



Appeal Decision

Hearing held 16 April & 6 August 2024

Site visit made on 12 December 2023

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 September 2024

Appeal Ref: APP/D3640/C/22/3295907

Land on the South-East Side of 79 Guildford Road, Bagshot GU19 5NS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Karl Kavanagh against an enforcement notice issued by Surrey Heath Borough Council.
- The notice, numbered 19/0116, was issued on 1 March 2022.
- The breach of planning control as alleged in the notice is "Without planning permission; Operational development consisting of the partial erection of a new dwelling on the land in connection with no longer extant planning permission 16/0281. Additionally, the unauthorised alteration of land levels, including the installation of a hard surface. The unauthorised installation of temporary structures including stationing of mobile homes, containers, skips and other moveable structure on the land as well as the storage of building materials, vehicles, plant and machinery in connection with these unauthorised operations and the material change of use of the land to a separate residential planning unit by subdivision" [*sic*].
- The requirements of the notice are:
 - (i) "Cease the use of the Land edged in red on the site location plan for residential purposes and the siting of mobile homes.
 - (ii) Permanently remove the mobile homes from the Land and, remove from the Land any ancillary structures which have been erected in connection with the siting of mobile homes.
 - (iii) Permanently remove from the land, to an authorised place of disposal, any resultant waste associated with complying with the above steps i).-ii).
 - (iv) Demolish and/or dismantle and remove from the land the, partially-built dwelling structure in the northwest corner of the site, as shown edged in blue on the site location plan.
 - (v) Following completion of step (i-iv) above, permanently remove from the land all ancillary structures and/or material introduced on to the land, Including but not limited to; outbuildings, caravans, containers, sheds, skips, cabins, building materials, plant, machinery, furniture and vehicles.
 - (vi) Following completion of step v) above, restore the land to its previous condition, as it was prior to the breach of planning, by breaking up the hardstanding and permanently removing the resultant broken debris from the Land to and authorised place of disposal
 - (vii) Following completion of step Vi) above, Restore the land back to original ground level so that it matches that of the Land immediately surrounding it, the exposed soil to be reseeded with grass.
 - (viii) Permanently remove from the land to an authorised place of disposal, any waste associated with complying with the above steps" [*sic*].
- The period for compliance with the requirements is: Six (6) months after the notice takes effect.
- The appeal is made on the grounds set out in section 174(2)(a), (c), (d), (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.

Summary Decision: The appeal is allowed and the enforcement notice is quashed.

Preliminary Matters

1. I visited the site on 12 December 2023, after which I determined that a Hearing was required to explore various matters. The parties confirmed at the Hearing that nothing had materially changed at the site and there was no need for me to undertake a further site visit as part of the Hearing proceedings.

The Enforcement Notice

2. An enforcement notice must inform the recipient with reasonable certainty what the breach of planning control is and what must be done to remedy it. If necessary, before determining the appeal, I have a duty to put the enforcement notice in order. My powers under section 176(1)(a) of the Town and Country Planning Act 1990 as amended (the 1990 Act) include to correct any defect, error or misdescription in the enforcement notice or, under section 176(1)(b), to vary the terms of the enforcement notice. In each case, the only test is whether the correction or variation would cause any injustice to the appellant or the local planning authority (LPA).
3. Planning permission was granted under LPA ref 16/0281 for the 'erection of a three bedroom dwellinghouse following demolition of existing' (the 2016 Permission). Work has commenced on the construction of a dwelling. The allegation suggests that the 2016 Permission is not extant, but also that the work is in connection with it, which is somewhat confusing. Whether the construction can be pursuant to the 2016 Permission is a matter for the ground (c) appeal. The allegation would be clearer if reference to it was deleted. Whatever the status of the 2016 Permission, as the allegation is the erection of a dwelling without planning permission, no injustice would arise from such a correction.
4. The allegation then continues 'additionally...' before describing the alteration of ground levels and laying of a hard surface. In a separate sentence, various temporary structures are listed. At the Hearing, the Council confirmed that there had been no material raising of ground levels and that this aspect should be removed. It was also confirmed that there were no temporary or moveable structures other than those listed, so a more precise closed list could be used. The use of punctuation throughout the allegation makes it unclear whether the various matters listed are linked to the construction of the dwelling or are alleged to be separate breaches of planning control.
5. The part of the allegation referring to 'temporary structures' also includes the stationing of mobile homes. No use of the mobile homes is specified in the allegation, although the final sentence also alleges the material change of use of the land to a separate residential planning unit by subdivision. There is no suggestion within the four corners of the Notice (nor the written evidence and oral submissions) that residential uses are going on anywhere other than in the mobile homes and the requirements of the notice demand cessation of the use for residential purposes and siting of mobile homes as one action.
6. Furthermore, at the Hearing, both parties confirmed that, other than the partially constructed dwelling, all other things specified in the matters alleged, including the mobile homes, were part and parcel of, or facilitating, the

construction of the dwelling. This is not at all clear from the allegation, but is an agreed understanding. Therefore, the allegation could be corrected, to allege the part construction of a dwelling, facilitated by the hard surface, various temporary structures and the stationing of mobile homes for residential purposes.

