



## Appeal Decisions

Site visit made on 24 July 2023

**by James Blackwell LLB (Hons) PGDip**

**an Inspector appointed by the Secretary of State**

**Decision date: 8<sup>th</sup> November 2023**

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**Appeal A Ref: APP/D3640/C/22/3299756**

**Appeal B Ref: APP/D3640/C/22/3299757**

**Land at 1 Middle Close, Camberley, Surrey GU15 1NZ**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeals are made by Mr Mukand Sai Mudgal (Appeal A) and Mrs Bhavina Mudgal (Appeal B) against an enforcement notice issued by Surrey Heath Borough Council.
- The enforcement notice, numbered 21/0095/ENF, was issued on 22 April 2022.
- The breach of planning control as alleged in the notice is failure to comply with a condition imposed on a planning permission ref 19/0701/FFU granted on 7 November 2019.
- The development to which the permission relates is: Proposed single storey front extension including two roof lights, first floor extension to the eastern side elevation, a two-storey extension to the western side elevation following demolition of the existing garage, change to main roof form to increase in ridge height, six roof lights to main front roof slope, two rear dormers and fenestration alterations to front and rear elevations.
- The condition in question is no. 1 which states that: The development shall be built in accordance with the following approved plans:  
Site Location Plan, Drawing reference: S02, Received 16.09.2019  
Proposed Block Plan, Drawing reference D07, Received 27.08.2019  
Proposed Ground Floor Plan, Drawing reference: D01, Received 27.08.2019  
Proposed First Floor Plan, Drawing reference: D02, Received 27.08.2019  
Proposed Second Floor Plan, Drawing reference: D03, Received 27.08.2019  
Proposed Roof Plan, Drawing reference: D04, Received 27.08.2019  
Proposed Side and Front Elevations, Drawing reference: D05, Received 27.08.2019  
Proposed Side and Rear Elevations, Drawing reference: D06, Received 27.08.2019  
Proposed Block Plan Bird Box Details, Drawing reference: D08, Received 03.10.2019  
Proposed Block Plan Tree Protection Plan, Drawing reference: D09, Received 03.10.2019.
- The notice alleges that the condition has not been complied with in that: the works are materially difference to the approved plans, noting in particular the enlargement of the front gables and installation of four heating and cooling units.
- The requirements of the notice are to:
  2. Take all steps necessary, including any alterations to buildings and structures currently on the Land or undertaking any demolition of any such buildings and structures, to ensure that the development complies with the approved drawings approved under Condition 1 of planning permission reference 19/0701/FFU and to match those materials to the existing building. (Relevant drawings are those listed above).
  3. Remove from the Land all resultant materials or other debris arising from compliance with Step 2 above.
  4. Reinstate the Land and make good any damage caused arising from compliance Step 3 above.
- The period for compliance with the requirements is: Four (4) months after this notice takes effect.

- Appeal A is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
- Appeal B is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended.

**Summary decisions: Appeal A succeeds in part and permission for that part is granted, but otherwise Appeals A and B fail, and the enforcement notice is upheld as corrected and varied in the terms set out in the Formal Decision.**

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### **Preliminary Matters**

1. The matters alleged in the notice (EN) include explanatory text to the alleged breaches of planning control, which are more akin to reasoning for the EN. I have therefore corrected the EN, so that the matters alleged are clearly and succinctly described. I have also separated the matters alleged into distinct components, which adds greater clarity and precision, particularly with regards to the split decision being issued.
2. I have varied the requirements of the EN, as paragraph 5.1 is again explanatory text, and not a specific requirement. I have therefore removed this paragraph to ensure the requirements are sufficiently clear and precise. I have also made corresponding amendments to the numbering of the steps. I am satisfied that these corrections and variations will not cause injustice to the parties, as neither the substance of the matters alleged, nor of the requirements, have been changed.
3. The second component of the matters alleged is the installation of four heating and cooling units, three of which were installed on the western flank elevation of the appeal property, and one of which was installed on the eastern flank elevation. All of these units have since been removed. Nonetheless, the appeal before me must be determined with regard to the alleged breaches of planning control at the time the EN was issued. In turn, these units are still considered as part of this decision.
4. Since the appeal start date, the 2021 iteration of the National Planning Policy Framework (Framework) has been superseded. I am satisfied that the updates to the Framework do not materially affect its content insofar as it is relevant to the main issues of this appeal. I have therefore determined this appeal with regard to the current version, published in September 2023.

