



Appeal Decision

Site visit made on 18 June 2025

By G Powys Jones MSc FRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 July 2025

Appeal Ref: APP/J3720/D/25/3362775

9 Avon Crescent, Stratford-upon-Avon, CV37 7EU

- 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 Mr Fraser Chambers against the decision of Stratford-on-Avon District Council.
 - The application Ref is 24/03227/FUL.
 - The development proposed is the construction of first floor extension above garage, including one front dormer window and one rear dormer window.
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Decision

1. The appeal is allowed, and planning permission is granted for the construction of first floor extension above garage, including one front dormer window and one rear dormer window at 9 Avon Crescent, Stratford-upon-Avon, CV37 7EU in accordance with the terms of the application, Ref 24/03227/FUL, subject to the conditions set out in the accompanying Schedule.

Preliminary and procedural matters

2. The appellant expresses concern at the Council's timing in requesting a change in the description of the proposed development¹, and indeed with the basis for the request. He says that the change was made without his consent. It seems to me, however, that whilst the Council's request for the proposed change was made late in the day, the appellant's agent agreed to it. I have utilised the amended description in the banner heading partly for this reason and since it more accurately and precisely conveys what is proposed.
3. Reference has been made to the planning history of the site which involves two appeals against the Council's refusal to allow what I shall describe as broadly similar proposals to that before me in terms of its effects on the main matter of concern to the Council. I have seen copies of the two appeal decisions². I have also been acquainted with the details of a successful application for a Certificate of Lawful Development (Proposed) (LDC) in respect of '*extension to flat roof to form pitched roof*'.³ The planning history is material to my considerations in the determination of the appeal.
4. The appellant has made an application for costs against the Council. This is the subject of a separate decision.

¹ Between that in the application form and that used in the Council's decision notice.

² APP/J3720/D/22/3311212 dated 25 January 2023 & APP/J3720/D/23/3333742 dated 23 March 2024.

³ Ref 24/00967/LDP dated 14 May 2024.

Main Issue

5. The main issue is the effect of the proposed development on the character and appearance of the host property and its surroundings.

Reasons

6. The subject property is a detached residence located in an attractive area of the town. Its appeal is enhanced by an open space situated in front of the property and its neighbouring dwellings. The appeal property and other dwellings either side facing the open space are of varying designs yet display a visual unity largely on account of their scale, common use of materials and architectural features.
7. The appeal property is built in brick with a tiled, hipped roof. It has a two-storey front bay. An attached single storey, flat roofed garage separates the two-storey elements of No 9 from No 11. The appellant wishes to infill the gap above the garage.
8. Similar schemes have been proposed before, and twice the Council's refusal of planning permission was upheld by Planning Inspectors on appeal. Their respective decision letters explain why the gap above the garage was considered significant and important in planning terms, and the harmful consequences of its closure.
9. It is a well-established principle of planning law⁴ that previous appeal decisions are capable of being material considerations and that like cases should be decided in a like manner so that there is consistency in the appellate process. However, that does not mean that I should not exercise my own judgment, particularly if there are features distinguishing this case from those that went before.
10. The main distinguishing feature in this case⁵ is that the appellant has obtained an LDC from the Council to erect a pitched roof above the garage. The certificate means, in effect, that the Council accepts that government has granted planning permission⁶ to the appellant to close the gap above the garage. The current proposal's design uses the roof profile subject of the LDC as a base, but adds dormers front and rear. In this regard the officer report on the latest application says:

Whilst I acknowledge the proposed dormers will create further volume, they do not create more harm in terms of closing the gap between the neighbouring property and the application site.
11. It was the closure of the gap and its effects which was the main basis for the Council's concerns in refusing the two previous proposals, concerns supported by Inspectors on appeal.
12. The officer report on the application explains the reasons why, with reference to case law, the LDC should attract limited weight as a fall-back. The Mansell case⁷

⁴ *North Wiltshire District Council v Secretary of State for the Environment* (1993) 65 P. & C.R. 137

⁵ The Inspector in the second appeal was made aware of the potential ability to add a pitched roof to the garage, but considered whether permitted development rights existed was outside the remit of the appeal. He chose to give the matter limited weight for the reasons set out in the decision letter.

