

Appeals Decisions

Site visit made on 3 December 2024

by D A Hainsworth LL.B(Hons) FRSA Solicitor
an Inspector appointed by the Secretary of State

Decision date: 6th January 2025

Appeal A: Ref: APP/N3020/X/23/3331937 **3 Woburn Rise, Woodthorpe, Nottingham NG5 4PS**

- Appeal A is made by Lina Gurtler under section 195 of the Town and Country Planning Act 1990 against a refusal by Gedling Borough Council to grant a lawful development certificate.
- The application Ref: 2023/0608, dated 8 August 2023, was refused by notice dated 18 October 2023.
- The application was made under section 191(1).
- The development for which the certificate is sought was described on the application form as "dormer, earthworks and raised ridge height than that what was permitted" [*sic*]. However, the 'Applicants Evidence Statement' submitted at the same time as the application form described the development for which the certificate is sought as "a dormer extension and earth works (to the western side of the property), a slightly higher ridge line to the previously approved garage conversion (eastern side of the property)" and "an additional canopy over the main front entrance door". The appeal decision has been dealt with on that basis.

Appeal B: Ref: APP/N3020/C/24/3336232 **3 Woburn Rise, Woodthorpe, Nottingham NG5 4PS**

- Appeal B is made by Adelina Guertrler under section 174 of the Town and Country Planning Act 1990 against an enforcement notice (ref: E/2023/0006) issued by Gedling Borough Council on 1 December 2023.
- The breach of planning control alleged in the notice is the construction of an unauthorised first-floor side extension.
- The requirements of the notice are as follows: -
 - "i) Demolish the unauthorised first-floor side extension.
 - ii) Reinstate the original sloping tiled roof to the dwellinghouse."
- The period for compliance with these requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(c) and (d) only.

Appeal C: Ref: APP/N3020/X/24/3338767 **3 Woburn Rise, Woodthorpe, Nottingham NG5 4PS**

- Appeal C is made by L Guertler under section 195 of the Town and Country Planning Act 1990 against a refusal by Gedling Borough Council to grant a lawful development certificate.
 - The application Ref: 2023/0895, dated 8 December 2023, was refused by notice dated 1 February 2024.
 - The application was made under section 191(1).
 - The development for which the certificate is sought is a dormer extension.
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Decisions

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is dismissed and the enforcement notice is upheld.

Appeal C

3. The appeal is dismissed.

Reasons for the decisions

Appeal A

Introduction

4. Section 195 requires an assessment to be made as to whether the Council's refusal of the application is or is not well-founded. The assessment is based on the lawfulness of the development as it existed at the time of the application on 8 August 2023. Section 191(2) states:

"... operations are lawful at any time if—

(a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and

(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force."
5. The planning merits of the development are not relevant to the appeal and there is no planning application before me.
6. The Government publication *Planning practice guidance* states that the applicant is responsible for providing sufficient information to support an application. It states that an application needs to describe precisely what is being applied for and the land to which the application relates and adds that, without sufficient or precise information, a local planning authority may be justified in refusing a certificate.
7. The Council's reasons for refusing the application are set out in a letter to the applicant's agent dated 18 October 2023, the details of which are in Appendix 1 to this appeal decision.
8. The burden of proof in Appeal A is on the appellant to make the case for the certificate. The standard of proof is the balance of probabilities, that is to say, whether something is more likely than not. The appellant's case makes several assertions, including (i) the works (except the canopy) had been substantially completed by 5 August 2019 and it was therefore too late to take enforcement action on 8 August 2023 because the time limit had expired under the '4-year rule', (ii) the dormer extension and the canopy were permitted development and (iii) there was no enforcement notice in force on 8 August 2023 because

the notice that had been issued by the Council was invalid. I have considered these matters in turn.