### **Ground (a) (Appeal A)**

#### **Main Issue**

5. The main issue is the effect of the development on the character and appearance of the area.

#### **Reasons**

##### *Background*

6. Planning permission was originally granted under reference 19/0701/FFU for extensions and other alterations to the appeal property (2019 Permission). The as-built development differs from the plans approved pursuant to the 2019 Permission in a number of ways. These changes include alterations to the dwelling's footprint, a reduction in its maximum ridge height, changes to the

size and position of the rear dormers and changes to the fenestration arrangement around the property. A first-floor infill extension on the eastern side elevation has also not been built. With the exception of certain changes to the gable fenestration, the Council has not raised any issue with these deviations from approved plans. However, the Council contends that harm does derive from the enlargement of the front gables and the greater extent of glazing used in one of these gables. It is these elements of the scheme that are considered in the reasoning below.

*As-built development*

7. The appeal property is a two-storey detached dwelling, located on the southern side of a small residential cul-de-sac. Houses within the cul-de-sac are mixed in size and design, which means there is limited uniformity between dwellings along the road. Many of the properties within the cul-de-sac are also heavily screened by tall hedgerows, which contributes a strong sense of verdancy to the street scene.
8. The newly built front gables are approximately 0.6 metres higher than consented, which means they extend close to the ridge of the dwelling (sitting approximately 0.2 metres below). On account of this proximity to the ridge, the gables fail to appear subservient to the main part of the dwelling, which exacerbates their prominence within the street scene when compared to the scheme consented under the 2019 Permission. The prominence of the gables dominates the frontage of the property, which causes some harm to its appearance and to the surrounding street scene. The appellant does not appear to dispute this.
9. Nonetheless, it should be highlighted that the scheme approved under the 2019 Permission also included a double fronted gable. The consented gables would have been approximately 0.6 metres lower than what has been built, which means they would have appeared slightly more subservient to the host property. However, their width and depth would have been similar, which means their general scale would have been comparable to what is now in situ. The gables would therefore have been a prominent feature, even if built in accordance with the consented scheme. When considered in this context, the resultant harm from the slight increase in height of the gables is relatively low.
10. In terms of the fenestration, a large proportion of the first-floor frontage to one of the gables is now almost entirely glazed. This does amplify the prominence of the gable, and exacerbates its dominance within the street scene. However, there are houses elsewhere along the cul-de-sac which feature large expanses of glass and fenestration, which means the expanse of fenestration used in this instance does not appear as a unique feature. This helps lessen the resultant impact on the street scene. The screening from the tall hedgerow running along the frontage to the appeal property also limits visibility of the gable feature from the road, which further reduces any resultant impact.
11. Nonetheless, the deviations from the as-built plans do cause some limited harm to the character and appearance of the host property and to the surrounding area. On balance, the development therefore conflicts with the design principles of Policy DM9 of the Surrey Heath Core Strategy and Development Management Policies Document 2012 (Core Strategy), which says development should respect the local character of the environment with particular regard to scale, materials, massing and bulk. The scheme also

conflicts with the design guidance for extensions set out in section 10 of the Council's Residential Design Guide<sup>1</sup> (Design Guide), which highlights that extensions should appear subservient to the host property, and respect the main building they relate to in terms of style, form and detailing. The development also contravenes the overarching design objectives of the Framework.

#### *Heating and cooling units*

12. The addition of four heating and cooling units would have also added a significant degree of clutter to the flank elevations of the appeal property. In particular, the extent of units installed on the western side of the property, which directly faced the garden to no. 3 Middle Close, would have assumed a semi-industrial appearance, which would have undermined the residential and verdant quality of the area. The appellant does not dispute this.
13. In turn, this element of the development would again have harmed the character and appearance of the host property and the surrounding area. The heating and cooling units would therefore have conflicted with the overarching design principles of Policy DM9 of the Core Strategy, the Design Guide and the Framework.

#### **Other Matters**

14. As highlighted, the scheme consented under the 2019 Permission would have also incorporated a double fronted gable, again with a feature window. The overarching bulk and scale of the consented scheme would have also been comparable to what has been built. In turn, the resultant improvements to character and appearance if the appellants were required to remedy the deviations from the as-built plans, would only be slight. This factor carries weight in my decision.
15. Prior to its renovation, the appeal property already included a full-height double-front gable, which was again a prominent feature of the dwelling. When the scheme is considered in the context of the original dwelling and its pre-existing degree of prominence, the resultant impact of the as-built dwelling is therefore even more limited.
16. I have had regard to the rights of the appellants under Article 8 of the European Convention on Human Rights, as incorporated into the Human Rights Act 1998. Article 8 affords the right to respect of private and family life and home, and includes consideration of the best interests of children.
17. In this instance, compliance with the requirements of the EN, specifically those relating to the remediation of the deviations from the as-built plans, would risk grave financial repercussions for the appellants. Indeed, the associated costs could risk the loss of their home, which could also necessitate a change in schools for their children. Given the personal circumstances of the appellants, and in particular the health of certain family members, these factors are a material consideration which carry significant weight in my decision.
18. Neighbours have raised concerns about the length of time that the renovations to the appeal property have taken, and the associated disruption this has caused. Any works required to ensure compliance with the as-built plans would

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<sup>1</sup> Surrey Heath, Residential Design Guide, Supplementary Planning Document (2017)

inevitably take time to complete, which would prolong this disruption and upheaval. Whilst not determinative, I am again mindful of this factor in my decision.

