



Appeal Decisions

Site visit made on 3 November 2010

by David Harrison BA DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 23 November 2010

Appeal Refs: APP/Q0505/C/10/2121824 & 2121825 21 Belvoir Road, Cambridge CB4 1JH

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Ian George Michael Jolley and Ms Katrina Julie Petrie-Symes against an enforcement notice issued by Cambridge City Council.
 - The Council's reference is P558/332. The notice was issued on 4 January 2010.
 - The breach of planning control as alleged in the notice is without planning permission, the carrying out of operational development, namely the erection of a full width roof dormer on the rear and side of the property.
 - The requirements of the notice are to remove the roof extension and reinstate the roof to its original condition.
 - The period for compliance with the requirements is six months.
 - The appeals are proceeding on the grounds set out in section 174(2) [a] [c] [f] and [g] of the Town and Country Planning Act 1990 as amended.
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Decision

1. I dismiss the appeals and uphold the enforcement notice. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural matters

2. I requested the submission of copies of the plans illustrating the proposed roof extension that were shown to the Council in October 2008. Copies of Drawing Nos. C.100.1A and C.100.2 both dated September 2008 were produced at the site visit.

Background

3. The plans shown to the Council in Oct 2008 indicate a "hip to gable" roof extension with a flat roofed dormer at the rear approximately 0.8 m lower than the ridge of the semi-detached bungalow, and French windows allowing access to a balcony. A note on Plan C.100.1A states "timber cladding to dormers". The Council advised that if the balcony element of the design were removed, the rest of the development would be permitted under Class B.1 of the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008, (GPDO).
4. Drawing Nos. D.100.1 and D.100.2 dated August 2009 show the roof alterations that were actually carried out and were submitted with a retrospective planning application to retain the structure. This application was refused, and this is the development which the enforcement notice requires to be removed.

The appeals on Ground (c)

5. For the appeals on ground (c) to succeed the appellants need to demonstrate that there has been no breach of planning control. Advice relating to the types of development which may be carried out without the need for planning permission are set out in the amended version of the GPDO which came into effect on 1 October 2008. Class B allows *The enlargement of a dwellinghouse consisting of an addition or alteration to its roof* but paragraph B.1 *Development not permitted* sets limitations on what is permitted. B.1 (c) (ii) sets a limit of 50 cubic metres and B.1 (d) (i) excludes a veranda, balcony or raised platform. B.1 (e) requires that the dwellinghouse is not on article 1(5) land, which includes land within a conservation area. The De Freville Conservation Area was designated in March 2009 and includes the appeal property.
6. Paragraph B.2 *Conditions* stipulates that (a) the materials used in any exterior work shall be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse.
7. The work commenced before the designation of the conservation area but it did not proceed in accordance with the plans shown to the Council in October 2008. It is agreed by both parties that the original plans showed an extension of 50 cubic metres and at one stage both parties agreed that the as built extension was 53 cubic metres. The appellant's agent subsequently maintained in his final comments that it was 51 cubic metres. I have not done any calculations of my own, but rely on the agreement between the parties that it is in excess of 50 cubic metres. There is therefore a conflict with criterion B.1 (c) (ii) of the GPDO.
8. Although the point was not raised in October 2008¹ the Council argues that there is also conflict with condition B.2 (a) which requires the use of materials of "similar appearance". I agree. The green painted timber is not "similar" to the red clay tiles or the buff brick of the original bungalow.
9. Before the designation of the conservation area the addition to the roof failed to qualify as permitted development on two counts. Since designation there is also clearly a conflict with B.1 (e). The appellant maintains that as the development commenced before the designation of the conservation area the "non conservation area permitted development rights" should be "preserved" until completion. Even if I were to adopt this approach there would still be a conflict with the requirements of Class B with regard to the volume of the development (albeit marginal) and the materials used.
10. The roof extension does not constitute permitted development under Class B and there has been a breach of planning control. The appeals on ground (c) therefore fail.

The appeals on Ground (a) : The deemed planning application

11. The deemed application is to retain the roof extension as built. There has been a change in the roof shape from hipped to gable end, with a dormer to the rear. The part of the dormer nearest to the other half of the semi-detached bungalow, No.19, is set into the original rear roof slope of the bungalow and has a French window. The part nearest to No.23 projects further outwards over a single storey extension to the rear of the bungalow.

¹ A note on Plan C.100.1A states "timber cladding to dormers".

18. The effect is particularly dominating because the flat roof is level with the ridge of the bungalow and the flank wall of the part of the dormer that projects out over the single storey rear extension and which faces towards No.19 is stark in appearance. The Council's Historic Environment Manager describes the design of the development as "very angular making the extensions look as though they have been plonked onto the roof and extension of the bungalow". It is suggested that in order for it to be less imposing it should be reduced to a "full box dormer on the rear of the property, and that the extension over the rear extension is removed". It seems to me that the size of this rear projection is particularly intrusive and has a harmful overbearing effect upon No.19. For this reason I find the development unacceptable, and in conflict with the aims of Policy 3/14 *Extending Buildings* of the Cambridge Local Plan (1996) which requires an extension to, among other things, (b) not unreasonably overlook, overshadow or visually dominate neighbouring properties.

