



Appeal Decision

Site visit made on 3 September 2024

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 September 2024

Appeal Ref: APP/X0360/C/23/3331731

Land at 10 and 12 Culver Lane, Earley, RG6 1DS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Mahboob Ali Khan against an enforcement notice issued by Wokingham Borough Council.
 - The notice was issued on 29 September 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a building and associated hardstanding as shown hatched blue in the approximate location on the plan attached to the notice.
 - The requirements of the notice are: (i) Demolish the building in the approximate position hatched in blue on the attached plan. (ii) Remove the foundations and grey paving slabs as shown in the approximate location hatched in blue on the attached plan. (iii) Disconnect and remove all services. (iv) Permanently remove from the land all materials resulting from compliance with steps (i), (ii) and (iii) above.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b) and (f) 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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Decision

1. The appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matter

2. This Decision takes into account the revised National Planning Policy Framework (the Framework), published on 19 December 2023.

Ground (b) appeal

3. The ground of appeal is that the matter alleged in the enforcement notice has not in fact occurred. The onus is on the appellant to show why their appeal should succeed on this ground, the relevant test of the evidence being on the balance of probability.
4. The appeal property contains a detached bungalow. The notice alleges the construction of a building and an associated hardstanding. A single storey structure with external walls faced in brick and a pitched tiled roof over, has been erected towards the end of the property's rear garden. Part of the structure also encroaches into the rear garden of the neighbouring property at 10 Culver Lane (No 10). There is an open-sided porch at the front of the structure, with a white UPVC lean-to attached to the rear. The structure contains a living area, double bedroom, a small kitchen and a bathroom and is

used as ancillary living accommodation for the bungalow. A hardstanding formed from paving slabs has been laid at the front and side of the building.

5. The structure clearly meets the definition of a building set out in the Act at s336(1), which includes any structure or erection, and any part of a building. Physical attachment to the outbuilding in the rear garden of No 10 is of limited relevance as to determining whether the structure is a building for the purposes of the above definition. There is no functional relationship between the structure and the attached outbuilding, which is in a different residential curtilage. As a result, in my view the structure could not accurately be described as an extension.
6. For the reasons set out above, on the balance of probability the matter alleged in the notice has in fact occurred. In any event, had I found that the structure should properly have been described as an extension, the notice could have been corrected using the power in s176(1)(a) of the Act, without causing injustice.
7. The ground (b) appeal fails.

Ground (a) appeal

Main Issue

8. The main issue in this ground of appeal is the effect of the building on the character and appearance of the surrounding area.

Reasons

Character and appearance

9. The bungalow is located in an established residential area in which single storey and two-storey detached and semi-detached dwellings, mostly similar in terms of their age and architectural style, are set back comparable distances from the street and generally sit in spacious, rectilinear plots. The substantial structure at No 10 aside, most residential outbuildings in the locality are generally of relatively modest scale and occupy limited portions of rear gardens. These factors contribute positively to the pleasantly spacious and cohesive suburban character and appearance of the area.
10. The building is of substantial scale compared to that of most other outbuildings in the vicinity, including the structure recently erected in another neighbouring garden to the rear. The building footprint occupies a significant portion of the rear garden. The size and bulk of the building stands in proximity to the boundaries of neighbouring property to the sides and at the rear. This leaves the impression of the building being cramped and restricted on its plot. Whilst the building is similar in terms of its scale and design to the attached outbuilding, that of itself is not a sound reason to perpetuate a form of development that is uncharacteristic of its surroundings.
11. Individually and along with the attached structure, the building has created an appreciably more built-up and enclosed feel and it is viewed as an alien and urbanising feature, entirely at odds with the prevailing pattern of development in the vicinity. There are limited views of the building in the street scene. Even so, that does not greatly offset the visual harm identified above. The building is apparent to occupiers of neighbouring residential property, the views from

which are generally of suburban development more typical of the surrounding area. Moreover, the existence of limited public views is not a sound reason to permit unacceptable development as it could be repeated, causing further visual harm.

