



Appeal Decisions

Hearing Held on 5 June 2018

Site visit made on the same day

by Mrs H M Higenbottam BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 September 2018

Appeal A: APP/V2255/C/17/3178690

Land at 83 Chatsworth Drive, Sittingbourne, Kent ME10 1TW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Martin Ward against an enforcement notice issued by Swale Borough Council.
- The enforcement notice was issued on 18 May 2017.
- The breach of planning control as alleged in the notice is 'Without planning permission the construction of a dormer window to the front of the dwellinghouse and the erection of a first floor balcony at the rear of the dwellinghouse on the land'.
- The requirements of the notice are:
 - (i) Demolish the dormer to the front of the dwelling house.
 - (ii) Demolish the balcony at the rear of the dwelling house.
 - (iii) Remove from the Land all materials, rubble, machinery, apparatus and installations used in connection with or resulting from compliance with this Enforcement Notice.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

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

Appeal B: APP/V2255/C/17/3191871

83 Chatsworth Drive, Sittingbourne, Kent ME10 1TW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Martin Ward against the decision of Swale Borough Council.
- The application Ref: 17/505172/FULL, dated 25 September 2017, was refused by notice dated 1 December 2017.
- The development proposed is to regularise the insertion of a dormer window, construction of a balcony and associated spiral staircase as a means of escape.

Summary of Decision: The appeal is allowed in part and is dismissed in part, as set out below in the Formal Decision.

Application for costs

1. A written application for costs was made by Mr Martin Ward against Swale Borough Council in relation to Appeal A. The Council made oral submissions in relation to that application at the Hearing and Mr Ward's agent responded. This application is the subject of a separate Decision.

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Preliminary Matters

2. In Appeal B the stated description of development is to regularise the insertion of a dormer window, construction of a balcony and associated spiral staircase as a means of escape. This is taken from the application form. The Council determined the application on the basis that it was a retrospective application and redefined it as such in the decision notice. I will determine Appeal B on the basis that it is seeking retrospective planning permission for the insertion of a dormer window, construction of a balcony and associated spiral staircase as a means of escape.

Appeal A on ground (c)

3. In appealing on ground (c), the burden of proof is firmly on the appellant to demonstrate, on the balance of probabilities, that the matters stated in the enforcement notice do not amount to a breach of planning control. The ground (c) appeal relates only to the front dormer window part of the allegation.

4. The appeal property was constructed pursuant to planning permission SW/03/0269. Condition 3 of that planning permission stated:

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any other revoking and re-enacting that Order) (with or without modification), no windows/dormer windows (other than those expressly authorised by this permission) shall be constructed.

5. The appellant states that the 2003 condition only prohibited a dormer window, not an enlargement to the roof per se. The condition did not remove the right to enlarge the roof. A dormer window is a window that projects vertically from a sloping roof, which is what has been inserted in the front roof slope of No 83. As such, the dormer window which has been inserted requires planning permission.
6. No planning permission has been granted for the insertion of the dormer window and as such the appeal on ground (c) fails.

Appeal B – section 78

Main Issues

7. The main issues are:
 - the effect of the front dormer window on the character and appearance of the host dwelling and street scene; and
 - the effect of the balcony on the living conditions of the occupiers of nearby properties, particularly in relation to privacy.

Reasons

Character and Appearance

8. The appeal site lies within a residential area, which has a variety of dwelling types and styles. There are pairs of semi-detached houses, detached houses, terraces, bungalows and chalet bungalows. No 83 is one of a pair of semi-detached dwellings which were granted planning permission in 2003. To the west are two chalet bungalows: one with three dormer windows and the other with one dormer window to the front roof slope.