The time limit

9. The Google Earth Pro image of 4/2019 shows the house before any works had started. The image of 9/2019 has been misinterpreted. It does not show a dormer extension in place. It shows that some work is being carried out on the roof slope facing north-west but, when compared with the image of 4/2019, the layout of roof tiles and the colour of the roof have not changed. The next clear image on Google Earth Pro is 4/2021, which shows that this roof has been replaced by a roof which has a different colour, does not show the tiles and has a centre line running from south-east to north-west that did not appear on the earlier images. This is the roof of the 'dormer extension'. This image also shows that work has been carried out above the front of the sloping roof facing south-east and over the garage and that work is on-going along the main roof ridge; none of these works appears on the image of 9/2019.
10. These images are not consistent with the assertion that the works had been completed by 5 August 2019. The appellant's own meta dated image shows that works were on-going on 19 September 2019 at the south-east side of the house which do not appear on the image of 9/2019, suggesting that the image of 9/2019 was in fact captured earlier. A Google Streetview image of September 2020 produced by the Council shows that works are still on-going on the upper part of the north-west side. The Council's own photographs uploaded on 30 October 2020 show that a substantial amount of building work had not been completed on the north-west side on the date the photographs were taken, which was either on that date or earlier in that week. Site visit photographs taken by the Council on 22 September 2023 show that building work on this side had not been finished.
11. When the appellant applied for planning permission for development including the higher ridge line (ref: 2023/0896) the application form stated that this part of the development started on 24 October 2019 and was completed on 2 December 2019. This is not consistent with the image of 4/2021 which shows on-going work along the ridge. It also confirms that this part of the works had not been completed by 8 August 2019.
12. No imagery is available in respect of the earth works and no other details have been provided apart from an indication that they might relate to the garage foundations, which does not provide sufficient clarity. It is not possible to ascertain from the available information what these works are.
13. The appellant has accepted that the canopy was constructed within the 4-year period.
14. Some doubts have been expressed about the accuracy of some of the dates referred to, but on the key issues the available evidence clearly demonstrates on the balance of probabilities that the time for enforcement action had not expired when the appellant made the application for the certificate on 8 August 2023.

Permitted development rights

15. The appellant claims permitted development rights apply in relation to the canopy and the 'dormer extension'.
16. No drawings or measurements have been submitted in relation to the canopy. The photographs show a substantial structure which has been erected on a new platform at the top of a new flight of steps. It is not possible to ascertain from the available information whether this structure complies with the limitations in Class D.1 of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015.
17. The appellant maintains that the 'dormer extension' is permitted by Class B of Part 1 of Schedule 2 to the Order. The Council maintain that it is not permitted development because it is in conflict with the provisions of Class A of Part 1.
18. The starting point is to identify the works that have taken place here. The whole of the north-west facing sloping roof, including its overhanging eaves, has been demolished. It has been replaced by a flat-roofed extension which is supported externally by walls that have been constructed vertically upwards on top of the existing ground-floor outer walls so as to meet up with the new roof and create an upper storey. Vertical windows have been inserted into the new wall.
19. This structure is not a 'dormer extension'. A dormer is a window set vertically in a structure that projects through a sloping roof. The structure does not have a sloping roof. The proposal to create the appearance of a 'dormer' by replicating the former overhanging eaves of the demolished roof at the same height on the wall of the structure is farfetched. 'Eaves' are the part of a roof that meets or overhangs the walls of a structure. The eaves of this structure are at the point where the new walls meet the new flat roof.
20. Class B permits "The enlargement of a dwellinghouse consisting of an addition or alteration to its roof". The Government publication *Permitted development rights for householders Technical Guidance* states on page 8 that it "covers additions or alterations to roofs which enlarge the house such as loft conversions involving dormer windows". Class B is not applicable since the house has been enlarged, not by adding to or altering the roof, but by demolishing the roof altogether and erecting another structure in its place.
21. This structure falls to be dealt with under Class A. The *Technical Guidance* states on page 8 that this "covers the enlargement, improvement or alterations to a house such as rear or side extensions". The Council maintain it contravenes paragraphs A.1(d) and A.3(b) and (c), because (i) the eaves are higher than the eaves of the original dwellinghouse, (ii) there are clear-glazed side-facing windows with openings less than 1.7m above floor level and (iii) its roof pitch is not the same as the roof pitch of the original dwellinghouse.
22. Paragraph A.1(d) states "the height of the eaves of the part of the dwellinghouse enlarged, improved or altered would exceed the height of the eaves of the existing dwellinghouse". Paragraph A.3(b) states "any upper-floor window located in a wall ... forming a side elevation of the dwellinghouse must be— (i) obscure-glazed, and (ii) non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in

which the window is installed". Paragraph A.3(c) states "where the enlarged part of the dwellinghouse has more than a single storey ... the roof pitch of the enlarged part must, so far as practicable, be the same as the roof pitch of the original dwellinghouse".

