
Appeal Decisions

Site visit made on 18 July 2018

by **B.S.Rogers BA(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 30 July 2018

Appeal A Ref: APP/W1850/C/17/3176593

11 Hartland Close, Belmont, Hereford, Herefordshire, HR2 7SL

- 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 Tim Woodcock against an enforcement notice issued by Herefordshire Council.
- The enforcement notice was issued on 25 April 2017.
- The breach of planning control as alleged in the notice is without planning permission unauthorised material change of use of land to residential curtilage and unauthorised operational development by erection of a garden room, decking, timber stairs and steps outside the residential curtilage.
- The requirements of the notice are, in brief, (1) permanently cease the residential use of land outside of your residential curtilage and remove the garden room, decking, timber stairs and steps outside of the residential curtilage (beyond the orange line shown on the plan); and (2) remove the plants (as listed).
- The period for compliance with the requirements is 3 months for step (1) and 6 months for step (2).
- The appeal is proceeding on the grounds set out in section 174(2)(f) & (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the notice is upheld with a correction and variations.

Appeal B Ref: APP/W1850/W/17/3176734

Appeal C Ref: APP/W1850/W/17/3184118

11 Hartland Close, Belmont, Hereford, Herefordshire, HR2 7SL

- Both appeals are made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- Both appeals are made by Tim Woodcock against the decisions of Herefordshire Council.
- **Appeal B:** The application Ref: 172214, dated 1 June 2017, was refused by notice dated 8 September 2017.
- The development proposed is change of use of land to residential curtilage. Retention of timber deck, single flight of timber stairs, gravel path, steps and timber retaining wall, post and wire boundary fence and associated groundworks.
- **Appeal C:** The application Ref: 162891, dated 28 August 2016, was refused by notice dated 15 March 2017.
- The development proposed is (retrospective) change of use of land to residential curtilage. Retention of timber deck, single flight of timber stairs, gravel path, steps and timber retaining wall, post and wire fence, associated groundworks.

Summary of Decisions: Both appeals are dismissed.

Preamble

1. In all 3 appeals, the use of the appeal site is described as 'residential curtilage'. However, 'curtilage' is not a use of land but defines an area of land in relation to a building. As in this case, land could be used for residential purposes without falling within the curtilage of a dwellinghouse. I shall correct the allegation in the notice accordingly and treat the other appeals in a similar manner. For the avoidance of doubt, the residential curtilage of the appellant's dwellinghouse is considered to be the original plot of land within which the house was constructed, terminating at the northern edge of the original garden.

Context

2. The appeal property is one of a row of modern, detached houses sited on a highly elevated terrace of land to the south of the River Wye. Immediately abutting the rear gardens is a very steep and heavily wooded slope, in the region of 40m in depth, leading down to a broad, grassed flood plain which abuts the river. The appellant has purchased the land between his rear garden and the river, corresponding to the width of his property; I understand that other neighbouring householders have made similar purchases.
3. The sloping land to which all 3 appeals relate is part of a Special Wildlife Site (SWS) described as the 'Belmont wood and Hunderton rough'. The most northerly section of the site of Appeals A and B is also within the impact risk zone of the River Wye Special Area of Conservation (SAC) and Site of Special Scientific Interest (SSSI).
4. Appeals A and B relate to development extending down the whole of the wooded slope, some 38 m in extent. Appeal C relates to the upper part of the slope, some 14m in extent. This application does not seek to retain the lower decking, garden room and lower timber flight of stairs, which are included within Appeals A and B.

Appeals B and C

5. Despite the close proximity to sites of local, national and international nature conservation interest, the Council appears satisfied that the adverse impact of this development can be mitigated by conditions, including requiring suitable restorative planting. Therefore, the main issue in both cases is the impact of the development on the character and appearance of the landscape.
6. The development plan relevant to this case is the Herefordshire Local Plan Core Strategy 2011-2031 (CS). It is consistent with the National Planning Policy Framework in promoting sustainable development. Policy SS6 seeks to conserve those environmental assets that contribute towards the county's distinctiveness, in particular its settlement patterns, landscape, biodiversity and heritage assets, and especially those with specific environmental designations. Policy LD1 requires development to have regard to landscape character, conserving and enhancing important landscapes and ensuring development integrates appropriately into its surroundings; it seeks to maintain and extend tree cover where important to amenity.
7. The appeal site is part of an area of land sensitive in both landscape and ecological terms. In the Council's County-wide Landscape Character Assessment (LCA), it falls within the Riverside Meadows character area. Whilst the LCA notes that woodland is generally not a feature of such an area,

nonetheless it seeks to conserve, restore and enhance linear tree cover and discourage built development. This part of the Wye Valley appears to depart from the generality of the LCA in that, to my mind, the wooded embankment of which the appeal site forms part is integral to the character and setting of this part of the Valley. It marks the transition between the urban fringe and the surrounding natural landscape adjoining the River Wye and, to my mind, forms a strong visual statement. It is an attractive landscape feature in its own right and is additionally a means of screening the urban development to its south side. The rustic nature of the landscape is appreciated in views of the river corridor from the Wye Valley Walk, which abuts the north side of the river. Although this is a fairly limited visual envelope, it is a landscape very sensitive to change.