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9. There are examples of dormers having been inserted in to a variety of the dwelling types within the immediate area. While these are not the dominant character of the area they are clearly part of the established character of it.
10. The appeal property is set, along with No 81, at an angle to the road at the southern end of Chatsworth Drive. Due to mature tree planting in front of dwellings to the north of the appeal site views towards Nos 81 and 83 are restricted as you approach from that direction. To the east an access road leads to a row of garages to the rear of properties in Chatsworth Drive and individual garages to dwellings in London Road, so that the Nos 81 and 83 are seen separately do the more historic development of Chatsworth Drive at the end of the residential cul-de-sac.
11. There is a pedestrian walkway to the flank boundary of No 81 which allows pedestrian access to London Road, the land slopes from the north up to the south at this point. To the south of No 83 is 236 and 234 London Road. No 236 is a bungalow with a glazed conservatory type structure across the rear elevation.
12. The Council has produced a document entitled *Designing an Extension A guide for Householders* (DaE) which outlines important points to consider when proposing an extension. In relation to dormers it states that they should be in proportion with the roof and as a guide should be no deeper than half the depth of the roof slope with square proportions or vertical emphasis. Tiled roofs are favoured with tiles to match the main roof.
13. The dormer window sits roughly central within the roof slope, set down from the ridge and in from the edge of the gable and party wall, and away from the eaves. It is a subservient addition to the roof. Complementary materials to the host dwelling have been used for the formation of the dormer window. As such, I consider it complies with the thrust of the guidance in the DaE.
14. Due to the variety of building forms and design, the use of appropriate materials and its subservient form within the roof scape the front dormer complies with Policies CP4, DM14 and DM16 of Bearing Fruits 2031: The Swale Borough Local Plan 2017 (LP) which require development to be of an appropriate design and quality and which is appropriate to the context with respect to materials, scale height and massing within the roof scape.
15. I consider that there are no conditions which would be necessary on any grant of planning permission for the existing front dormer as the development is complete.

Privacy

16. No 83 is set at a lower level than 236 London Road and there are clear views from the balcony to the rear garden and rear glazed conservatory of No 236. The rear balcony at No 83 is a minimum of 16.7m from the rear elevation of No 236. The first floor window of No 83, as it was originally built, was 18.3m distant. The separation distances to other properties in London Road are greater than 21m. The DaE states that windows to the rear should be at least 21m from the windows of other houses to the rear and that extensions which reduce such a distance would need to be carefully examined. There is no guidance relating specifically to balconies.

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17. The original dwelling at No 83 did not comply with the separation distances set out in the DaE for window to window distances to No 236. However, I consider that the balcony further reduces the separation and introduces an area where people can come and go at first floor level to No 83 or sit or stand out on. This in my view would increase the potential and frequency of overlooking from No 83 to No 236 which would be seriously detrimental to the living conditions of the occupiers of No 236. This would be contrary to LP Policies CP 4, DM 14 and DM 16 which require development to be of a good design, protecting residential amenity and causing no significant harm to amenity.
18. The relationship of the balcony to the rear first floor window of No 81 would allow a person standing on the balcony or climbing the stairs to look into that window. However, I am satisfied that this could be adequately mitigated by the imposition of a condition to require the erection and retention of a privacy screen, were the balcony found to be acceptable in other regards.

Other Matters

19. The appellant stated that the balcony and staircase were required to provide a safe fire escape for occupiers. As I understand it, this requirement is because the property is open plan and over three floors. There is no substantiated evidence to demonstrate that internal alterations could not be made to create a safe layout or that if the layout remained the same that there was no alternative to the external fire escape via the balcony and stair case.

Conclusions

20. While I have found the front dormer window to be acceptable for the reasons set out above, the rear balcony and staircase significantly harms the privacy of the occupiers of 236 London Road. The stated justification for the balcony and staircase does not, on the evidence available, outweigh that harm. I will therefore allow the front dormer window and dismiss the rear balcony and staircase.

Appeal A on ground (f)

21. This ground of appeal is that the requirements of the notice are excessive and that lesser steps would overcome the objections. In appealing on ground (f) the appellants must specify specific lesser steps which, in their view, would overcome the objections to the appeal development. The appellant has confirmed that ground (f) is only pleaded in relation to the dormer window and not any other part of the allegation. The appellant considers that the glazed part of the dormer window could be blocked up leaving a roof enlargement.
22. The Council confirmed at the Hearing that the purpose of the notice is to remedy the breach of planning control that has occurred. As there is no ground (a) appeal in relation to Appeal A and I have found what has been constructed required planning permission the lesser steps cannot remedy the breach of planning control. As such, the appeal on ground (f) fails.
23. However, I have concluded that the dormer window is acceptable for the reasons set out in the considerations of Appeal B. A split decision will be issued in relation to Appeal B under section 78 of the Act and planning permission will be granted for the front dormer. The appellant can therefore place reliance on section 180 of the Act, to the effect that the notice ceases to

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have effect so far as it is inconsistent with the planning permission that will be granted.

