The Planning Inspectorate

Appeal Decisions

Site visit made on 6 February 2017

by K R Saward Solicitor

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

Decision date: 22 February 2017

38 Derby Avenue, Upminster RM14 2NR
Appeal A: APP/B5480/C/16/3160764
Appeal B: APP/B5480/C/16/3160765

- 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 Chris Watson (Appeal A) & Miss Domonique Mills (Appeal B) against an enforcement notice issued by the Council of the London Borough of Havering.
- The enforcement notice was issued on 9 September 2016.
  The breach of planning control as alleged in the notice is without planning permission, the erection of a single storey rear extension that extends 6.1m beyond the original rear wall of the house.
- The requirements of the notice are:-
  EITHER:
  (i) Reduce the size of the rear extension so that it extends no more than 3m from the rear wall of the original house.
  (ii) Remove all materials and debris resulting from step (i) from the site.
  OR:
  (iii) Remove the 6.1m rear extension in its entirety.
  (iv) Remove all materials and debris resulting from step (iii) from the site.
- The period for compliance with the requirements is 6 months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a),(c)&(f) 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 s177(5) of the Act.
- Appeal B is proceeding on the grounds set out in section 174(2)(c)&(f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Summary of Decisions: The appeals succeed in part on ground (f) and the enforcement notice is upheld as corrected and varied in the terms set out in the Formal Decision.

Application for costs

1. An application for costs was made by the appellants against the Council. This application is the subject of a separate Decision.

Matters relating to the notice

2. Whilst there is no appeal on ground (b), the appellants challenge the accuracy of the enforcement notice which alleges that the single storey rear extension extends 6.1m beyond the original rear wall of the house. During my site visit, the depth was measured at marginally less than 6m. The Council accepts the

error and that the notice is incorrect as drafted. It is clear from the Council's Appeal Statement that its concerns are not limited to the depth of the extension, but also include the height. It is evident that the appellants were aware of those concerns from the arguments raised in their grounds of appeal. Whilst the appellants object to any correction of the notice, they have not identified how injustice may be caused. There was no need for the allegation to specify the dimensions of the extension. Given the full representations made by the appellants, I am satisfied that the notice can be corrected without injustice to either party by simply referring to "a single storey rear extension".

3. In its reasons for issuing the notice the Council has listed Policy DC33 of its Core Strategy and Development Control Policies Development Plan Document (DPD), 2008 and Policy 6.13 of the London Plan, 2015. Both policies concern car parking standards, no mention of which is made in the Council's submissions. The relevance of these policies is therefore unclear and I have disregarded them in my consideration of the appeal.

Appeals A & B - ground (c)

4. The appeal on this ground is that the matters alleged in the notice do not constitute a breach of planning control. The burden of proof is firmly on the appellants to demonstrate that the single storey rear extension attacked by the notice constitutes permitted development, as claimed.

5. The appeal property is a semi-detached bungalow on a plot which slopes downwards from the end of the rear garden towards its highway frontage. At the time of my site visit, the extension was incomplete and the land was still in an excavated state. Nonetheless, it was possible to see at the site edges where the original land levels were.

6. The Town and Country Planning (General Permitted Development) Order 1995 gave a period until 30 May 2016 for a single storey extension to a semi-detached dwelling to be built to 6m in depth measured from the rear wall of the original dwellinghouse and with a maximum height of 4m. That was subject to various limitations and conditions including the prior approval procedure under paragraph A.4. where a proposed extension exceeded 3m in depth.

7. On 12 February 2015, the Council gave written notice under the 1995 Order that their prior approval was not required for a proposed single storey rear extension at the premises measuring an overall depth of 6m from the original rear wall of the bungalow, a maximum height of 2.85m and an eaves height of 2.65m.

8. It is now agreed that the depth is under 6m, but the extension, as built, still exceeds the maximum 2.85m height shown in the application, as the appellants acknowledge. They attribute this to the inclusion of a parapet wall.

9. The Town and Country Planning (General Permitted Development) (England) Order 2015 (the 2015 GPDO) replaced the 1995 Order on 15th April 2015 and extended the period in which larger extensions must be completed until 30 May 2019. By virtue of the Interpretation Act 1978 anything done under the revoked Class A now has effect as if done under the 2015 GPDO.

