis of the details that were before the Council when it made its decision.
9. Appeal A was originally made on grounds (a), (c), (f), and (g). In appealing on ground (c) the appellant contends that the breach of planning control stated in the notice does not constitute a breach of planning control. However, the appellant also submits that the breach has not occurred.
10. As such, I consider that there is a hidden ground of appeal on ground (b), namely, that the matters alleged in the notice have not occurred. This has a degree of overlap with the appeal on ground (c). As the Council has had sight of the points raised by the appellant and had opportunity to respond at final comments stage, I am satisfied that no injustice would be caused by me taking the approach that the appeal is also proceeding on ground (b). I have dealt with grounds (b) and (c) together.

Appeal A on grounds (b) and (c)

11. For the appeal to succeed on ground (b) the onus is on the appellant to show that what is alleged in the notice has not occurred as a matter of fact. To

¹ *Bernard Wheatcroft Ltd v SSE* [JPL 1982 P37]

² *Holborn Studios Ltd v The Council of the London Borough of Hackney* [2017] EWHC 2823 (Admin)

succeed on ground (c), the appellant must demonstrate that the matters alleged in the notice do not constitute a breach of planning control.

12. The breach of planning control alleged in the notice comprises two parts, the erection of a two storey rear extension and engineering operations to the rear garden resulting in level changes. It is in relation to the two storey rear extension that the ground (b) and (c) appeals are made.
13. Clearly, there is no dispute between the parties that a two storey rear extension has been erected at the property. This was also readily apparent from my visit. The main thrust of the appellant's case is that the extension has the benefit of planning permission³ ("the 2021 permission"). Whether or not the extension at the property is permitted (i.e whether or not the extension constitutes a breach of planning control) is a matter that should be considered under the ground (c) appeal. Accordingly, the ground (b) appeal fails.
14. It is the appellant's case that the 2021 permission has been implemented and that the two storey rear extension is, in the most part, in accordance with the approved plans. However, it is the Council's position that the extension is not in accordance with the approved plans and as those differences could not be considered de-minimis, planning permission does not exist for the extension erected.
15. The difference between the extension approved under the 2021 permission and the extension erected on site relates to its roof. The 2021 permission included a crown roof, whilst the extension built on site comprises a flat roof. Save for this change in roof design, I have been given no reason to conclude that the development on site does not otherwise accord with the 2021 permission.
16. As pointed out by the appellant, minimal works are required in order to commence a development pursuant to section 56 of the 1990 Act. The 2021 permission was granted on 17 December 2021 and did not include any pre-commencement conditions. There can therefore be no doubt that the development was commenced within a period of three years. It is possible that, following the commencement of a development, a deviation from the approved plans occurs to the extent that it becomes an enforcement matter. In such circumstances, it does not necessarily follow that the approved development has not commenced, or that the entirety of the development is unlawful.
17. Having regard to the extent of the 2021 permission, the crown roof was a minor element of the overall scheme. Accordingly, the change from a crown roof to a flat roof does not, in my judgement, render the entirety of the development not in accordance with that permission or alter the fact that the permission was commenced. As a result, I conclude that the two storey rear extension has the benefit of the 2021 permission.
18. I therefore find that the two storey rear extension is not development without the required planning permission, but is instead in breach of condition 2 of the 2021 permission which required the development to be built and retained in accordance with the approved plans and details. This is not the allegation before me, and therefore the appeal on ground (c) succeeds in relation to the two storey rear extension.

³ Council Reference: 21/07633/FUL

Appeal A on ground (a) – the deemed planning application, and Appeal B

19. Having regard to my findings on the ground (c) appeal, I have dealt with the ground (a) appeal in relation to the engineering operations to the rear garden only. Despite the differences between the breach of planning control alleged in Appeal A and the description of development in Appeal B, both appeals essentially relate to the same development. The main difference between the two appeals is that Appeal B includes the erection of boundary treatments and landscaping which have not yet been completed on site.
20. On this basis, and having regard to the evidence of the parties, the main issues that I will consider for these appeals are broadly the same. I am therefore satisfied that the ground (a) appeal and Appeal B can be considered together.
21. The Council referred to Policy DM36 of the Wycombe District Local Plan (adopted August 2019) (WDLP) in both the reasons for issuing the enforcement notice and for refusing the planning application. However, as this policy relates specifically to extensions and alterations to existing dwellings, it is therefore no longer directly relevant to the appeals before me.

Main Issues

22. The main issues are the effect of the development on:

- the living conditions of occupiers of 12 Shelley Road, with particular regard to outlook and privacy; and
- the character and appearance of the area.

Living Conditions

23. The appeal property is a detached dwelling located to the north-east of Shelley Road. The appeal site is situated on a slope with the ground sloping down away from Shelley Road towards an area of public open space to the rear of the property known as Tom Burt's Hill.
24. Following the engineering operations there is now a significant change in ground levels between the rear gardens of the appeal property and 12 Shelley Road. The boundary between the properties is made up of a low-level brick wall nearest to the dwellings themselves, with the remainder of the boundary consisting of a close boarded timber fence with concrete posts.
25. At present, there are clear views from the raised area of garden over the low-level brick wall into the rear garden of No. 12. In my view, this undoubtedly results in a loss of privacy being experienced by occupiers of No. 12 when using their rear garden space. However, this loss of privacy would be overcome by the continuation of the timber fencing along the full length of the boundary as proposed under Appeal B.
26. When viewed from the garden of No.12, due to the raised ground levels at the appeal property, the existing boundary fencing appears unusually high. Particularly when stood towards the rear of the garden, the fence is an overbearing and dominating feature. This impact would only be further exacerbated by the erection of fencing along the entire length of the boundary between the properties.