Appeal A on ground (g)

24. This ground of appeal is that the time given to comply with the notice is too short. The Council have given three months for compliance. The appellant sought a six month compliance period.
25. At the Hearing the Council accepted that a six month period would allow a reasonable length of time for contractors to be appointed and a solution to the fire escape issue to be explored and an alternative solution pursued. I will therefore vary the period for compliance to six months. The appeal on ground (g) succeeds to that extent.

Conclusion on Appeal A

26. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations

Formal Decisions

Appeal A

27. It is directed that the enforcement notice be varied by the deletion of words 'Within 3 (Three)' and the substitution thereto of 'six'. Subject to this variation the appeal is dismissed and the enforcement notice is upheld.

Appeal B

28. The appeal is dismissed insofar as it relates to the construction of a balcony and associated spiral staircase as a means of escape. The appeal is allowed insofar as it relates to the insertion of a dormer window and planning permission is granted for the insertion of a dormer window at 83 Chatsworth Drive, Sittingbourne, Kent ME10 1TW in accordance with the terms of the application, Ref: 17/505172/FULL, dated 25 September 2017 and the plans submitted with it, so far as relevant to that part of the development hereby permitted.

Hilda Higenbottam

Inspector

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APPEARANCES

FOR THE APPELLANT:

Miss J Norris BSc FRICS	The Rural Planning Practice, agent for the appellant
Mr M Ward	Appellant
Mr D Ward	Father of the Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mrs T Day BA (Hons) MRTPI	Senior Planning Officer, Swale Borough Council
Ms M Harris BA(Hons)	Graduate Planner, Swale Borough Council

DOCUMENT SUBMITTED AT THE HEARING

1 Statement of Common Ground submitted by the appellant



Costs Decision

Hearing Held on 5 June 2018

Site visit made on the same day

by Mrs H M Higenbottam BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 September 2018

Costs application in relation to Appeal Ref: APP/V2255/C/17/3178690 Land at Chatsworth Drive, Sittingbourne, Kent ME10 1TW

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Martin Ward for a partial award of costs against Swale Borough Council.
 - The hearing was in connection with an appeal against an enforcement notice alleging, without planning permission, the construction of a dormer window to the front of the dwellinghouse and the erection of a first floor balcony at the rear of the dwellinghouse on the land.
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Decision

1. The application for an award of costs is refused.

The submissions for Mr Martin Ward

2. The costs application was submitted in writing. The following additional points were made orally. The application for costs is made with respect to the lack of a site visit to assess the impact of overlooking on No 236 London Road.
3. The Enforcement Officer for the Council spoke to neighbours but did not speak to the applicant. The original house did not fit into the design guidance produced by the Council and was short on the back to back distances.
4. The Council Officer should have attended the applicant's site and property to assess the situation and he then would have concluded that there was no harm resulting from the development.

The response by Swale Borough Council

5. The Council provided a written response to the costs application. The following additional points were made orally.
6. The Council carried out a site visit from a neighbouring property once it was aware of the rear balcony. The appeal property has also been viewed from public areas, a footpath and the road.

Reasons

7. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved

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unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The applicant's submissions fall within paragraph reference ID 16-046-20140306 of the PPG, namely that the Council did not carry out adequate prior investigations. More diligent investigations could have avoided the need to issue the notice, narrowed the issues or avoided the appeal.

8. The Council has provided evidence that they carried out site visits on 16 and 25 March 2015. A further site visit was carried out when the Council became aware of the erection of the rear balcony on 15 February 2017. The Council state that they were unable to access the appeal property at that time, which I take to mean no one was at the appeal property when the Council visited that day. The Officer viewed the balcony and took photographs from a neighbouring property.
9. In my view, the Council carried out a thorough investigation to assess the development that had taken place at the appeal property and the effect of that on the living conditions of the neighbouring occupiers. I see nothing unreasonable in how the Council gathered its evidence or the fact that the Council did not view the balcony from within No 83's boundary. This is because the Officer was able to assess the effect of the erection of the balcony from public areas and from the neighbouring property.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and the application for an award of costs fails.

Hilda Higenbottam

Inspector