19. In terms of other local objections, the overall size and bulk of the as-built property is broadly comparable to the scheme consented under the 2019 Permission, and so the general scale of the property has already been approved. The siting of the property, degree of separation between dwellings, and the screening afforded by the front hedgerow, also help ensure that the as-built dwelling does not materially impact on any potential for overlooking or loss of privacy, when considered against the consented scheme.
20. I am mindful of the earlier appeal decision in connection with the property which carries weight in my decision. Whilst I have agreed with the findings of the previous inspector in terms of conflict with the development plan, there is no indication that the personal circumstances of the appellant were considered (or evidenced) as part of this earlier appeal, or that the previous Inspector had sight of, or regard to the plans and dimensions of the pre-existing property. This means that the factors and material considerations relevant to the outcome of this appeal are different.

### **Planning Balance**

21. As highlighted, the development conflicts with Policy DM9 of the Core Strategy, as well as the design principles of the Design Guide and the Framework. However, given the broad similarities between the as-built scheme and the scheme consented under the 2019 Permission, the associated harm arising from these conflicts is limited.
22. Set against this harm, I attach significant weight to the personal circumstances of the appellants, and in particular to their Article 8 rights to a family and private life. The associated disruption and limited benefit of compliance with the EN to the character and appearance of the host property and to the area are also material to my decision, as is the pre-existing prominence of the original dwelling, a further factor which weighs in favour of the development. When taken together, I consider that these considerations do outweigh the harm arising from the policy conflicts outlined above, but only insofar as they relate to the deviations from the as-built plans.
23. In terms of the heating and cooling units, this element of the scheme would have harmed the character and appearance of the host property and of the surrounding area, and there are no benefits which would outweigh this harm.

### **Ground (f) (Appeals A and B)**

24. Pursuant to ground (f), the appellant alleges that the steps required to be taken in the EN exceed what is necessary to remedy the alleged breach of planning control. However, given my conclusions with regard to the as-built elements of the scheme, for which permission will be granted, the appeals on ground (f) only fall to be considered insofar as they are relevant to the installation of the four heating and cooling units. In their appeal statement, the appellants accept that the heating and cooling units are harmful, and therefore intimate an intention to remove them (as has now since been done).
25. Notwithstanding this position, it is worth highlighting that, as per s173(4) of the Town and Country Planning Act 1990, the purpose of the EN is to remedy

the breach of planning control. The requirements set out in the EN must therefore achieve this purpose. In this instance, the requirements of the EN state that all necessary steps must be taken to ensure the property complies with the plans originally approved pursuant to the 2019 Permission.

26. Whilst this requirement could be construed as including a requirement to remove the heating and cooling units (as clearly intended by the Council), this is not explicit. To provide greater clarity in terms of the steps required, I have therefore incorporated a specific requirement to remove the heating and cooling units from the property. This variation helps ensure that the requirements correspond properly to the matters alleged to constitute the breach (as amended). It also helps ensure that the requirements are distinct and separate from one another, which is helpful given that I am issuing a split decision.
27. Given the nature of the matters alleged, and that the appellant does not dispute the harm arising from the heating and cooling units, I am satisfied that this variation does not cause injustice to the parties. As mentioned, I have also made a number of other minor variations to the requirements, to ensure sufficient clarity with regard to their numbering. These requirements, as amended, go no further than remedying the original breach of planning control as described in the EN, and any lesser steps would not properly achieve this purpose.
28. Nonetheless, on account of the variations made, the appeals on ground (f) succeed, but only to the extent outlined.

### **Ground (g) (Appeals A and B)**

29. Pursuant to ground (g), the appellants allege that the period for compliance with the requirements of the EN is too short. However, once again, given my conclusions with regard to the as-built elements of the scheme, the appeals on ground (g) only fall to be considered insofar as they are relevant to the installation of the heating and cooling units.
30. Given that the heating and cooling units have already been removed, there is no reason for the period for compliance to be extended. The appeals on ground (g) therefore fail.

### **Conditions**

31. I have included a new condition which requires the property to be retained in accordance with the up to date as-built plans. This is to give certainty over the development now consented.
32. I have also reviewed the conditions attached to the 2019 Permission, to see if any of these should be carried forward to the new permission. However, all of these were pre-commencement or construction requirements, and do not include any elements of ongoing compliance. In turn, it is not necessary for any of the original conditions to be re-imposed, as the development is now complete and occupied.
33. The appellant has suggested that a condition could be imposed to restrict permitted development rights insofar as they allow the installation of heating and cooling units. However, given that the EN will be upheld insofar as it



relates to the installation of these units, I do not consider such a condition to be necessary, because the EN will be effective against future development.