The "fall back position", and the weight to be given to PPG18.

19. I have carefully considered the appellant's argument that if the development cannot be retained in its entirety an opportunity should be allowed to modify the dormer by slightly reducing its volume so that it complies with the permitted development rights available when work began prior to the designation of the conservation area. Paragraph 18 of PPG18 refers to unauthorised development by private householders and concludes that LPAs should not normally take enforcement action in order to remedy only a slight variation in excess of what would have been permitted by the GPDO. However, the significance of a "fall back position" is that it is an actual rather than a theoretical alternative, and in this case if the roof extension was to be removed as required by the notice, it could not be replaced by any other form of roof extension using permitted development rights under Class B as they are all removed by paragraph B.1(e). I reach this conclusion even though the aim of paragraph B.1(e) is to allow the opportunity to control development which could harm the character or appearance of a conservation area, and in this case I have concluded that there is no such harm. The fact remains that there is no "fall back position" in terms of permitted development rights.

Conclusion on the ground (a) appeals

20. My conclusion is that the development which is the subject of the deemed planning application has a harmful overbearing effect upon the amenities of the adjoining semi-detached bungalow and notwithstanding the "fall back position" and the advice in PPG18, planning permission to retain the development should be refused. The appeals on ground (a) therefore fail.

The appeals on Ground (f)

21. For the appeals on ground (f) to succeed the appellants need to demonstrate that the steps required to comply with the requirements of the notice are excessive, and that lesser steps would overcome the objections. Appellants are encouraged to state how they think the wording of the requirements should be varied. The appellants have repeated some of the arguments in favour of allowing the roof extension to be retained and suggest that at most the requirement should be to reduce it to a size that would have qualified as "permitted development" at the time the work commenced. However, these arguments have already been addressed, and no specific alternative requirements are suggested.

Main issues

12. The main issues are (i) the effect of the development upon the character and appearance of the De Freville Conservation Area, (ii) the effect upon residential amenity of the occupiers of nearby dwellings owing to overlooking and loss of privacy or the creation of an overbearing effect, and (iii) the weight to be given to the "fallback position" and the advice in PPG 18 *Enforcing Planning Control*.

The effect upon the character and appearance of the conservation area

13. The area comprises mainly late 19th and early 20th century houses with small areas of more recent development, including the appeal premises.
14. There are a number of dormers in the rear roofs of houses which are visible in the local street scene. The appellants maintain that these dormers were part of the character of the conservation area when it was designated in 2009, and I accept this. The upper part of the rear dormer at No.21 is clearly visible from Aylestone Road above the fences and garden vegetation but it is not intrusive. The green colour of the vertical timber boarding does not draw attention to itself, and it is seen against the side wall of the two storey house beyond, No.23, which rises above it. The green painted cladding of the new gable end can be glimpsed from Belvoir Street through the narrow gap between No.21 and No.23 but it has no material impact in my view. Apart from these glimpses of the dormer, views of the development are limited to those obtainable from the rear gardens of the adjoining houses, and I will consider this later. I think the unauthorised development has no harmful impact upon the character and appearance of the conservation area, which can be said to be preserved.

Residential amenity

15. The Council's *Roof Extension Design Guide* has a paragraph relating to development on rear roof slopes which are only visible from other gardens. According to the guide these still matter, since they may have an impact on the amenity of neighbouring houses. However, in these circumstances a more flexible approach may be acceptable and there may be situations in which extensions to the rear roof slope of a less conventional style are appropriate.

Overlooking and loss of privacy

16. I saw that both the windows in the dormer overlook the garden of the adjoining semi-detached bungalow, No.19, and to a lesser extent the adjacent detached two-storey house No.23. The effect is accentuated by the full depth glazing of the French windows nearest to No.19 but also mitigated by the presence of net curtains. However, these are both bedroom windows and the number of occasions when overlooking might occur are limited. Such overlooking is commonplace at the rear of two storey houses and these predominate in the area; the bungalows are an anomaly. The degree of overlooking is not significant enough to amount to a reason for refusing planning permission.

Overbearing effect

17. The roof extension can be seen from the rear garden of No.23, but it is not particularly intrusive. It is also visible through the rooflight in the single storey part of the rear of No.23 but I do not attach any particular significance to this. The dormer is much more intrusive when seen from the rear garden of No.19, the adjoining semi-detached bungalow. Although the "longer" section is nearer No.23, the impact is greater at No.19.

22. Although I have concluded as part of the ground (a) appeals that some form of rear roof extension could be acceptable, there is no specific alternative scheme or set of plans that could be referred to in any alternative wording of the requirements of the notice. The appeals on ground (f) therefore fail.

The appeals on Ground (g)

23. The appellants argue that a 12 month compliance period is necessary as they are living in the property and it would be difficult to organise the demolition work within the 6 months required by the notice. In the light of my decision on the ground (a) appeals, time may be needed for the preparation and consideration of an alternative scheme, before any demolition and/or modification work can be carried out. I propose to increase the compliance period to 9 months and to this extent the appeals on ground (g) therefore succeed.

David Harrison

Inspector