7. This correction, while significant, would not cause injustice to either party because there is no disagreement as to the situation on the ground and the appeal has been made on the basis that the partial construction of the dwelling has been carried out pursuant to the 2016 Permission. There is no separate case made, for example, that the other matters might not be a breach of planning control in their own right. There would also be no injustice in respect of the other grounds of appeal because all the matters would remain listed in the allegation. Whatever the outcome of the appeal, if it were to later become apparent that the other matters constituted a separate breach of planning control, the Council could consider issuing a new enforcement notice targeting them.
8. The requirements of the Notice contain a number of typographical inconsistencies such as misplaced or missing capital letters and commas. There is some repetition in the steps. These minor matters could be corrected without causing injustice.
9. It is also important that the requirements flow logically from the allegation. Consequential changes would be required from any redrafting of the allegation. However, despite the drafting errors, the requirements are clear that the purpose of the Notice is to remove all items from the Land and return it to its original condition. Therefore, provided that the overall effect of the Notice is the same, there would be no injustice to either party from any corrections to make the links to the allegation clearer and the requirements more precise and logical.
10. For the avoidance of doubt, corrections to the allegation are set out in my formal decision. In light of my decision on the appeal, however, it is not necessary to set out the corrections to the requirements.

Ground (c)

11. The appeal on ground (c) is that there has been no breach of planning control. The onus of proof is on the appellant and the required standard is 'on the balance of probability'. The appellant's position in this case is, in essence, that the development in respect of the partially completed dwelling is permitted by the 2016 Permission and that all other matters alleged are on site and occupied in connection with those works.
12. There are 3 main issues. First, it is necessary to consider what the 2016 Permission was for; second, whether the terms of any conditions might have rendered a commencement unlawful; and third, whether the extension of the existing dwelling is incompatible with the implementation of that Permission.

The 2016 Permission

13. The 2016 Permission was for the "erection of a detached three bedroom dwelling house following demolition of existing". The Council suggest that the word 'following' within the description of development permitted means that the existing house should have been demolished before the construction of the

- new house began. Since the permission was granted, the existing house has been modified and extended, and is still standing.
14. Like a previous permission granted in 2015, the intent of the original applicant of the 2016 Permission appears to have been to replace the existing dwelling with a new one. That is described within the submissions supporting their application and formed the basis of a case that the trade-off in buildings would mean that the development was not inappropriate in the Green Belt. The intent is reflected in the way that the description of the development is worded.
 15. The case of *Lambeth London Borough Council v SoS Housing, Communities and Local Government and others* [2019] UKSC 33 indicates that a planning permission should be interpreted, through the eyes of a reasonable reader, by finding the natural and ordinary meaning of the words used, viewed in their particular context and in the light of common sense.
 16. From the Council's decision notice, the context in this case includes 5 conditions and 3 plans that are explicitly listed in condition 3 of the 2016 Permission. Those plans are a location plan, a proposed site plan, and a drawing showing floor plans and elevations. No other plans and documents, such as those describing the applicant's intent are listed on the decision notice, so any successor in title might not appreciate any need to refer to them.
 17. The ordinary meaning of the word 'following' would imply that the first action (in this case the erection of a dwelling) would take place after the second (demolition of the existing). The question in this case is whether that must happen, and if so, to what extent.
 18. It is clear from the site plan that the existing and proposed dwellings would occupy, in part, the same land. It was, therefore, necessary to undertake at least some demolition prior to the erection of the new dwelling and, irrespective of who carried out those works, there is no dispute that this is what happened. A former side 'wing' of the existing dwelling was demolished, after which, foundations were dug for the new dwelling and then walls began to be erected.
 19. The *Lambeth* case considered whether a requirement that was absent from a condition could be implied from the description of the development. Unlike the present case, it concerned an application under Section 73 of the 1990 Act to 'vary' a condition. While the restrictive condition in question had not been reimposed on the new permission, the description of development was explicit in setting out what the new restriction would be.
 20. In contrast, there is nothing explicit in the 2016 Permission that requires the demolition of the existing dwelling to be completed. There are no conditions about phasing and the description of development does not refer to complete demolition of the entirety of the existing.
 21. Even if a description alone could require all of the permitted matters to be done in their entirety or phased in a particular way, in this case additional words, such as 'only' following, or following 'complete' demolition would be needed to reach that interpretation. The description certainly does not explicitly say that construction of the new development cannot commence until the entirety of the existing dwelling has been demolished. The description of development in *Lambeth* was clear and did not require additional words to be read into it.