23. As stated in paragraph 19 above, the eaves of the structure are at the point where the new walls meet the new flat roof. Photographs produced by both the appellant and the Council confirm that this point is higher than the highest eaves of the existing house. The structure does not comply with paragraph A.1(d).
24. The Council's site visit of 22 September 2023 confirmed that the side windows were not more than 1.7m above floor level, were clear-glazed and were capable of being opened. The structure did not comply with paragraph A.3(b).
25. Compliance with paragraph A.3(c) has not been achieved, because the structure has a flat roof and the house has a sloping roof.

The enforcement notice

26. The appellant and the Council are in dispute about the validity of the enforcement notice issued by the Council on 9 December 2020. Since the application for the certificate does not satisfy the provisions of section 191(2)(a) it is not necessary to determine whether there is a contravention of this notice under section 191(2)(b).

Conclusion on Appeal A

27. For the above reasons, I am satisfied that the Council's refusal of the application for the certificate is well-founded. Appeal A has therefore been dismissed.

Appeal B

Introduction

28. Grounds (c) and (d) concern the state of affairs that existed on 1 December 2023, the date when the enforcement notice was issued. The burden of proof is on the appellant to make the case on these grounds. The standard of proof is the balance of probabilities, that is to say, whether something is more likely than not. As there is no appeal on ground (a), the planning merits of the first-floor side extension are not for consideration in this appeal.

Ground (c)

29. The purpose of the appeal on ground (c) is to maintain that the construction of the first-floor side extension does not constitute a breach of planning control.
30. The 'first-floor side extension' referred to in the notice is the same extension as the 'dormer extension' dealt with in Appeal A. It is operational development for which section 57 states that planning permission is required. A specific planning permission has not been granted and I have already concluded in Appeal A that permitted development rights do not exist for its construction. The appeal on ground (c) has therefore failed.

Ground (d)

31. The purpose of the appeal on ground (d) is to maintain that, at the date when the notice was issued (1 December 2023), no enforcement action could be taken in respect of the first-floor side extension. Under section 171B, the time period began on 1 December 2019 but in this instance section 171B(4)(b) applies since the Council either took enforcement action or purported to take enforcement action in respect of the extension on 9 December 2020. (Section 171B(4)(b) authorises "taking further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the local planning authority have taken or purported to take enforcement action in respect of that breach.")
32. The evidence summarised in paragraph 10 above shows that the extension had not been substantially completed on 1 December 2019. The appeal on ground (d) has therefore failed. The Council do not need to rely on section 171B(4)(b).

Conclusion on Appeal B

33. For the above reasons, Appeal B has been dismissed and the enforcement notice has been upheld.

Appeal C

Introduction

34. Section 195 requires an assessment to be made as to whether the Council's refusal of the application is or is not well-founded. The assessment is based on the lawfulness of the 'dormer extension' as it existed at the time of the application on 8 December 2023. Section 191(2) states:
- "... operations are lawful at any time if—
- (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and
- (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force."
35. The burden of proof in Appeal C is on the appellant to make the case for the certificate. The standard of proof is the balance of probabilities, that is to say, whether something is more likely than not. The planning merits of the development are not relevant to the appeal and there is no planning application before me.

Assessment

36. The Council's reasons for refusing the application are set out in a letter to the applicant's agent dated 1 February 2024, the details of which are in Appendix 2 to this appeal decision. As to these details, Class B is not applicable for the reasons given in paragraph 20 above and the Council have since acknowledged that the reason based on section 191(2)(b) was incorrect, since the notice was not then in force.

37. The 'dormer extension' referred to in the application is the same structure as the one dealt with in Appeal A, apart from alterations that have since been carried out to make the windows compliant. It has already been established that the time limit for enforcement action has not expired. The structure as it existed on 8 December 2023 still does not comply with paragraphs A.1(d) and A.3(c) of Part 1 of Schedule 2 to the Order and requires planning permission.

Conclusion on Appeal C

38. I am satisfied that the Council's refusal of the application for the certificate is well-founded for the reasons given by the Council with reference to paragraphs A.1(d) and A.3(c). Appeal C has therefore been dismissed.

