



Appeal Decision

Site visit made on 13 January 2015

by **Nigel Burrows BA MRTPI**

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

Decision date: **17 February 2015**

Appeal Ref: APP/V2255/C/14/2220485

Roseann, Saxon Avenue, Minster, Kent, ME12 2RP

- 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 David Grey against an enforcement notice issued by Swale Borough Council.
- The Council's reference is ENF/MIN/13/013.
- The notice was issued on 16 May 2014.
- The breach of planning control as alleged in the notice is 'the construction of a rear extension and garage, the approximate positions of which are highlighted on the plan, which in the opinion of the Council would require planning permission.'
- The requirements of the notice (as set out in paragraph 5) are:-
 - (i) Demolish the rear extension and the garage;
 - (ii) Remove any materials or debris etc from the Land caused in complying with the requirements of 5(i) above.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (c) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld

Procedural Matters

1. The appeal against the enforcement notice was originally lodged on ground (a). However, the submissions lodged on the appellant's behalf also included arguments normally considered under ground (c), namely that the garage extension did not require planning permission. The appeal is therefore proceeding on grounds (a) and (c). The main parties were subsequently given the opportunity to make further ground (c) submissions, which have been taken into account in my consideration of the appeal.

The appeal on ground (c)

2. Ground (c) is known as one of the 'legal' grounds of appeal. The onus is on the appellant to make out the case that there has not been a breach of planning control.
3. The erection of the rear extension and garage constitute development for the purposes of section 55 of the 1990 Act. It is therefore necessary to consider whether these works are permitted development under the provisions of the Town and Country Planning (General Permitted Development) Order, as amended (i.e. the GPDO). Bearing in mind the rear extension and garage are attached to the dwelling, they should be assessed against the provisions of Class A, Part 1, Schedule 2 of the GPDO.
4. There is no firm evidence before me to indicate when the unauthorised development commenced. However, the Council's submissions include photographs of the construction works. A photograph apparently taken on 18 April 2013 indicates the

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works were well advanced at this time. On the balance of probability, I therefore consider the development falls to be considered against the amendments to Class A, Part 1, Schedule 2 of the 1995 GPDO which came into force on 1 October 2008¹.

5. The provisions of Class A allowed the enlargement of a dwellinghouse, subject to certain limitations. The appellant's stance is the single storey garage extension erected to the side of the bungalow did not require planning permission. The inference appears to be that it complied with all of the limitations and conditions set out within Class A, including paragraphs A.1 (a) to (i). However, according to the Council, the rear extension and garage were erected as a 'single building operation'. The Council's stance is the whole of the development therefore required planning permission.
6. The ground (c) submissions for the appellant appear to focus on the garage extension. These submissions state "... in reality it is only the conservatory that does not meet permitted development criteria." However, the conservatory and garage are linked. The Council's photographs indicate they were under construction at the same time. The appellant has not provided any evidence to refute the Council's assertion that the building works involved one overall project to enlarge the bungalow, nor has any firm evidence been provided to demonstrate that the overall enlargement of the property met all the relevant limitations and conditions of Class A, or any other part of the GPDO.
7. It is well established in planning law that the onus rests with the appellant to make out his or her case. I find that burden has not been satisfactorily discharged in this instance. As matters stand, I conclude that building operations have taken place at the property without the necessary planning permission and a breach of planning control has occurred as alleged in the enforcement notice. The appeal on ground (c) fails.

The ground (a) appeal and deemed application

8. The main issue in this appeal is the effect of the development on the living conditions of neighbouring residents, with particular reference to their outlook and sunlight.
9. The enlargements to the side and rear of the bungalow appear to have resulted in a significant increase in the overall bulk and proximity of built development near the boundary with the adjacent bungalow, 'Pendower'. The development appears to have resulted in an increased sense of enclosure to the occupiers of this property, to the extent that it significantly impinges upon their outlook. The oppressive impact of the garage is accentuated by its gabled flank wall, which is noticeable from some of the neighbours' side windows and passageway. The additional rearward projection of the linked conservatory exacerbates this sense of enclosure, to the extent that the neighbours are likely to feel hemmed in by the cumulative effect of the enlargements.
10. The appellant indicates the depth of the conservatory does not exceed 3.0m - as recommended in the Council's SPG². It is also alleged the SPG is dated, as a 4.0m deep rear extension would not require planning permission. Be that as it may, given the cumulative effect of the current enlargements, they constitute an unneighbourly form of development. The appellant also argues the recent amendments to the GPDO would allow the provision of an 8.0m deep rear extension³. However, this would need to be the subject of the prior approval procedure. In any event, there is no firm evidence to demonstrate there is 'a greater than theoretical possibility' that such a development might take place. This argument cannot be given significant weight in this appeal.
11. Concerns have been expressed about additional overshadowing of 'Pendower'. However, this has not been quantified, for example by reference to any sunlight or daylight calculations. Bearing in mind that a garage previously existed alongside 'Roseann', it is

¹ S.I. 2008 No. 2362: The Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008

² Supplementary Planning Guidance - 'Designing an Extension: A Guide for Householders'

³ S.I. 2013 No. 1101: The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013

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not clear whether the new extensions have unacceptably diminished the levels of sunlight available to 'Pendower' (or daylight). In any event, the increased sense of enclosure and consequential harm to the outlook of the neighbours constitutes a decisive objection to the development. In this respect, I find it conflicts with the objectives of 'saved' policies E1 and E24 of the Council's Local Plan⁴ to ensure that residential amenity is protected.

12. The appellant is evidently willing to replace the high-level windows on the west side of the conservatory⁵ with obscure glazed, fixed lights. However, this step would not overcome the overbearing and dominating impact of the development. It is not obvious to me that the adverse impact of the scheme could be overcome by any other planning conditions.
13. Having said that, I recognise that it might be possible for the parties to explore whether or not a mutually acceptable solution could be found for some alternative form of enlargement to the property. I also note the Council has given the appellant a period of up to 6 months to comply with the notice. This should allow adequate time for the parties to explore the matter further or, alternatively, for the appellant to comply with the notice.
14. The Council's concern to protect residential amenity is generally consistent with the Government's objectives for the planning system. Paragraph 14 of the National Planning Policy Framework (March 2012) sets out the presumption in favour of sustainable development. The economic, social and environmental dimensions of sustainable development should be addressed. Paragraph 9 also makes it clear that pursuing sustainable development includes seeking positive improvements in the quality of the environment and improving people's quality of life. I conclude the existing development materially conflicts with the latter objectives. The appeal on ground (a) therefore fails.

Conclusions

15. I have taken into account all the other matters raised, including the personal and financial circumstances of the appellant, but I find they do not alter or outweigh the main considerations that have led to my decision. For the reasons given above, I shall uphold the enforcement notice and refuse to grant permission on the deemed application.

Formal Decision

16. 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 as amended.

Nigel Burrows

INSPECTOR

⁴ Swale Borough Local Plan (2008)

⁵ Which appear to encroach across the boundary when open