

Appeal Decision

Hearing held on 20 August 2024

Site visit made on 20 August 2024

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th August 2024

Appeal Ref: APP/D3640/C/23/3319565

Land at 55A Robins Bow, Camberley, Surrey GU15 3NP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act). The appeal is made by Mr Nicholas Lambert against an enforcement notice issued by Surrey Heath Borough Council.
- The notice was issued on 21 February 2023.
- The breach of planning control as alleged in the notice is Without planning permission, the construction of a dormer window, on the southern roof elevation.
- The requirements of the notice are: 1) Demolish and remove the dormer window on the southern roof elevation; 2) Reinstate the roof, using materials that match the existing dwelling, as approved by planning permission 15/0756; 3) Remove from the site all resulting materials and debris, as a result of taking steps 1, 2, and 3.
- The period for compliance with the requirements is 6 months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), and (f) of the Act. 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.

Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Preliminary Matter

1. It became evident during the Hearing that the dwelling was constructed with the dormer as a single building operation, rather than separately. The main parties do not consider the description of the alleged breach needs correcting and I see no reason to conclude differently.

Ground (c)

2. To succeed under this ground of appeal the appellant needs to demonstrate, on the balance of probabilities, that the construction of the dormer window on the south elevation did not constitute a breach of planning control.
3. It is claimed that the dormer is 'permitted development' under the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('the GPDO'). Article 3(1) and Class B of Part 1, Schedule 2 of the GPDO grant planning permission for the enlargement of a dwellinghouse consisting of an addition or alteration to its roof, subject to conditions and limitations.

4. The dormer cannot comprise an enlargement of the dwelling because it was constructed as part of the house as a single operation. Even if this was not the case, for the same reasons explained by a previous Inspector¹, the dormer did not accord with condition B.2(a) of Class B at the time it was substantially complete. The development cannot retrospectively benefit from the planning permission granted by the GPDO and it is in breach of planning control.
5. The appeal under ground (c) must therefore fail.

Ground (f)

6. Ordinarily, an appeal under ground (f) would be assessed after an appeal under ground (a) has failed. However, it was agreed by the main parties that I should allow the appeal under ground (f) by varying the notice to require the dormer's south elevation windows to be fixed shut. It was suggested that this would remedy the breach of planning control and avoid any need for me to consider the appeal under ground (a).
7. To clarify, for an appeal under ground (f) to succeed, the appellant needs to show that the steps required to be taken exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity which has been caused by the breach. It is therefore necessary for me to identify the purpose of the notice, which in this case is to remedy the breach, rather than any injury to amenity. I cannot vary the requirements to achieve any alternative purpose.
8. As set out above, the development cannot retrospectively claim compliance with planning permission granted by the GPDO. Therefore, varying the requirements as suggested would not achieve the purpose of the notice. There are no obvious alternative or lesser steps which may achieve the purpose of the notice with less cost and disruption.
9. The appeal under ground (f) therefore fails.

Ground (a) and the Deemed Application for Planning Permission

10. The main issues are the effect of the development on: the character and appearance of the area; and the living conditions of residents of 57A Robins Bow, with particular regard to privacy and outlook.

Character and Appearance

11. The site is within a post-war housing estate characterised by a mix of mainly semi-detached, single and double storey houses separated by regular gaps. The dwellings at Nos. 55A and 57A are later developments to the estate and form the ends of terraces which are closer together than many other houses on the estate. There are examples of modestly sized dormers within the estate with different finishes, including those with white cladding.
12. Notwithstanding the presence of other dormers locally, the development is an unsympathetic addition to what would otherwise be a modestly proportioned dwelling. It adds significant bulk to the dwelling, which appears cramped within the tightly arranged plot on account of the size of the

¹ Appeal ref: APP/D3640/X/21/3280065

dormer close to the boundary. The large expanse of white cladding makes it a noticeable and brash feature in the street scene. All of this is at odds with the more neatly arranged and spacious surroundings which are typical of the Post War Open Estates Area defined in the Council's Western Urban Area Character Supplementary Planning Document (SPD) (2012).

13. The development therefore harms the character and appearance of the area, contrary to Policy DM9 of the Council's Core Strategy and Development Management Policies 2011-2028 (2012) (the CSDMP). This also conflicts with the Council's Western Urban Area Character SPD and Residential Design Guide SPD (2017), and the National Planning Policy Framework (the Framework). These encourage development to comprise high quality design which respects its surroundings, amongst other things.

Living Conditions

14. The site is at a higher level than No.57A and the development has an imposing presence on views from the rear garden of that property. It does not affect the daylight or sunlight at No.57A in any meaningful way on account of the orientation of the plots, but it does have a harmful effect on the outlook enjoyed from the garden of that property due to its height and mass close to the boundary.
15. The south elevation windows are entirely obscure glazed to an appropriate standard and are non-openable up to a height of 1.7m above internal floor level. This prevents unacceptable overlooking of neighbouring properties. Any person with an eye level above 1.7m in height would need to stand close to the windows to see into No.57A when the windows are open, which is unlikely to be a regular occurrence.
16. Despite its south elevation windows being obscure glazed and only openable at high level, perceived overlooking is experienced within the garden of No.57A when those windows are open. This is due to the number of windows, the partial views into the development which they provide, and their proximity to No.57A.
17. Although the development is close to the side boundary, the gap is such that noise from within the development is unlikely to cause unacceptable harm to the living conditions of residents at No.57A. I do not doubt that sounds from within the development can be heard within the garden of No.57A, perhaps clearly when windows are open, but this is a common and expected situation on housing estates. Furthermore, the nature of any noise would be typical for a residential environment.
18. The development therefore harms the living conditions of residents of No.57A on account of its unacceptable effect on their outlook and sense of privacy. This is contrary to Policy DM9 of the CSDMP and the advice set out in the Council's Residential Design Guide SPD and the Framework. These seek to achieve, amongst other things, development which respects the amenities of occupiers of neighbouring property.