10. It is a condition in paragraph A.4.(11) of Class A of the 2015 GPDO that where prior approval is not required, development must be carried out in accordance with the information supplied in the application unless the developer and local

planning authority agree otherwise. There was no agreement between the parties for a deviation in the scheme. Given the difference in height, the condition was not met and the built development is not that originally applied for and confirmed as permitted development by the Council.

11. A retrospective planning application for the extension was refused planning permission on 8 June 2016. No appeal was lodged against that decision. Notwithstanding that retrospective application, the appellants argue that the built extension meets all criteria of Class A under what is now the 2015 GPDO.

12. Even if the extension does meet the current size criteria within Class A, the fact remains that an application under the prior approval procedure was not submitted for this particular extension before development began as required by paragraph A.4.(2) of the 2015 GPDO. Had an application been made for the size of extension now built, there could have been neighbouring objections triggering the need for prior approval on the impact of the development on the amenity of adjoining premises. Approval may not have been given.

13. Reliance cannot be placed on the prior notification for a smaller and thus different extension. The extension does not meet all the criteria of the 2015 GPDO without compliance with the requirements in paragraph A.4.(2) and therefore cannot benefit from permitted development rights under Class A.

14. I find as a matter of fact that the single storey rear extension has been built in breach of planning control. The ground (c) appeals fail.

Appeal A only - ground (a) and the deemed planning application

Main Issues

15. The main issues are the effect of the extension on:-

- the character and appearance of the surrounding area;
- the living conditions of the neighbouring occupiers with particular reference to outlook; and
- whether any harm is outweighed by other considerations.

Reasons

Character and appearance

16. The appeal property is a modest semi-detached bungalow with hipped roof located in a road composed of similar dwellings. It is paired with No 40.

17. The parapet wall gives the appearance of a flat roofed structure. Once the land levels are reinstated, the extension will not look as high as it does at present. However, the parapet wall will still project above eaves height of the bungalow. This disparity is readily apparent in views of the side elevation from the highway. Apart from being disharmonious, the additional height of the parapet wall increases the overall sense of scale to a level where it appears excessive against the host dwelling.

18. At almost 6m, the extension exceeds the maximum 4m depth for a rear extension to a semi-detached property contained within the Council's Residential Extensions and Alterations Supplementary Planning Document (SPD), 2011. As a guide given as a general rule, the 4m figure is not

prescriptive, but it is intended to ensure that an extension is subordinate to the original dwelling. The circumstances as a whole need to be considered.

19. The extension spans the width of the bungalow. The combination of width, height and depth cause the extension to appear unduly bulky exacerbated by the large expanse of unbroken wall to the side elevations. No others of comparable size and scale have been drawn to my attention. Indeed, the extension at No 40 is identified as half the depth of that at the appeal site.

20. Whilst acknowledging that the appearance would likely be improved if the exterior were fully finished, I nevertheless find the extension to have a significant adverse effect on its surroundings due to its height, scale and mass. This is contrary to DPD Policy DC61 and Policies 7.4 and 7.6 of the London Plan all of which seek high quality development which responds to local character along with the SPD. There is also conflict with paragraphs 17 and 56 of the National Planning Policy Framework insofar as they promote high quality design.

Living conditions

21. I have approached the issue of outlook from the viewpoint of whether there is an overbearing development rather than in the sense of the loss of a view.

22. The extension is built up to the shared boundary with No 40. The SPD recommends that any part of a rear extension greater in depth than 4m should be set in by a 45 degree angle to ensure a reasonable level of amenity is afforded to neighbouring properties. As No 40 has itself been extended, the development at the appeal site does not extend 4m past its rear elevation to indicate that a set in would be necessary. Nonetheless, the degree of projection beyond the depth of No 40 is still some 3.6m and given its height, the extension protrudes significantly above the high boundary fence.

23. There are patio style doors at No 40 very close to the boundary. Other windows are also quite near. In views from the patio doors in particular the presence of such a high wall in close proximity will invariably have an enclosing effect for occupiers. Further, the long expanse of this high solid wall extending along the boundary is also likely to be oppressive for neighbours using their patio area which is located immediately in front of the patio doors.

24. The extension is set in from the other side boundary with No 36. The gap between the buildings lessens the visual impact from this neighbouring property, but does not overcome all harm on outlook. There are two windows at No 36 directly facing the side elevation of the extension. Bearing in mind the height of the extension, a long stretch of wall extending around 6m close to the boundary will cause occupiers to experience an overbearing effect to some degree in views from those closest rooms.

