



Appeal Decisions

Site visit made on 10 December 2024

by **D Fleming BA (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 13th January 2025

Appeal A Ref: APP/D3830/C/23/3333842

43 Wilderness Road, Hurstpierpoint, HASSOCKS BN6 9XD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Ms Emma Poland against an enforcement notice issued by Mid Sussex District Council.
- The notice was issued on 25 October 2023.
- The breach of planning control as alleged in the notice is the construction of a two storey semi-detached dwellinghouse and creation of a hardstanding on the Land.
- The requirements of the notice are to:
 - 1) Cease the construction of the two storey semi-detached dwelling house on the land identified hatched green on the plan attached to the notice.
 - 2) Remove from the Land the hard standing on the land identified hatched blue on the plan attached to the notice and reinstate the land on which the hard standing is situated to the garden condition and appearance prior to the creation of the hardstanding.
 - 3) Either (i) demolish the two storey semi-detached dwelling house on the Land identified hatched green on the plan attached to the notice and reinstate the north flank wall of 43 wilderness Road to a condition and appearance prior to the commencement of the construction of the two storey semi-detached dwelling house on the Land, or
(ii) revise the construction of the two storey semi-detached dwellinghouse to implement and accord with planning permission DM/23/0338 in accordance with the decision notice and the plans marked WR43 sk01, WR43 sk02 and 1190-22 sj05b attached to the notice.
 - 4) To remove from the land all waste and materials as a result of steps 2 and 3 of the requirements above.
- The periods for compliance with the requirements are:
 - (i) The requirement for step 1 of the notice should be 1 day (24 hours) after the notice comes into effect.
 - (ii) The requirements for steps 2, 3 and 4 of the notice should be 3 months after the notice comes into effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d), (f), (g) of the Town and Country Planning Act 1990 (as amended).

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Appeal B Ref: APP/D3830/W/23/3331711

43 Wilderness Road, Hurstpierpoint, West Sussex BN6 9XD

- 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 Ms Emma Poland against the decision of Mid Sussex District Council.
- The application Ref is DM/23/1302.
- The development proposed is to create 2 new semi-detached dwellings (one 3 bed, one 4 bed).

Summary Decision: The appeal is dismissed.

Applications for costs

1. An application for costs has been made by the appellant against the Council. This application will be the subject of a separate decision.

Preliminary Matters

2. A revised National Planning Policy Framework was published on 12 December 2024 but as the revisions do not materially change the national approach to the appeal development it has not been necessary to seek the views of the parties on this matter.
3. From the appellant's submissions it appears some evidence was sent to the Council to show when the hard standing was created. As the Council had responded to this in their submissions, I asked for a copy for my consideration and received this on 19 December 2024.

The ground (c) appeal

4. The first part of the appellant's ground (c) appeal is really an appeal under ground (b) in that they claim the allegation has not occurred as a matter of fact. As this has been addressed by the Council in their Statement of Case, there would be no injustice if I were to consider those submissions as though made under ground (b).
5. The appeal relates to a detached dwelling house with a front and rear garden. The allegation alleges operational development, namely the erection of a two storey structure. The appellant had received planning permission to extend the existing dwelling with a two storey side extension and had started to build this in 2023 when she also added an internal dividing wall to reduce the size of the existing dwelling. The Council issued the enforcement notice following a refusal of planning permission to subdivide the existing dwelling, which was being extended, into two dwellings. The appellant refers to the existing dwelling as 43b and the new dwelling as 43a Wilderness Road.
6. When framing the allegation, the Council needed to have in mind section 75 of the Town and Country Planning Act 1990 (the 1990 Act). This is because the wording of the allegation provides the description for the deemed planning application if there is an appeal under ground (a). Section 75 states where planning permission is granted for the erection of a building, the grant of permission may specify the purposes for which the building may be used. If no purpose is so specified, the permission shall be construed as including permission to use the building for the purpose for which it is designed.
7. In this case the purpose of the two storey structure was for a new dwelling house. The Council were not alleging that such a use had occurred as building works were still under way, only that a dwelling was the intended purpose of the structure. As such there is no need to correct the wording of the allegation and the appeal under ground (b) fails.
8. The ground (c) appeal relates to the hard standing laid on the former lawn area at the front of the property. The appellant submits that this was created before works began on the extension and before the construction of the internal dividing wall within the original dwelling. Express planning permission was not needed as she made use of the permitted development set out in the Town and Country Planning (General Permitted Development)(England) Order 2015 (the GPDO), Schedule 2, Part 1, Class F Hard surfaces incidental to the enjoyment of a dwelling house.
9. The burden of proof rests on the appellant in a ground (c) appeal. The evidence submitted comprises: an undated photograph and two dated Google Street View

images; and copies of two invoices for the purchase and delivery of 19.7 tonnes of “MOT loose” dated 23 February 2023 and 1 March 2023. The appellant explains that the purchase invoice was dated after the delivery was made in February. The appellant states the photograph was taken on 23 February 2023 and it shows that the lawn had been removed and a digger was removing a tree root. No significant work had begun externally on the house as the tiles remained on the wall.

