



Appeal Decisions

Site visit made on 8 July 2026

by **R Bartlett PGDip URP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 20 July 2026

Appeal A Ref: APP/V0510/C/25/3359954 and

Appeal B Ref: APP/V0510/C/25/3359955

Flint Cottage, 21 The Green, Ashley, Newmarket, Suffolk, CB8 9EB

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended).
- Appeal A is made by Mrs Deborah Simpson and Appeal B is made by Mr Richard Simpson, against an enforcement notice issued by East Cambridgeshire District Council.
- The notice was issued on 19 December 2024.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a single storey side extension.
- The requirements of the notice are to:
 - i) Demolish the single storey extension: or
 - ii) Make alterations to the side extension to fully comply with conditions 1 and 3 of planning permission reference 15/00281/FUL which approved 'First floor, and single storey extension to side'.
 - iii) Remove all resulting debris and material from the site arising from compliance with requirements (i) or (ii).
- The periods for compliance with the requirements are:
 - i) Six (6) months from the date this Notice takes effect.
 - ii) Six (6) months from the date this Notice takes effect.
 - iii) Eight (8) months from the date this Notice takes effect.
- The appeal is proceeding on the ground set out in section 174(2)(f) of the Town and Country Planning Act 1990 (as amended).

Appeal C Ref: APP/V0510/D/25/3359998

Flint Cottage, 21 The Green, Ashley, Newmarket, Suffolk, CB8 9EB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with a condition subject to which a previous planning permission was granted.
- The appeal is made by Mrs Deborah Simpson against the decision of East Cambridgeshire District Council.
- The application Ref is 24/00960/VAR.
- The application sought planning permission for a first floor and single storey extension to the side without complying with a condition attached to planning permission Ref 15/00281/FUL, dated 15 July 2015.
- The condition in dispute is No.1, which states that: Development shall be carried out in accordance with the drawings and documents listed below: ASH BC 1 Version A 23rd June 2015, Elevations 23rd June 2015, ASH BC 3 Version B 23 June 2015, Existing 16th March 2015 and RDSA 1 16th March 2015.
- The reason given for the conditions is: To define the scope and extent of this permission.

Summary Decisions: Appeals A and B are dismissed, and the enforcement notice is upheld with a variation in the terms set out below in the formal decision. Appeal C is dismissed.

Procedural Matters and Background

1. Appeals A and B were made on grounds (a) and (f). However, S174(2) of the Town and Country Planning Act 1990, prevents appellants from having multiple attempts at getting planning permission for the same development within a two-year period. In this case, an application (ref.24/00960/VAR), to vary condition 1 of planning permission ref.15/00281/FUL by substituting the approved drawing numbers, was refused less than two years before the enforcement notice was served. Consequently, ground (a) has been barred and in determining appeals A and B, I am unable to take account of any planning merits.
2. Planning permission ref.15/00281/FUL (the 2015 permission) was granted 15 July 2015, subject to a condition requiring that the development permitted be commenced within 3 years of the date of that permission. The application form, to carry out that development other than in accordance with condition 1, states that the development commenced on 22 May 2018. A certificate of lawfulness (ref. 24/00600/CLE) was granted by the Council on 9 August 2024, which conclusively presumes the development subject to the 2015 permission was lawfully commenced. I have therefore dealt with the appeals on the basis that the 2015 permission remains extant and provides a lawful fallback position.
3. At the time of my visit, the walls had not yet been timber clad, the roof tiled, rainwater goods fitted, or roof lights installed, but the external shell of the extension had been constructed, and windows and doors installed making it watertight. These works appear to be in accordance with the revised drawings for which permission is sought. The internal works were not quite complete, and the extension was not in use.

Appeals A and B

The Appeals on ground (f)

4. An appeal on ground (f) is made on the basis that the requirements of the notice exceed what is necessary to either (a) remedy the breach of planning control or (b) remedy any injury to amenity which has been caused by the breach. In this case, the notice explicitly states that its purpose is to remedy the breach of planning control that has occurred.
5. The appellants consider that planning permission should be granted for the revised scheme that has, more or less, been completed on the site. Whilst alternative plans were submitted at the final comments stage, in the absence of an appeal on ground (a) I am unable to consider the planning merits of an alternative scheme or to grant planning permission for the revised drawings. Moreover, as the alternative plans submitted at the final comments stage have not been subject to third party consultation or consideration by the Council, injustice may be caused should I consider these late submissions.
6. In any event, the only way to remedy the breach of planning control that has occurred is by either removing the extension entirely or by altering it to accord with the approved drawings.
7. The appeals on ground (f) therefore fail.