The Fallback Position

19. Determination of the appeal under ground (a) and the deemed application for planning permission must be made in accordance with the development

plan unless material considerations indicate otherwise. A fallback position is one such consideration, as an option open to the appellant if the appeal fails.

20. It is not disputed that a replacement dormer of the same dimensions, external materials and window arrangement could be constructed in accordance with planning permission granted by the GPDO, provided it would also comply with Condition 5 of planning permission reference 15/0756 ('Condition 5'). This is because matching external materials have been used on a north elevation dormer, which is now exempt from planning control.
21. Read alongside the approved plans referred to by condition 3 of planning permission reference 15/0756, it is clear that the first sentence of Condition 5 seeks to require the kitchen window to be obscure glazed, and non-opening, unless if the opening part of that window is at least 1.7m above the finished ground floor level of the dwelling. In that context, it is also clear that the phrase 'other openings' in the second sentence of Condition 5 is referring to any other opening parts of windows. There is no indication in the planning permission that it may be ambiguously referring to any clear glazed windows or extensions.
22. Condition 5 does not prohibit the erection of a dormer on the south roof slope, provided it would not include opening windows on the south elevation. Such development, in accordance with the planning permission granted by Article 3(1) and Class B of Part 1, Schedule 2 of the GPDO, would be the appellant's fallback position. There is a real prospect that the fallback position would be carried out following compliance with the notice.
23. The fallback position would cause exactly the same harm to the character and appearance of the area as the existing development. It would also cause the same level of harm to the outlook of residents at No.57A. There would, however, be no unacceptable sense of loss of privacy caused by the fallback position, as its south elevation windows would be fixed shut to avoid perceived overlooking of No.57A. The fallback position would therefore represent an improved form of development compared to the existing.
24. It should be borne in mind that planning enforcement action should be remedial, rather than punitive. I see no benefit in upholding the notice when the appellant could lawfully erect the fallback position. It is open to me to grant planning permission subject to a condition requiring the south elevation windows to be fixed shut, which would achieve the same development as the fallback position with less cost and disruption. Moreover, I can attach a planning condition prohibiting the insertion of additional windows in the south elevation of the development, which was agreed as necessary to protect the privacy of neighbouring residents.

Conclusion on the appeal under Ground (a) and the deemed application for planning permission

25. I have found the development is in conflict with the development plan, SPDs and the Framework. However, in this case, the fallback position is another consideration which strongly indicates planning permission should be granted for the development. I shall therefore grant planning permission for the development subject to conditions.

26. For the above reasons, it is necessary to attach conditions requiring the south elevation windows to remain fixed shut and obscure glazed and to prevent other windows being inserted in the south elevation of the development.
27. It was agreed by the main parties that the opening parts of the windows could be chemically sealed and have their handles removed to ensure they would remain fixed shut. The text used in condition 1 below is necessary to formally require the approval of details of how the windows will be fixed shut, and the implementation and retention of those details. It has strict timescales and severe consequences for non-compliance which were agreed by the main parties as reasonable and necessary for the condition to be enforceable.
28. The development has already been built and as such there is no need for me to attach a condition specifying any plans which the development shall be retained in accordance with. The Council has copies of plans showing the existing roof and elevation layouts, which it can rely on for enforcement purposes should it need to.
29. The appeal under ground (a) therefore succeeds and I shall grant planning permission for the development subject to conditions.

Conclusion

30. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the dormer window on the south roof elevation as described in the notice.

Formal Decision

31. 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 Act for the development already carried out, namely the construction of a dormer window on the south roof elevation at 55A Robins Bow, Camberley, Surrey GU15 3NP as shown on the plan attached to the notice and subject to the following conditions:
 - 1) The south elevation dormer hereby permitted shall be demolished and the south elevation roof slope shall be reconstructed using materials to match the existing dwelling in accordance with planning permission reference 15/0756 within 6 months of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 1 month of the date of this decision details of how the south elevation windows will be fixed shut shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for the implementation of those details.
 - ii) If within 3 months of the date of this decision the local planning authority refuse to approve the details or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

- iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted details shall have been approved by the Secretary of State.
 - iv) The approved details shall have been carried out and completed in accordance with the approved timetable.
 - v) Upon implementation of the approved details specified in this condition, those details shall thereafter be retained and the south elevation windows shall remain fixed shut at all times.
 - vi) 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.
- 2) The south elevation windows of the development hereby permitted shall remain obscure glazed.
- 3) No additional windows shall be created in the south side elevation or roof slope of the development hereby permitted.

L Douglas

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Ben Norton	Planning agent
Nick Lambert	The appellant

FOR THE LOCAL PLANNING AUTHORITY:

Lee Payne	Senior Planning Enforcement Officer
Shannon Kimber	Senior Planning Officer

INTERESTED PARTIES:

Douline Schoeman	Neighbour
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DOCUMENTS PROVIDED AT THE HEARING

- Agreed existing roof and elevation plans
- Suggested conditions