
Appeal Decisions

Site visit made on 20 September 2016

by Tom Gilbert-Wooldridge BA (Hons) MTP MRTPI IHBC

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

Decision date: 13 October 2016

Appeal A Ref: APP/J1535/W/16/3153526

Molens, 209d High Road, Loughton, Essex IG10 1BB

- 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 Nurtac Timur against the decision of Epping Forest District Council.
 - The application Ref EPF/1503/15, dated 23 June 2015, was refused by notice dated 19 May 2016.
 - The development proposed is described as "retrospective application for a single storey rear extension with relocating of the external metal staircase for the residential units and alter shop front".
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Appeal B Ref: APP/J1535/W/16/3153531

Molens, 209d High Road, Loughton, Essex IG10 1BB

- 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 Nurtac Timur against the decision of Epping Forest District Council.
 - The application Ref EPF/1505/15, dated 23 June 2015, was refused by notice dated 6 May 2016.
 - The development proposed is described as "retrospective application for outbuilding to the rear of the property".
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Decision Appeal A

1. The appeal is allowed and planning permission is granted for a single storey rear extension with relocating of the external metal staircase for the residential units and alter shop front at 209d High Road, Loughton, Essex IG10 1BB in accordance with the terms of the application, Ref EPF/1503/15, dated 23 June 2015 and the plans numbered 911-00, 911-01, 911-02, 911-03, 911-04, 911-05, 911-10, 911-20, 911-30, 911-40, 911-50 and 911-60 subject to the following condition:
 - 1) No external lighting shall be installed on the extension hereby permitted until details of the external lighting have been submitted to and approved in writing by the local planning authority. The installations shall be carried out in accordance with the details as approved and shall thereafter be retained as such.

Decision Appeal B

2. The appeal is allowed and planning permission is granted for an outbuilding to the rear of the property at 209d High Road, Loughton, Essex IG10 1BB in accordance with the terms of the application, Ref EPF/1505/15, dated 23 June
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2015 and the plans numbered 911-00 Rev A, 911-01 Rev A, 911-02 Rev A, 911-100, 911-200, 911-300, 911-400 and 911-500 subject to the following conditions:

- 1) The outbuilding hereby permitted shall only be used for storage purposes and shall not be used from which to serve drink, food or other products.
- 2) No external lighting shall be installed on the outbuilding hereby permitted until details of the external lighting have been submitted to and approved in writing by the local planning authority. The installations shall be carried out in accordance with the details as approved and shall thereafter be retained as such.

Procedural Matters

3. Planning permission was granted on 25 June 2014 for the change of use of the appeal site from shop to restaurant/café (EPF/0553/14). Condition 2 of the permission states: "The rear garden of the application site hereby approved shall not be used in any way by customers".
4. Both appeals seek retrospective planning permission for development already constructed. Permission is sought merely for the retention of the structures, rather than for any change of use of the rear garden or variation of the above condition. I have assessed both appeals on this basis.

Main Issue

5. The main issue with both appeals is the effect of the proposed development on the living conditions of occupiers of properties on Priory Road, with particular regards to noise and disturbance.

Reasons

6. The appeal site consists of a café on the ground floor with residential above and a garden to the rear. At my site visit, I noted that the garden contains block paving nearest to the café with artificial grass covering much of the remainder. Along the side and rear boundaries of the garden are external lighting as well as planting beds and railway sleepers. A large tree is situated within the garden and has wooden seating around its trunk. All of the above elements of the garden appear to have been installed relatively recently and are of a good design quality.
7. The appeal site garden backs onto the rear gardens of properties on Priory Road, a residential side street. These rear gardens are relatively short and the rear elevations of these properties are visible above ground floor level from the appeal site garden over the boundary fence due to limited boundary planting. At my site visit, the noise of the extract flue serving the café kitchen was clearly audible from the pavement in front of the Priory Road properties nearest to the appeal site.
8. The extension subject to Appeal A includes folding doors on the rear elevation adjacent to the internal seating for the café. At my site visit, the doors were closed and little noise from the internal seating area could be heard in the rear garden.
9. The outbuilding subject to Appeal B incorporates good quality external materials to complement the appearance of the garden. At my site visit, I

noted that the outbuilding is accessed via a door on the north-west elevation nearest the kitchen and contained cold storage rooms and general food and drink storage. On the eastern corner of the outbuilding is a small room with two openings onto the garden. At my site visit, the room was being used for the storage of food and drink. The openings are approximately 1 metre above ground level and contain window sills and external lighting. The openings were closed with security shutters at my site visit but resembled serving hatches. During my site visit, the outbuilding was in use by staff accessing food and drink items to use within the café and its kitchen. As such, the noise levels generated by the outbuilding at my visit were minor.