The Appeals on ground (g)

8. An appeal on ground (g) can be made on the basis that the period for compliance specified in the notice falls short of what should reasonably be allowed. Although the appellants did not initially appeal on this ground, it seems to me that reverting to the originally approved scheme, whilst remaining an option open to the appellants and one which is likely to be more preferable to them than removing the whole extension, would not be ideal given that the two-storey staircase part of the extension is no longer required in that location and the removal of any further parts of the existing flank wall could compromise the structural stability of the cottage. Furthermore, the Council's report on the S73A application indicates that it considered the two-storey element of the scheme to appear incoherent and awkward, and only permitted it due to the functional justification for relocating the staircase.
9. The Council's statement confirms that it advised the appellant to apply for a lawful development certificate to confirm that the 2015 permission had lawfully commenced, and if successful, to submit an application under S73A of the 1990 Act to amend it. Whilst this advice was intended to be helpful, the description of development on the 2015 permission restricts the scope of changes that can be made. Case law¹ has confirmed that the description of development in an existing planning permission cannot be amended, only the conditions. If amending a condition would result in a conflict between it and the description of development, then it is beyond the powers under S73A, and a fresh planning application is required. Had this application not been made, the enforcement appeal would not have been ground (a) barred.
10. An extended compliance period of 12 months would enable the appellants to discuss alternative options with the Council and to submit a revised planning application should they wish to do so.
11. I have sought the views of both main parties on considering an appeal on ground (g) and extending the compliance period. Whilst I acknowledge the Council's concerns regarding the length of time the matter has been ongoing and the level of local interest, it was not unreasonable for the appellants to assume their appeal would be successful, or to await its outcome, before going to the time and cost of perusing alternative options. I have also not been made aware of any local interest in relation to any of these appeals and there was only a single objection from the Parish Council to the S73A application to vary the plans. I am therefore satisfied that extending the period for compliance would not result in any injustice and would be a proportionate response to the breach of planning control that has occurred.
12. The appeals on ground (g) therefore succeed, and I shall vary the requirements of the notice accordingly.

Conclusion

13. For the reasons given above, I conclude that the requirements of the notice are not excessive to remedy the breach of planning control and the appeals on ground (f) therefore fail. However, the period for compliance falls short of what is reasonable.

¹ John Leslie Finney v Welsh Ministers & Carmarthenshire County Council, Energiekontor (UK) Limited; and Fiske v Test Valley BC & Woodington Solar Limited

I shall therefore vary the notice prior to upholding it and the appeals on ground (g) succeed.

Appeal C

Main Issues

14. Notwithstanding my concerns above regarding the validity of an application made under S73A, for a proposal differing from the description of development in the existing planning permission, I have considered the application as submitted to and determined by the Council. The main issues are therefore i) whether the amended development would preserve or enhance the character or appearance of Ashley Conservation Area (ACA); and ii) the effect of the amended development on the living conditions of occupiers of 14 Chapel Row.

Reasons

Conservation Area

15. There is a statutory duty under section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990, to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.
16. The significance of the ACA is derived from its irregular pattern of residential development and open spaces. The village has grown organically and as such properties vary considerably in terms of age, style and materials. The majority of buildings are however modest in scale and height and contain traditional roof forms and fenestration.
17. The host dwelling is a small traditional cottage with a low, pitched roof and a single storey flat roof extension to the side. It is finished in flint with red brick detailing, slate roof tiles and a red brick chimney stack. Due to its position, set back from the road, it is less visually prominent than other properties nearby. Nevertheless, it makes a positive contribution to the historic character and appearance of the ACA.
18. The amended western side extension, due to its height, width, depth and roof form, fails to reflect the modest proportions of the original dwelling and despite being set back from the front elevation of the dwelling, does not appear subordinate to it. This is mainly due to the high eaves that are just below the level of the first-floor window cills in the original cottage, the ridge height exceeding the eaves height of the original cottage, and the expanse of the roof slope resulting from its increased height, width and depth.
19. Whilst I acknowledge that the approved scheme was also disproportionate in its width to the original building and contained a two-storey element to accommodate a staircase, its gable ended pitched roof form, which stepped down in height, better reflected the traditional design of the host dwelling and its immediate surroundings. The two-storey element of the extension was also lower than the eaves level of the cottage at the point where it projected beyond its rear elevation.
20. There is no explanation as to why, upon removing the two-storey staircase element due to structural concerns, the roof line was not amended to align with the lower roof height of the remainder of the approved single storey side extension or why it could not be replaced with a simpler small link, which would break up the