⁶ Article 3(1) *The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)*.

⁷ *Mansell v Tonbridge and Malling BC* [2017] EWCA Civ 1314 (The Mansell case)

reviews the current state of the law as to the status of a fallback development as a material consideration in a planning decision. The case highlighted that the relevant law as to a 'real prospect' of a fallback development being implemented was applied in the Court of Appeal in Sullivan LJ's judgement in the Samuel Smith Old Brewery case⁸. The basic principle is "*... for a prospect to be a real prospect, it does not have to be probable or likely: a possibility will suffice*".

13. That there exists a legitimate fallback is not a matter in dispute. The issue is what weight should be attached to it as a material consideration applying the basic principle set out in Sullivan LJ's judgement.
14. It would be feasible and practical for the new roof subject of the LDC to be implemented, either wholly or in part, and for the two dormers to be retrofitted, subject of course to a further permission being obtained for the latter⁹. Such a process would increase costs and be wasteful of resources, but I have no good reason to conclude other than this is a possibility.
15. Alternatively, the appellant could simply build the roof in accordance with the plans approved under the terms of the LDC, and to forget the dormers. Whilst this may not provide the appellant with the accommodation he ideally seeks particularly in terms of useable space and natural levels of internal lighting, it is a distinct possibility in my view, although the Council thinks otherwise.
16. I am further persuaded by the planning history which demonstrates a degree of determination and resourcefulness on the appellant's part to achieve, on his preferred terms, the refurbishment and improvement of a dwelling which apparently had fallen into a poor state. As intimated in the grounds of appeal, it is entirely possible that the appellant would be minded to fill the gap as a form of protest at the unfair and unreasonable treatment he clearly believes he has received in his lengthy involvement in the planning process. The appellant would not be acting unlawfully; he would simply be implementing his PD entitlements.
17. As a matter of planning judgment, I consider it a distinct possibility, if not a likelihood, and therefore a real prospect that the PD entitlement to erect a roof extension and to close the gap would be implemented were this appeal dismissed. It follows that I attach significant weight as a material consideration to the appellant's PD rights confirmed by an LDC.
18. I therefore turn to the dormers. The rear dormer would not be seen in the public realm, and I see no justifiable reason for objection. The Council does not refer to the rear dormer in its sole reason for refusal but objects to the proposed front dormer on the grounds that it would '*...draw attention to the roof extension and highlight the closing of the important visual gap.*' I disagree. I find the front dormer to be of an acceptable and proportionate design similar in appearance to the two dormers plainly seen in the front elevation at 15 Avon Crescent, three doors away. These sit acceptably and harmoniously in their visual context, as would the front appeal dormer proposal if built.

⁸ *Samuel Smith Old Brewery (Tadcaster) v Secretary of State for Communities and Local Government* [2009] JPL 1326

⁹ Whether the Council would grant permission for the dormers themselves is open to doubt, but I deal with their planning merits later.

19. I therefore conclude that the effect of the proposal on the character and appearance of the host property and its surroundings would be no worse than that effected by the construction of the roof extension under PD rights. I also conclude that this is a case where the material considerations indicate to me that the provisions of the development plan policies as set out in the reason for refusal need not be strictly adhered to in respect of the principle of the extension. The proposed dormers are compliant with the relevant aspects of the development plan's design policies, being CS.9 and CS.20 of the adopted Core Strategy and policy BE5 of the Stratford Neighbourhood Plan. Accordingly, the appeal succeeds.

Conditions

20. In the interests of certainty, it is important that the development is carried out in accordance with the approved plans, and a condition to this effect is imposed.
21. The Council's suggested standard condition on materials is also imposed in the interests of visual amenity.

Other matters

22. It is not within my remit and neither do I have the authority to extend the term of another planning permission granted in respect of the property, as requested by the appellant.
23. I have taken account of all other matters raised in the representations, including the references to the National Planning Policy Framework and the Council's design guidance, but no other matter raised is of such strength or significance as to outweigh those considerations that led me to my conclusions.

G Powys Jones

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: the location plan and Drawing Ref 3255/010 Rev A; 3255/070 Rev A; 37044CVLS-01 & -02.
- 3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.