25. Therefore, I find that there is an adverse effect on the living conditions of neighbouring occupiers with reference to outlook. Although DPD Policy 61 does not refer to outlook among its list of effects on neighbouring properties, there is conflict with national policy and the provision within paragraph 17 of the Framework which seeks a good standard of amenity for all existing and future occupants of land and buildings.

Other considerations

26. The appellant argues that there is 'fallback' position, namely the construction of an extension to the specification set out in the prior notification. To support that stance the appellant quotes *Brentwood Borough Council v SSE and Gray*[1] as authority that a decision must have regard to the appellants ability to implement a fallback planning permission.

27. Here, the fallback position would only be available once the unauthorised extension is demolished. It is suggested that the appellants would still need an extension and so would take that approach, if necessary. I have no substantive evidence to indicate that there is a real prospect that they would demolish and reconstruct the authorised extension particularly given the scope and cost of such an exercise involving an extension that is largely complete.

28. In any event, the fallback position is not a compelling argument when the extension proposed originally was not similar but lower at 2.85m maximum height. In context, this is not a slight difference, but one that reflects notably in terms of visual impact and compatibility with the host bungalow along with less impact on neighbouring outlook. Thus, the fallback position does not offer a similar or worse outcome, but one that would not be as harmful. As such, it does not afford a credible fallback position that would warrant the grant of planning permission on the deemed planning application.

Conclusion on ground (a) and the deemed planning application

29. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal on ground (a) and the application for deemed planning permission should fail.

Appeal A & B - ground (f)

30. The ground of appeal is that the steps required by the notice to be taken are excessive. The appellants consider it excessive for the notice to require a removal or reduction in depth of the extension to 3m when the Council's SPD provides for a single storey extension of 4m.

31. As set out above, the 4m depth identified in the SPD is given as a general rule. It is not prescriptive and the SPD makes clear that the acceptable depth of any proposed rear extension will depend on a number of site-specific considerations. These include matters such as the size of the dwelling and its proximity to neighbouring dwellings.

32. The Council has given the option to reduce the extension to 3m in depth being the permitted development limit under Class A.1.(f) of the 2015 GPDO without compliance with the prior approval procedure.

33. The appellants cite *Tapecrown v FSS & Vale of White Horse DC*[2] in which it was held that an Inspector has wide powers to decide whether there is any solution, short of a complete remedy of the breach, which is acceptable in planning and amenity terms. The enforcement procedure is intended to be remedial not punitive. Where it appears that there is an 'obvious alternative' which would overcome the planning difficulties with less cost and disruption, the Inspector

[1] [1996] JPL 939
[2] [2006] EWCA Civ 1744

should feel free to consider it. That position is also reflected in *Moore v SSCLG*[3]*.*

34. The Council indicates that the purpose of the notice is to remedy the breach as provided in section 173(4)(a). Demolition of the extension is consistent with that purpose, but the notice also gives the appellants the option to reduce the depth to no more than 3m. That alternative indicates that the Council must consider the breach is capable of being remedied by a smaller extension.

35. An obvious alternative in this case with less cost and disruption would be for the extension to be reduced in height to fall within the size parameters originally confirmed by the Council on 12 February 2015 as not requiring prior approval. In reaching that decision, the Council must clearly have been satisfied that an extension of the specification set out in the application complied with the conditions, limitations and restrictions applicable to Class A. Apart from the height, as addressed above, there is no suggestion that the extension would fail to meet the other requirements of Class A.

36. The appellant say that the height can easily be reduced to a completely flat roof of 2.85m. Such approach would mitigate to acceptable levels the impacts on amenity as identified in my considerations under ground (a).

37. Accordingly, the notice shall be varied to allow the appellants the third option of reducing the extension to accord with the scheme as approved originally. To that limited extent, the ground (f) appeals succeed.

Formal Decisions

38. It is directed that the enforcement notice be corrected by:

(a) deleting the words "that extends 6.1m beyond the original rear wall of the house" from paragraph 3.

and varied by:

(b) inserting the following text in paragraph 5. after sub-paragraph (iv):

"**OR**:

(v) Reduce the size of the rear extension to comply with development application no. Y0001.15, including the conditions and limitations applicable thereto.

(vi) Remove all materials and debris resulting from step (v) from the site."

(c) inserting ",OR Steps (v) and (vi)" after "Steps (iii) and (iv)" in the last sentence of paragraph 5.

39. Subject to these corrections and variations the appeals are dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

KR Saward

INSPECTOR

[3] [2013] JPL 192