10. On the basis of this evidence, it appears that work began on the hard standing before the work began on the extension. Planning permission was granted for the extension in May 2023 (Ref: DM/23/0338). However, there is no evidence before me to demonstrate when the hard standing was complete. MOT is a sub base (the grey aggregate in the appellant’s images) and it appears at some point that cream coloured gravel was laid on top of it. Whilst the appellant states the surface of the hard standing is porous, I cannot be certain, based on the information before me, that the conditions of Class F relating to drainage are met. The appeal under ground (c) therefore fails.

The ground (d) appeal

11. This ground of appeal is that at the date when the notice was issued, no enforcement action could be taken. The burden of proof in an appeal on this ground lies with the appellant. As such, the appellant needs to show, on the balance of probabilities, that the hard standing was substantially complete before the relevant date. The relevant date for this breach of planning control is 25 October 2019, namely more than 4 years before the notice was issued.
12. The appellant’s own evidence regarding the construction of the hard standing demonstrates that this was not the case and the appeal under ground (d) therefore fails.

The ground (a) appeal, the deemed application and the section 78 appeal

Main Issues

13. The main issues are (i) the effect of the proposed use and the design of the development on the character and appearance of the area; and (ii) the effect of the proposed use on the living conditions of the occupants of the original dwelling, having regard to privacy.

Reasons

Character and appearance

14. Wilderness Road comprises a mixture of predominantly detached two storey dwellings and bungalows laid out around a sweeping curve that falls gently from north to south. Most properties have the benefit of a large front garden and in addition the road is bounded by a grass verge on both sides planted with trees. These areas are well maintained. Some of the houses, such as the appeal site, back onto Wilderness Wood, which can be glimpsed between the buildings and forms an attractive backdrop. All these elements combined result in a very pleasant residential area.
15. The layout of the original dwelling on the appeal site included a single detached garage built on the side boundary. The main entrance to the house was from the side, in the space between the garage and the house. In the past some of this

space had been infilled to create a covered link to a conservatory added to the rear of the garage. The rear of the house had also been extended to provide a larger kitchen and dining area with enlarged bedrooms above.

16. The May 2023 planning permission was to demolish the rear of the garage and the conservatory and to replace this with a kitchen/breakfast area with two bedrooms and a bathroom above. This involved moving the entrance door to the front of the property and converting what remained of the garage area into a store and utility area.
17. Construction works subsequently began but the appellant deviated from the approved plans. The original dwelling was divided into two by the erection of a partition wall and the insertion of a second staircase. A new front door was inserted into the space approved for a full height window adjacent to the lounge window and then tenants moved into what became No 43b.
18. The Council have no issue with either the overall size of the extension or the changes to the fenestration. Rather their concern is focussed on whether the site is suitable for a development of two houses, as opposed to one. This mainly manifests itself in the provision of adjacent front entrance doors and the development of the front ground with a hard standing to provide off street parking for both dwellings.
19. I find there is nothing unacceptable in the provision of adjacent front entrance doors, which are often seen in the development of semi-detached houses, especially as they are aligned in this case with the first floor windows above. However, the loss of the front garden to off-street parking is a significant change to the layout of this pleasant estate and would result in the provision of 4 side by side off-street parking spaces stretching from one side boundary to the other. The proposed 40cm wide planting strip in the middle would be too narrow to mitigate for the loss of the former expanse of garden and would be difficult to discern when cars are parked on the drive. The development would also result in the loss of a small portion of grass verge to facilitate the creation of a dropped kerb to access the hard standing. This would further emphasise the harm to the character and appearance of the area caused by the new parking area.
20. There are other semi-detached dwellings in the road but these are situated on much larger plots with garages to the side and set back from the front elevation so front gardens are maintained and off-street parking to the side is discreet. The exception to this is the former detached bungalow at No 13 which has now been subdivided into two bungalows. Part of the former front garden is used for parking but the loss of landscaping goes unnoticed due to the location of the bungalow in a corner, the retention of a shrub bed in the middle of the hard standing and the presence of a large piece of lawned public open space in front of the bungalow. Furthermore, the development was achieved without the need to widen the existing dropped kerb.
21. The space around either originally designed semi-detached dwellings or those at No 13 also mean that residents have somewhere to discreetly store their waste bins on non-collection days. However, the limited proportions of the appeal site mean that the waste bins for No 43a would most likely be stored directly in front of the dwelling. Whilst there is a narrow gap between the flank wall of No 43b and the

boundary with No 45, it has not been demonstrated that this would be sufficient for the storage of waste bins which could result in additional clutter on the drive.