22. Furthermore, the case of *R. (oao Hart Aggregates Ltd) v Hartlepool BC* [2005] EWHC 840 (Admin) indicates that where an LPA wishes to impose any obligation upon an applicant by way of a requirement or prohibition, it should do so in express terms. It goes on to say that the need to spell out any requirement or prohibition in clear terms applies with particular force where a condition is said to prevent not merely some detail of the development, but the commencement of any development pursuant to the planning permission.
23. The case of *Hart Aggregates* concerned conditions and whether they might prevent development. Nevertheless, I find strong parallels to the current situation. In this case, part of the existing dwelling has been demolished, following which, part of the new dwelling has been erected. Those operations are within the description of the development. The description of development sets out what can be done pursuant to the 2016 Permission, but it does not set out any clear requirement or prohibition. There is no condition to control the sequence of operations or require any part of the development to be carried out in full, or indeed, at all. It does not say that the construction of the new dwelling cannot commence until the existing one has been completely demolished.
24. Therefore, while the natural and ordinary meaning of the word 'following' is that one action should take place after another, reading a requirement into the description to do the first only following completion of the second, in the context of the whole decision notice, is somewhat strained. I, therefore, find it more likely than not that the partial erection of a dwelling that has taken place, can have occurred pursuant to the 2016 Permission while part of the existing dwelling (albeit the main part) remains standing.

Conditions

25. There are 5 conditions on the 2016 Permission. The first requires development to begin within 3 years and there is no dispute that part of the existing dwelling was demolished and the foundations were dug for the new dwelling within this time. If it were relevant whether the demolition was pursuant to the 2016 Permission or some other planning permission, then, without any substantive contrary evidence, an email from the previous owner describing that he was implementing the 2016 Permission by demolition work makes it more likely than not that it was.
26. Condition 3 requires the development to be built in accordance with the three plans previously noted. The site plan shows the proposed new dwelling drawn in heavy outline and the existing dwelling shown with a red dashed line rather than the black lines that might usually denote buildings. The plan does not specify any demolition, although the new dwelling partially overlaps the existing, and the land on which the existing is stood is labelled 'Garden'.
27. Even if condition 3, which requires development to be carried out in accordance with the site plan, needed the garden to be laid out to comply with the condition, it does not specify when final compliance with the condition is required. Moreover, the Notice does not target a completed development. Neither the condition, nor any other part of the 2016 Permission, specifies that the development must be completed at any given time in accordance with that plan. It would be unusual for gardens to be laid out before the construction of a dwelling had finished and so I find that condition 3 and its reference to the site plan showing garden areas, does not prevent the partial erection of a dwelling.

28. The other three conditions, nos. 2, 4 and 5, contain the words 'no development shall take place' or 'no development shall commence' until certain actions have been completed. The wording of these conditions clearly places a prohibition on development until the specified actions have been completed. While there is a suggestion that details were sent to the Council, the appellant, who carries the burden of proof, cannot provide convincing evidence that the specified actions have been completed. However, there is no dispute that in order for a breach of these conditions to render development pursuant to the 2016 Permission unlawful, the conditions must go to the heart of the permission.
29. Condition 2 concerned matters of external materials. It is perfectly reasonable for the Council to seek to control such matters, however, there is no obvious reason in this case why agreement over this detail of external finishes needs to be reached before any other development begins. Therefore, I find that condition 2 does not go to the heart of the 2016 Permission.
30. Condition 4 relates to a Method of Construction Statement. It would clearly be prudent for some of the details specified in the condition that could affect off-site interests, such as traffic management and hours of construction, to be agreed before any works commenced. However, this condition deals with the process of carrying out the development, not any detail of the finished development itself. That is, a breach of the condition, would not affect how the development related to the site and its surroundings or alter its ultimate impacts. The development is a small one, the reason for the condition is exclusively concerned with the operation of the highway network, and there is no indication that there would be any wider, or long term environmental effects stemming from construction activities. Therefore, I find that it does not go to the heart of the 2016 Permission.
31. Condition 5 relates to tree protection. It requires the development to be carried out wholly in accordance with an arboricultural report that had already been submitted. There was, therefore, no finer detail required surrounding which trees should be protected or how that protection should be carried out. The condition only seeks to prohibit development prior to the provision of photographs showing that the tree protection measures had been implemented.
32. I understand how photographs could assist with monitoring compliance with a condition and they might be a useful tool for enforcement. However, the process of taking and submitting photographs would not in itself protect the trees. It is the, already provided, details of protection measures that would achieve that aim and, irrespective of the photographs, the condition requires development to be carried out in accordance with those. Therefore, I find that the requirement in condition 5 to provide photographs before development commences does not go to the heart of the 2016 Permission.
33. With regard to the foregoing, I find that none of the conditions, nor any breach of them, would prevent the partial erection of the dwelling alleged being carried out in accordance with the 2016 Permission.