10. The Council and a number of third parties are concerned that the folding doors on the rear extension and the design of the outbuilding are intended to encourage customers to use the rear garden. The Council's appeal statement for both appeals refers to a warning served on the owner of the café from one of the Council's licensing compliance officers regarding the use of the garden contrary to alcohol licence conditions. It also refers to contact from local residents concerned about the use of the garden. Third parties have highlighted to me a number of instances during June and July 2016 where they have been disturbed by outdoor evening use of the rear garden by customers of the café.
11. The use of the garden by customers of the café would likely generate a variety of noise and other disturbances depending on the time of day and could include light pollution and odour. The proximity of the rear gardens and rear elevations of properties on Priory Road means that this would be very noticeable and would significantly detract from the living conditions of occupiers of these properties. There would also be overlooking of upper floor windows on the rear elevation of Priory Road properties which would additionally harm the living conditions of occupiers in terms of privacy.
12. However, any use of the rear garden by customers would be a breach of condition from the 2014 planning permission. The retention of the outbuilding with its serving hatch and the extension with its folding doors would not, on their own, result in noise and other disturbances or overlooking to the rear of properties on Priory Road. Thus, there would be no harm to the living conditions of occupiers of properties on Priory Road. It is only if the appellant allows customers to go through the folding doors or uses the outbuilding to serve food and drinks to customers in the rear garden that any harm would occur.
13. It is open for the Council to take enforcement action against any breach of condition. Condition 2 of EPF/0553/14 would not be superseded by the granting of planning permission for these two appeal schemes. The condition would remain necessary, relevant and enforceable.
14. I have taken into account the government's planning policy statement (PPS) dated 31 August 2015 that makes intentional unauthorised development a material consideration to be weighed in the determination of planning appeals. However, the unauthorised development subject to these two appeals, whether intentional or unintentional, does not result in any harm to living conditions in itself and thus places limited weight against the grant of planning permission.
15. I have also taken into account Article 8 of the Human Rights Act 1998 which states that everyone has the right to respect for his private and family life, his

home and his correspondence, as well as Article 1 of the First Protocol of the same Act, which states that every natural or legal person is entitled to the peaceful enjoyment of his possessions. I have found that retention of the development subject to both appeals would not cause harm to the living conditions of occupiers of Priory Road. Therefore, there would be no interference with the rights under Article 8 and Article 1 of the First Protocol.

16. Concluding on the main issue, the effect of the development in both appeal schemes on the living conditions of occupiers of Priory Road would be acceptable. Any harm that would occur would be consequential and in breach of an existing planning condition. Therefore, the appeal schemes accord with Policy DBE9 of the Epping Forest District Local Plan (adopted January 1998) which seeks to ensure that new development does not result in an excessive loss of amenity for neighbouring properties taking into account factors including overlooking, noise, smell and other disturbance. The appeal schemes would also meet the aims of the National Planning Policy Framework in terms of paragraph 17 and securing a good standard of amenity for all existing and future occupants of land and buildings. Finally, the weight that I can give to unauthorised development in line with the PPS of 31 August 2015 is limited and does not outweigh development schemes that are otherwise acceptable.

Other Matters

17. Concerns regarding the noise emitted from the extract flue above the kitchen are outside the remit of these appeals. It is clearly noisy, but it is for the Council to investigate such concerns to see if any breach of planning control has occurred.
18. I note concerns about light pollution and overlooking from the internal seating area within the café towards the properties on Priory Road. However, there is reasonable distance between the internal seating area and the rear gardens and elevations and a fence runs along the boundary between the appeal site and the Priory Road gardens to mitigate any negative effects.
19. The scale of the extension and outbuilding is not overly large and they utilise good quality materials to present an acceptable appearance. The extension has resulted in a relatively large café, but is not excessively big for the location. I note concerns about the proliferation of cafes and restaurants along the High Road, but the premises already has planning permission for such use regardless of the outcome of these two appeals.
20. I saw no evidence on site of poor waste storage. The outbuilding conceals an external storage area for bins which appeared to be well-maintained. I have also not been presented with any evidence that the development associated with the appeal scheme results in crime or the fear of crime.
21. I appreciate the dissatisfaction that some local residents have expressed at the number of planning applications that have been submitted for this site in recent years and the frustration felt by some at amendments being made to previous planning permissions. However, this does not affect my conclusions regarding the planning merits of the two appeal schemes.

Conditions

22. As the development schemes have already been carried out, there is no need to impose conditions relating to a time limit or requiring development to be

built in accordance with the submitted plans. However, I have referred to the plan numbers in the formal decisions to ensure future compliance.

23. I have considered the various conditions put forward by the Council and third parties. I agree that specifying the use of the outbuilding to storage purposes would be necessary to deter other uses of the structure which might harm the living conditions of occupiers of properties in Priory Road. I also consider that it is necessary to control external lighting on the extension and outbuilding for similar reasons.
24. I disagree that a condition should be imposed restricting the use of the folding doors to emergencies only, as such use would be difficult to define and enforce, and the existing condition from EPF/0553/14 already precludes the use of the rear garden by customers. Furthermore, it would not be reasonable as the doors can provide ventilation to the internal seating area. There might be some noise pollution from the internal seating area resulting from the doors being open in warmer weather, but this noise would not be as audible as customers using the rear garden.
25. I cannot impose a condition on the extract flue as I do not know its planning history and is something for the Council to investigate in the first instance. It would not be relevant to the development that forms part of these appeals. I also consider it unnecessary to impose a condition relating to screening along the rear boundary as there is an existing fence with a reasonable distance between the extension and the rear gardens and elevations of properties on Priory Road, and the rear garden should not be used for customers.

Conclusion

26. For the reasons set out above, the effect of the proposed development on the living conditions of occupiers of Priory Road would be acceptable. Having had regard to all other matters raised, I therefore conclude that both appeals should be allowed.

Tom Gilbert-Wooldridge

INSPECTOR