27. The erection of the additional boundary fencing as proposed in Appeal B would clearly overcome any concerns with regards to a loss of privacy. Nevertheless, it would result in a further sense of enclosure compared to the current situation and would appear as an unduly oppressive and overbearing feature when viewed from the back garden of No. 12.
28. The appellant has also referred to Class A of Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, which would permit the erection of a fence in this location up to a height of 2m without requiring planning permission. Whilst a fence of this height would alleviate many of the concerns with regards to scale and dominance, given the significant difference in the ground levels between the properties, it would result in a further loss of privacy for users of No. 12's rear garden.
29. I therefore conclude that the development unduly harms the living conditions of the occupiers of No. 12. Accordingly, the development conflicts with Policy DM35 of the WDLP, and guidance contained within the Council's Householder Planning and Design Guidance Supplementary Planning Document (adopted January 2020) (SPD). These seek, amongst other things, to ensure that developments do not adversely affect the amenities of neighbouring properties.

Character and Appearance

30. The Council contend that the engineering operations and raised ground levels adversely impacts upon the visual amenity of the surrounding area, including detracting from the naturally sloping character and appearance of Tom Burt's Hill and adjacent residential gardens.
31. The engineering operations themselves have little effect on the character and appearance of the area. Despite the sloping topography of Tom Burt's Hill and adjacent residential gardens, due to a combination of existing boundary treatments and vegetation, the ground works are not immediately apparent when viewed from Tom Burt's Hill to the rear of the site.
32. However, as a consequence of the raised ground levels, the boundary fencing between the appeal site and No.12 protrudes noticeably above any adjacent boundary treatments. Although the materials are appropriate and in keeping with the boundary treatments at adjacent properties, due to its height and elevated position the fencing appears as an incongruous feature when viewed from the public open space to the rear of the site.
33. Whilst the impact of the fencing is not severe, it nevertheless causes some limited harm. The erection of further fencing and completion of the boundary treatments as proposed under Appeal B would only serve to exacerbate that harm.
34. I therefore conclude that the development is harmful to the character and appearance of the area, contrary to Policies CP9 and DM35 of the WDLP, and guidance contained within the SPD. These seek, amongst other things, that developments improve the character of the area and are of high-quality design.

Conclusion

35. For the reasons given above, having considered the development plan as a whole and all material considerations, I conclude that planning permission should not be granted in response to either the ground (a) appeal against the

enforcement notice and deemed application, or to the Section 78 appeal against the refusal of planning permission. Therefore, Appeal A on ground (a) fails, as does Appeal B.

Appeal A on ground (f)

36. An appeal on this ground is that the steps required to be taken exceed what is necessary to remedy the breach of planning control, or as the case may be, the injury to amenity. The notice seeks to remedy the breach of planning control by requiring the demolition of the two storey rear extension, and by returning the land in the rear garden to the ground levels which existed prior to the development, including the removal of the steps and retaining wall.
37. I have concluded in the ground (c) appeal above that the two storey rear extension has the benefit of the 2021 permission. It therefore follows that the requirement to demolish the extension should be deleted.
38. However, with regard to the engineering operations to the rear garden, I do not consider that the requirements are excessive or that lesser steps could remedy the breach of planning control. The notice does no more than seek remedy of the breach. There are no lesser steps drawn to my attention by the appellant or any obvious alternatives that would remedy the breach of planning control, which is the purpose of the notice. Therefore, in relation to the engineering operations in the rear garden, the appeal on ground (f) fails.

Appeal A on ground (g)

39. The appeal on ground (g) is that the time given to comply with the requirements of the notice is too short. The notice specifies a period of nine months after the notice takes effect.
40. The appellant argues that the compliance period is insufficient to carry out the required works, as professionals would need to be instructed with many being booked up for several months ahead. A compliance period of at least one year has been suggested to comply with all of the requirements stated in the notice.
41. Following my findings above, the requirement to demolish the two storey rear extension has now been deleted. This significantly reduces the amount of work required by the notice. In addition, there is no evidence before me to demonstrate that it would be difficult to find suitable professionals to carry out the remaining requirements, or that those works could not be physically carried out within the period specified in the notice. Accordingly, the appeal on ground (g) fails.

Conclusion

Appeal A

42. For the reasons given above, I conclude that the appeal in respect of the two storey rear extension should succeed on ground (c). Accordingly, the enforcement notice is quashed insofar as it relates to the two storey rear extension. In these circumstances, the appeal under the various grounds set out in section 174(2) of the 1990 Act, 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.

43. For the reasons given above, I conclude that the appeal should not succeed in respect of the engineering operations to the rear garden resulting in level changes, including the erection of steps and retaining walls. I have therefore upheld the enforcement notice with a variation.

Appeal B

44. For the reasons given above, I conclude that the appeal should be dismissed.

David Jones

INSPECTOR