8. To my mind, the encroachment of residential use into the wooded embankment or into the flood plain below would, in principle, be harmful in introducing domestic activity and paraphernalia into an otherwise natural looking area. It would fail to respect its context and to demonstrate that the landscape has positively influenced site selection, as required by Policy LD1.
9. The operational development which is the subject of Appeal B comprises an upper area of decking, which is part within and part beyond the residential curtilage. From this decking, stairs and steps lead down to a lower decking on which is sited a garden room. There are further stairs leading down to the lowest level, enclosed by a fence. Planting has taken place on the areas not covered by the decking and stairs. The development is constructed of timber and well designed. However, it represents an inappropriate incursion of built development into this otherwise unspoilt wooded area, which I saw was clearly visible from the Wye Valley Walk and would be much more evident in the winter months.
10. The proposal subject to Appeal C would omit the lower decking, the garden room and the lower stairs. However, whilst less harmful than the development subject to Appeal B, it would still represent an inappropriate incursion of built development into this wooded embankment.
11. Adding to the harm arising from the present development is the strong possibility that granting planning permission would encourage other nearby land owners to pursue similar schemes, thereby causing cumulative damage to the landscape. Additionally, whilst the Council has indicated that the ecological impact of the present development could be mitigated by suitable planning conditions and a planting scheme, due to the sensitivity of the site in its wider context there is a possibility that a wider cumulative impact might not be suitably mitigated.
12. I note that in 2004 the Council approved an area of decking extending beyond the curtilage of a dwelling further to the east of the appeal site. I also note the dismissal in 2005 of an appeal against the Council's refusal to allow the construction of decking at another dwelling to the east of the appeal site and to extend residential use into the river corridor. These seemingly contradictory decisions do not lead to a clear conclusion and are of limited assistance in my consideration of the appeal proposals.
13. I have taken account of third party views both for and against the development but have found nothing of sufficient weight to alter my conclusions. I have also noted that the appellant was led to believe by his solicitor that planning permission was not required for the development. However, that is a matter

for the appellant to take up with his solicitor. There is no indication that the Local Planning Authority was asked for any such advice.

14. In conclusion, I have come to the view that both developments are unacceptably harmful to the character and appearance of the attractive landscape of this part of the River Wye valley, contrary to the aims of CS Policies SS6 and LD1. They do not represent a sustainable form of development and, accordingly, both Appeals B and C fail.

Appeal A, ground (f)

15. In terms of the use of the land, the requirement for the cessation of residential use is no more than is required to address the breach. The removal of the operational development is equally necessary to address the breach. However, the plan attached to the notice only requires the operational development beyond the orange line to be removed. This line permits the upper decking to be retained just over 1m beyond the residential curtilage but excludes a further similar depth of decking, extending across some 2/3 of the width of the site, and enclosed by a balustrade. To my mind, if a minor incursion is permissible to the orange line, it would be unduly punitive to require the small, additional area of decking to be removed. I shall vary the notice accordingly.
16. Turning to the planting, this does not fall within the definition of development. Also, it was agreed at the site visit that one of the plants, *Almelachier Lamarckii* had not actually been planted. The presence of the remaining 2 species was not widespread and did not appear to me to give the land a 'residential' character. Accordingly, I find the requirement to remove them to be excessive and not to directly address the breach of planning control.
17. The appeal on ground (f) succeeds to the extent described above.

Appeal A, ground (g)

18. The appellant seeks more than 3 months to carry out Step (1) of the requirements of the notice on the basis of needing to avoid working on the steep slope in the winter months. However, the timing of this appeal decision makes an additional compliance period unnecessary. The appeal on ground (g) fails.

Formal Decisions

Appeal A

19. The enforcement notice is corrected by, in part 3, replacing "material change of use of the land to residential curtilage" with "material change of use of the land for residential purposes".

The enforcement notice is varied by:

- i. replacing step (1) with "Permanently cease the residential use of land outside of the residential curtilage and remove the garden room, lower decking, timber stairs and steps outside of the residential curtilage. The whole of the upper decking, extending approximately 3m beyond the northern edge of the residential curtilage, may be retained"; and
- ii. deleting step (2) and the corresponding time for compliance.

Subject to the above correction and variations, the appeal is dismissed and the enforcement notice is upheld.

Appeal B

20. The appeal is dismissed.

Appeal C

21. The appeal is dismissed.

B.S. Rogers

Inspector