roof line and reduce the massing of the roof, making the extension appear as an outbuilding when viewed above the fenceline from the road.

21. Instead, the ridge height of almost the whole extension has increased to be above the eaves level of the cottage, at a similar height of the originally approved two-storey staircase link. The footprint has also increased in width and depth, and a hipped roof slope has been introduced at one end, which further detracts from the simple symmetry of the host dwelling.
22. Whilst my attention was drawn to the presence of other hipped roofs in the ACA, which I observed during my visit, these are symmetrical hipped roofs forming part of those original planned developments as opposed to later additions to a gabled property. As such they are not comparable to the scheme before me. Although the hipped roof slightly reduces the length of the ridge, it does little to reduce the massing of the roof in public views from the road. I acknowledge that relocating the staircase resulted in the need to reconfigure the space within the original building, but the appellants personal desire for a specific area of space does not outweigh the need to preserve the ACA.
23. I therefore conclude that the amended plan fails to reflect the scale and design of the traditional cottage and consequently fails to preserve the historic character and appearance of the ACA. This results in less than substantial harm to the significance of the heritage asset (the ACA), however, in accordance with paragraph 212 of the National Planning Policy Framework (the Framework) great weight must be given to the asset's conservation, irrespective of the level of harm.
24. Paragraph 215 of the Framework states that where development will lead to less than substantial harm, this should be weighed against the public benefits of the proposal, including securing its optimal viable use. No public benefits have been brought to my attention, and whilst I acknowledge that extending and improving the living space may secure the optimum viable use of the dwelling, there is no evidence before me to suggest that this could not be achieved in a more sympathetic manner.
25. The revised development is therefore contrary to policies ENV2 and ENV11 of the East Cambridgeshire Local Plan April 2015 (as amended 2023) (the local plan), and paragraphs 135(c) and 215 of the Framework. Collectively, these policies seek to ensure that the design of new development, particularly in conservation areas, preserves or enhances the character or appearance of the area. I find no conflict with policy ENV1 of the local plan, which relates to landscape character.

Living Conditions

26. The extension sits behind the short rear garden and flat roof garage of No.14 Chapel Row. Although it is set slightly in from the boundary shared with the rear of No.14, which prevents any overhanging of the eaves or rainwater goods, it is significantly higher than the garage and projects further north of it. Given the height of the extension, its proximity to the boundary and its position to the southwest, it is likely to result in some overshadowing, as well as appearing very large and somewhat overbearing.
27. However, any shadowing would be mainly over the garage and due to the offset from the boundary and the hipped roof sloping away from No.14, the effects would

be little different from that of the approved scheme. I also note that no neighbours have objected to the amended form of the development.

28. I therefore conclude that the development does not adversely affect the living conditions of occupiers of No.14 Chapel Row. Accordingly, it does not conflict with policy ENV2 of the local plan, in so far as it seeks to ensure new development has no significant detrimental effect on the residential amenity of nearby occupiers.

Conclusion

29. For the reasons given above, the amended plans fail to accord with the development plan taken as a whole, and there are no material considerations to indicate that a decision should be made other than in accordance with the plan. I therefore conclude that Appeal C should be dismissed.

Formal Decisions

30. It is directed that the enforcement notice is varied by deleting from paragraph 6(i), (ii) and (iii) the words “Six (6) months and Eight (8) months” and replacing them with the words “Twelve (12) months” as the time for compliance with the requirements. Subject to this variation, Appeals A and B are dismissed and the enforcement notice is upheld.
31. Appeal C is dismissed.

R Bartlett

INSPECTOR