Works to the existing dwelling

34. After the 2016 Permission was granted, another planning permission was granted permitting the extension and alteration of the existing dwelling (the Extension Permission). The existing dwelling was then extended, albeit not in

accordance with the Extension Permission. The extension has subsequently become lawful through the passage of time.

35. In any case, the Council submits that the extension of the existing dwelling is incompatible with the 2016 Permission. This is on the basis that an extended dwelling is not the existing dwelling referred to in the 2016 Permission, and that the decision to extend the existing dwelling rather than demolish it means that there would be two dwellings at the site.
36. However, I see no obvious reason why, in general terms, extending a dwelling would mean that it could no longer be regarded as an 'existing' one. This might be relevant in a hypothetical situation where it was necessary to distinguish between a dwelling as it previously existed and the same dwelling in an extended form, but in the present case the distinction is between one that was already on the site and a new one. Even extended, the one already there, and still there, albeit with some additions, would clearly be the existing one.
37. Moreover, even extended, that 'existing' dwelling could theoretically still be demolished, so there is no incompatibility on that basis. Importantly, the works involved in extending the existing dwelling are not incompatible with the 2016 Permission because the demolition suggested in the Extension Permission, and that actually carried out, is the same as that needed to make space for the new dwelling.
38. Regarding the second point, and whether or not it might result in the formation of a separate planning unit, I have already found that the 2016 Permission does not require the entirety of the existing dwelling to be demolished prior to the partial erection of the new one. Therefore, incompatibility would only arise if there was a requirement to complete the laying out of the site in accordance with condition 3. The works to extend and alter the existing dwelling do not physically prevent that happening if it were required and it would not prevent the partial erection of the dwelling alleged.
39. Therefore, neither the two planning permissions granted, nor the works actually undertaken are incompatible. Accordingly, this is not a reason to find that the matters alleged are not permitted by the 2016 Permission.

Other matters

40. As set out in my preliminary matters, it became clear at the Hearing that the Notice is primarily intended to target the partially constructed dwelling. There was no dispute that the other matters within the allegation, however it may be set out, are only on the site as a consequence of the 2016 Permission and the appellant's desire to implement it. There is no suggestion that, were it not for the 2016 Permission, the other works would somehow be lawful.
41. Nor has it been suggested that, in the event that the partial construction of the new dwelling is found to be lawful, pursuant to the 2016 Permission, the Notice should be corrected to only refer to those other matters. Indeed, that would not be anticipated by either party so, even if that were a theoretical outcome, it would not be available as injustice could arise. Therefore, having considered the partially constructed dwelling, it is not necessary for me to go on to consider the other matters alleged in any detail.

Conclusion on ground (c)

42. The Notice seeks to target a partially constructed dwelling. Notwithstanding the description of development, in consideration of the ground (c) appeal, I have found that the 2016 Permission does not require the existing dwelling to have been demolished before that can happen. There is no breach of condition that would go to the heart of the 2016 Permission such that it would render any commencement of development unlawful. Works to extend the existing dwelling have not been shown to be incompatible with the carrying out of development pursuant to the 2016 Permission. The other matters alleged are a consequence of the partial construction of the dwelling and are not regarded by the Council to be separate, unconnected breaches of planning control.
43. Thus, for the reasons given, I find it more likely than not that the 2016 Permission was lawfully implemented, remains extant and that the partial erection of the dwelling accords with it. It does not, therefore, represent a breach of planning control and I conclude that the appeal on ground (c) should succeed. Accordingly, there is no need for me to go on to consider the other grounds of appeal.

Formal Decision

44. The Notice is corrected by:

In section 3, the matter which appears to constitute a breach of planning control, delete the entire paragraph outlining the allegation and replace with:

Without planning permission:

- i) The partial erection of a new dwelling on the Land in the location edged blue on the plan attached to this enforcement notice.
- ii) Facilitating works comprising the laying of hard surfacing and siting of containers, skips and other moveable structures, the storage of building materials, vehicles, plant and machinery.
- iii) The material change of use of the Land by the stationing of mobile homes for a separate self-contained residential use.

45. Following the above correction, the appeal is allowed and the enforcement notice is quashed.

M Bale

INSPECTOR

Appearances

For the appellant

Christiaan Zwart – 39 Essex Chambers

Karl Kavanagh

For the Council

Hugh Richards – No 5 Chambers

Maxine Lewis – Corporate Enforcement Team Leader

Iain Williams MRTPI – Team Leader, Planning