### **Conclusion**

34. For the reasons given, I conclude that Appeal A on ground (a) succeeds insofar as it relates to the as-built plans, but fails insofar as it relates to the installation of the four heating and cooling units. Given that the appeal succeeds in part only, I shall uphold the enforcement notice, subject to the corrections and variations outlined in the Formal Decision.
35. As I am upholding the EN, I shall not exercise my power under section 177(1)(b) and its related statutory provisions to discharge condition 1 of the original 2019 Permission. This is because any changes to that permission, which pre-dates the EN, would not benefit from the provisions of section 180 of the 1990 Act so as to supersede the requirements of the EN.
36. Instead, I shall grant a fresh planning permission pursuant to section 177(1)(a) on the application deemed to have been made under section 177(5) for the erection of single storey front extension including two roof lights, first floor extension to the eastern side elevation, a two storey extension to the western side elevation following demolition of the existing garage, change to main roof form to increase in ridge height, six roof lights to main front roof slope, two rear dormers and fenestration alterations to front and rear elevations without compliance with the drawings set out in condition 1 of planning permission 19/0801/FFU dated 7 November 2019, subject to a new condition which requires retention of the development in accordance with the as-built plans. In accordance with section 180 of the 1990 Act, the requirements of the EN will cease to have effect insofar as they are inconsistent with this new permission.
37. Given that planning permission is granted for the as-built development pursuant to ground (a), grounds (f) and (g) only fall to be considered insofar as they are relevant to the installation of the four heating and cooling units.
38. As set out above, I have made a number of variations to the requirements of the EN, and the appeals on ground (f) therefore succeed, but to that extent alone. For the reasons outlined above, the appeals on ground (g) fail.

### **Formal Decisions**

39. It is directed that the enforcement notice is corrected by:
  - a) deleting paragraph 3 and substituting it with the following new paragraph 3:

**THE MATTER WHICH APPEARS TO CONSTITUTE THE BREACH OF PLANNING CONTROL:**

Erection of single storey front extension including two roof lights, first floor extension to the eastern side elevation, a two storey extension to the western side elevation following demolition of the existing garage, change to main roof form to increase in ridge height, six roof lights to main front roof slope, two rear dormers and fenestration alterations to front and rear elevations, without compliance with the drawings set out in condition 1 of planning permission 19/0801/FFU dated 7 November 2019, with the non-compliance comprising the following:

- A) the development has been built in accordance with following drawings: S01 (Site Location Plan); S111 (As-Built Ground Floor Plan); S112 (As-Built First Floor Plan); S113 (As-Built Second Floor Plan); S114 (As-Built Roof Plan); S115 (As-Built Elevations); S116 (As-Built Elevations);
- B) the installation of four heating and cooling units on the western and eastern flank elevations of the property.

and varied by:

- b) deleting paragraph 5.1;
  - c) re-numbering steps 5.2, 5.3 and 5.4 to 5.1, 5.2 and 5.3 respectively;
  - d) deleting reference to "Step 2" in 5.3 and substituting it with "Step 1";
  - e) deleting reference to "Step 3 in 5.4 and substituting it with "Step 2"; and
  - f) inserting the following new paragraph 5.4:
    - 4. To permanently remove the heating and cooling units from the property, together with all associated cabling and equipment.
40. Subject to these corrections and variations, **Appeal B** is dismissed and the enforcement notice is upheld. Subject to the same corrections and variations **Appeal A** is dismissed in part, the enforcement notice is upheld and planning permission is refused for the matters alleged under paragraph 3(b) of the notice, being the installation of four heating and cooling units on the western and eastern flank elevations of the property, on the application deemed to have been made under section 177(5) of the 1990 Act as amended.
41. Planning permission is however granted on the application deemed to have been made on **Appeal A** under section 177(5) of the 1990 Act as amended for the matters alleged under paragraph 3(a) of the notice, being the erection of single storey front extension including two roof lights, first floor extension to the eastern side elevation, a two storey extension to the western side elevation following demolition of the existing garage, change to main roof form to increase in ridge height, six roof lights to main front roof slope, two rear dormers and fenestration alterations to front and rear elevations, without compliance with the drawings set out in condition 1 of planning permission 19/0801/FFU dated 7 November 2019 on Land at 1 Middle Close, Camberley, Surrey GU15 1NZ, subject to the following new condition:
- (1) The development shall be retained in accordance with the following drawings: S01 (Site Location Plan); S111 (As-Built Ground Floor Plan); S112 (As-Built First Floor Plan); S113 (As-Built Second Floor Plan); S114 (As-Built Roof Plan); S115 (As-Built Elevations); and S116 (As-Built Elevations).

*James Blackwell*

INSPECTOR