22. This is not unusual in some residential areas but in Wilderness Road it would be another indication that the development would be cramped in contrast to the layout of the surrounding area. This would be the case even though I saw on some spacious plots in the road, some residents choose to store their waste bins in front of their garage doors. These largely go unnoticed though due to the presence of planted and maintained front gardens.
23. As well as referring to 13 Wilderness Road, the appellant has provided a list of over 30 addresses, planning reference numbers and descriptions of development where purportedly similar developments have taken place. However, she provides no detailed analysis to show that this is the case. Less than five of the sites appeared to be in Hurstpierpoint and 13 wilderness Road is only similar to the appeal site by virtue of being in the same road. Several applications were granted prior to the adoption of the current district plan and it is not clear whether sites in places such as Crawley, East Grinstead or Haywards Heath are covered by neighbourhood plans. This evidence therefore merits limited weight.
24. I therefore find that the proposed dwelling and the design of the development results in harm to the character and appearance of the area. Whilst the development would result in an additional dwelling to the existing housing stock, this would conflict with the housing development principles set out in the Hurstpierpoint & Sayers Common Parish Council, Parish 2031 Neighbourhood Plan made March 2015. Policy Housing HurstH5 states all new housing developments shall be designed in their layout, density, housing mix, styles and treatment of open and other shared space to reflect the village character of the parish. There is also conflict with Policy DP26 of the Mid Sussex District Plan 2014-2031, adopted March 2018 (the DP), which requires well designed development that protects gardens that contribute to the character of an area.

Living conditions

25. The Council are concerned that the layout of the development does not provide for an independent external access from the front of No 43a to the rear. As existing, the future occupiers of No 43a would have to walk in front of habitable room windows at No 43b in order to access their rear garden. This would result in a loss of privacy for the occupiers of No 43b. Notwithstanding this, I find that such an external access route whilst desirable is not essential and is not dissimilar to the layout of other properties elsewhere. The living conditions of the occupiers of No 43b could therefore be maintained by not requiring such an access, as suggested by the Council. The development would therefore accord with the requirements of DP Policy 26 to not cause significant harm to the amenities of residents, taking account of the impact on privacy.

Interim conclusion

26. Whilst matters of privacy could be overcome, the same cannot be said with regard to the harm I have found to the character and appearance of the area. The appeal on ground (a) therefore fails.

The ground (f) appeal

27. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve its purpose. The purposes of an enforcement notice are set out in section 173 of the 1990 Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy any injury to amenity (s173(4)(b)). In this case the notice requires amongst other matters the removal of the hard standing and the reinstatement of a garden. Therefore, I consider that the purpose of the notice is to remedy the breach of planning control.
28. In appealing on ground (f) the onus is on the appellant to specify lesser steps, which in her view would overcome the objections to the development. The lesser step suggested is the submission of a fall back argument, namely that the hard standing would be reinstated using permitted development rights if the dwelling remained as a single dwelling house. It would therefore serve no useful purpose to require the removal of the hard standing.
29. Although this is a potential fallback position, other than stating she would utilise permitted development rights, the appellant has not provided any other information that would lead me to believe it is a realistic fallback, which she would implement. The Council state there were two off street parking spaces for the four bedroom house prior to the current development. Whilst the appellant states she added two spaces for the benefit of the property, the timing appears too convenient with work to develop the spaces beginning at the same time as initial work on the house.
30. The larger hard standing would have provided space for the siting of a skip as well as for tools and materials, thus avoiding the costs of skips and materials licences. The May 2023 planning permission only increased the number of bedrooms by one and it has not been shown that this would trigger a requirement to provide an additional two off street spaces. It therefore seems unlikely that the appellant would incur the expense of re-installing a hard surface following compliance with the notice. For these reasons the appeal under ground (f) fails.

The ground (g) appeal

31. This ground of appeal is that the time given to comply with the requirements of the notice is too short. It is therefore limited in scope to a consideration of the actual time needed to carry out the work or actions specified in the steps.
32. The appellant submits that a period of 15 to 18 months would be more reasonable than 3 months as the property is occupied by a family who would need to be re-housed prior to work starting. At the site visit I saw that builders were present on site and work was underway within the extension. After my visit the appellant indicated that she was considering withdrawing the appeal but also advised that for various reasons she had decided not to proceed with the idea of two dwellings on site and would proceed with the single dwelling.
33. Notwithstanding this, in order to fully comply with the notice, the subdivision of the original dwelling and the installation of the second staircase would have to be rectified. Unlike a loft conversion where it is possible to continue to reside within a dwelling during the works, the nature of the notice's requirements are major. They involve the removal of walls and a second staircase. To avoid this severe disruption, it would be more appropriate if the family were to vacate the property. As such, three months is too short a period and six months would be

more reasonable to enable the re-housing of the family and for the works to be carried out. A longer period is not necessary and would be tantamount to a grant of temporary planning permission. The appeal under ground (g) therefore succeeds.

Conclusions

Appeal A

34. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act.

Appeal B

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

Formal Decisions

Appeal A

36. It is directed that the enforcement notice is varied by the deletion of “3 months” in paragraph 6.2 of the notice and its replacement with “6 months”. Subject to this variation, 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.

Appeal B

37. The appeal is dismissed.

D Fleming

INSPECTOR