12. The appellant advanced a 'fallback' position of erecting an outbuilding with a similar footprint, but with a flat roof form and lower eaves line, within the limits of the planning permission granted by the GPDO¹ at Article 3, Schedule 2, Part 1, Class E. The Courts have established the principles of a fallback position². I did not read the appellant's fallback argument other than as part of their case for granting permission for the building in the ground (a) appeal. There is no dispute that the building does not benefit from planning permission.
13. Few details were supplied however of the purpose of the proposed replacement outbuilding and its incidental quality in relation to the enjoyment of the bungalow. The Government's Technical Guidance³, which assists in interpreting the GPDO, advises that a purpose incidental to a dwelling would not cover normal residential uses, such as separate self-contained accommodation or primary living accommodation such as a bedroom, bathroom, or kitchen. In the absence of such facilities, any replacement outbuilding is highly likely to have a considerably smaller footprint and consequently scale, compared to the current building. Moreover, in the absence of further details it is not possible to ascertain whether such an outbuilding would be required for a purpose incidental to the enjoyment of the bungalow. As a result, on the basis of the available evidence I am not persuaded that an incidental outbuilding with a similar footprint would be erected after the notice is complied with. It follows that any adverse visual consequences associated with the fallback position are afforded limited weight.
14. For the reasons set out above, the building causes unacceptable harm to the character and appearance of the surrounding area. This does not accord with criterion in Policy CP1 of the Wokingham Core Strategy (CS), as the high quality of the environment is not maintained. The building also does not accord with criterion in CS Policy CP3, as the mass, layout and built form is not appropriate to the area's character nor is it of high-quality design. Furthermore, the building does not accord with Policy TB06 of the Wokingham Managing Development Delivery Local Plan, as it does not contribute positively to the character of the area. Since there is little to indicate that the building is intended to be a separate dwelling, design principle R22 in the Wokingham Borough Design Guide Supplementary Planning Document is of limited relevance. Nevertheless, by not achieving a well-designed place, the building is inconsistent with the Framework.

Ground (a) appeal-Conclusion

15. The building causes unacceptable harm to the character and appearance of the surrounding area, in conflict with the Development Plan taken as a whole. There are no material considerations that indicate the decision should be made other than in accordance with the Development Plan. Consequently, the ground (a) appeal does not succeed.

¹ Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

² Including *Mansell v Tonbridge And Malling BC* [2017] EWCA Civ 1314.

³ Permitted development rights for householders: Technical Guidance MHCLG 2019.

Ground (f) appeal

16. The ground of appeal is that the requirements of the notice are excessive.
17. An enforcement notice can have the purpose of remedying the breach, including by making any development comply with the terms, including conditions and limitations, of any planning permission granted in respect of the land, or restoring the land to its condition before the breach took place. Alternatively, the purpose of the notice can be to remedy any injury to amenity which has been caused by the breach.
18. The notice requires the building and the associated hardstanding to be removed. This is as opposed to requiring the building to be modified by, for example, reducing it in size. Removing the building and hardstanding would restore the land to its condition before the breach took place. Therefore, the purpose of the notice must be to remedy the breach. The notice states as such, at paragraph 4 (iii).
19. The fallback position of erecting an incidental outbuilding with a similar footprint by relying on the permission granted by the GPDO in Class E, has been considered in the ground (a) appeal. It is not possible to remedy the breach by making the building comply with the terms of the planning permission granted by Class E. As noted already, the permission granted by that Class does not extend to erecting a building for use as ancillary living accommodation.
20. Since replacing the pitched roof with a flat roof and detaching the building from the structure at No 10 would mean that part of the development in the notice remained in situ, the breach would be sustained. This would not achieve the purpose of the notice as the property would not be restored to its condition before the breach took place. As a result, the lesser steps proposed by the appellant are not an obvious alternative to the notice requirements. No other alternative to those requirements was advanced and to my mind, none would remedy the breach.
21. Therefore, the steps set out in the notice are not excessive; they are proportionate, being the minimum that is required to restore the property to its condition prior to the breach taking place. The ground (f) appeal also fails.

Conclusion

22. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Stephen Hawkins

INSPECTOR