D.A.Hainsworth

INSPECTOR

Appendix 1

Appeal A - Council's reasons for refusal

"The Council has considered the application and made a decision to refuse the application for the following reasons:-

1. The information provided in support is not sufficient evidence to show that the "dormer, earthworks and raised ridge height than that what was permitted" was substantially completed for a continuous period of four years up to the date of the application.

a.) Dormer

The applicant states in the statement (para 5) that all works were substantially complete in late June 2019 and then contradicts this in the timeline (para 13) when it is stated that the applicant had substantially completed their dormer by 29 July 2019.

The Council's own evidence of the October 2020 photographs and the google images from September 2019 also contradict this. The time period for enforcement is 4 years in accordance with s171B of the Town and Country Planning Act 1990 Act.

Therefore, the applicant has failed to demonstrate on the balance of probabilities that the dormer was substantially complete more than 4 years prior to the date of the application (08 August 2023).

b.) Earthworks

No information has been provided as to what constitutes the earthworks, where they are located, there are no photographs or no description of when work was undertaken and what that work involved.

The applicant has failed to provide sufficient information to enable the Council to determine this element of the application and consequently my recommendation is that this element of the application is refused.

c.) Raised ridge height

The applicant states in the statement (para 5) that all works were substantially complete in late June 2019 this is then contradicted by the timeline (para 13) when it is stated that the applicant had substantially completed the renovation works of the existing garage by 5 August 2019.

The Council's own evidence of the October 2020 photographs and the google images from September 2019 also contradict this.

In accordance with s171B(1) of the Act the time period for enforcement is 4 years if we consider the raised ridge height purely in terms of operational development however the ridge height is higher than what was permitted in planning permission 2019/0527 and condition 2 provides that the plans must be complied with as a condition of this permission, the plans set the height of the ridge that was approved. Therefore the raised ridge height is a breach of a planning condition for which the limitation period for taking enforcement action is 10 years in accordance with s171B(3) above.

Therefore, the applicant has failed to demonstrate on the balance of probabilities that the raised ridge height was substantially complete more than 10 years prior to the date of the application (08 August 2023).

d.) Porch

No information has been provided in relation to the porch. There are no photographs of the porch submitted with the application and insufficient evidence to make any sort of determination.

The applicant has failed to provide sufficient information to enable the Council to determine this element of the application.

2. The Council could still take enforcement action against the owners for this breach of planning control and as such the Council cannot issue a certificate of Lawfulness for this change of use.
3. The Council is not satisfied on the balance of probabilities that the applicant's evidence is sufficiently precise and unambiguous to justify the grant of a certificate in the terms requested."

Appendix 2

Appeal C - Council's reasons for refusal

"The Council has considered the application and made a decision to refuse the application for the following reasons:

Class A – enlargement, improvement or other alteration of a dwellinghouse

The proposed enlargement to the dwellinghouse is not a permitted development under Class A of Part 1, Schedule 2 of the GPDO as the height of the eaves of the part of the dwellinghouse enlarged, improved or altered would exceed the height of the eaves of the existing dwellinghouse, and therefore the development is not permitted under Class A.1(d).

The dormer extension also incorporates side upper floor windows to the side elevation of the dwellinghouse. The windows are not obscure-glazed and are not non-opening despite the parts of the window which can be opened are less than 1.7 metres above the floor of the room in which the window is installed. Therefore, the development is not permitted under Class A.3(b).

The roof pitch of the first-floor extension is also not the same as the roof pitch of the original dwellinghouse. Therefore, the development is not permitted under Class A.3(c).

Class B – additions etc to the roof of a dwellinghouse

The dormer

The combined cubic content of the roof space as a result of the development (including the dormer and roof extension to the other side of the dwelling) exceeds the cubic content of the original roof space by more than 50 cubic metres in the case of a non-terrace house. Therefore, the development is not permitted under Class B.1(d)(ii).

In order to be permitted development, the development must meet all the limitations and conditions under each Class relevant to the proposal. As the dormer extension falls within Class A and Class B of the of Part 1, Schedule 2 of the Order and the development is not permitted under this Class [*sic*], the application has been refused.

Section 191(2)(b) Town and County Planning Act 1990 –

An enforcement notice was served on this site on 1st December 2023 which relates to the unauthorised first-floor side extension. Under section 191(2)(b) of the Town and Country Planning Act 1990 a development cannot be lawful if it constitutes a contravention of any requirements of any enforcement notice in force. Therefore, the development is not permitted under s191(2)(b) of the Town and County Planning Act 1990 as it would contravene the enforcement notice and so a certificate of lawfulness cannot be granted."