

Appeal Decision

Site visit made on 28 November 2016

by C Jack BSc(Hons) MA MA(TP) MRTPI

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

Decision date: 28th December 2016

Appeal Ref: APP/A2280/D/16/3159647

1 Embassy Close, Gillingham, Kent ME7 3EN

- 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 & Mrs P and K Dudley against the decision of The Medway Council.
 - The undated application Ref MC/16/2725 was refused by notice dated 16 August 2016.
 - The development proposed is a single storey side and rear extension.
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Decision

1. The appeal is allowed and planning permission is granted for a single storey side and rear extension at 1 Embassy Close, Gillingham, Kent ME7 3EN in accordance with the terms of the undated application, Ref MC/16/2725, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plan: drawing 16.06.03.
 - 3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those of the existing building.

Application for costs

2. An application for costs was made by Mr and Mrs P Dudley against The Medway Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue is the effect of the proposed development on the living conditions of neighbouring occupiers, with particular regard to daylight.

Reasons

4. 1 Embassy Close is a modest end of terrace house, typical in the local streetscene. The close is part of a predominantly residential area where there is a mix of generally close-knit housing. A variety of extensions and alterations can be seen in the vicinity. At No 1, there is currently a canopy across the full width of the rear elevation, which is constructed from lightweight timber with a clear plastic roof covering.
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5. The proposed development is a single-storey, wrap around extension to the side and rear of the house. It would have a sloping, tiled roof with four rooflights in the side roofslope. The existing canopy would be removed.
6. No significant concerns have been raised in relation to the side element of the proposed extension and I see no reason to disagree. The Council's principle concern relates to the relationship between the rear part of the extension and the glazed patio doors that are centrally positioned in the rear elevation of the attached mid-terrace property, 2 Embassy Close, serving the living room. There are no other windows or external doors to that room.
7. The Council's report indicates that it found the 45 degree test to show a detrimental loss of daylight in plan and elevation. However, the Council has subsequently advised that it carried out the test in elevation incorrectly. It has submitted a revised test with its response in relation to the appellants' application for costs, taking the 45 degree line from half way down the roof slope of the proposed extension. The revised position of the 45 degree line indicates the test to be passed, however the Council states that its decision was also based on the information submitted with the application and the case officer's site visit. The Council further submits that the appellants also used the methodology incorrectly for the test in elevation.
8. The appellants have undertaken the 45 degree test in plan and elevation, shown on the submitted Diagram 1. They accept that the proposed rear extension fails the test in plan form, because the centre point of the patio doors lies within the 45 degree line from the outermost adjacent point of the extension. However, in elevation form, they consider that because the test refers to patio doors, rather than a conventional window, it should relate to a point 2 metres above ground level on the centre line of the doors. The 2m point lies outside the 45 degree line, taken from half way along the sloping roof of the extension.
9. The appellants' grounds of appeal indicate that Diagram 1 refers to the 45 degree 'rule of thumb' test set out in the Building Research Establishment's 'Site Layout Planning for Daylight and Sunlight: A guide to good practice', 2011 second edition (BRE). The 45 degree test is not enshrined within saved Policy BNE2 of the Medway Local Plan 2003 (MLP) itself but the supporting text to the policy advises that the Council will have regard to the advice in the 'Kent Design' 2000, with specific reference to the BRE as containing tests to check the level of daylight and sunlight. I have also not been provided with that Kent Design document, however, as it was dated 2000 it would anyway refer to the earlier edition of the BRE, which has been effectively superseded by the 2011 edition.
10. Section 2.2 of the BRE sets out guidelines for extensions to existing buildings in order to safeguard the daylight to nearby buildings, including the 45 degree test in plan and elevation. It advises that if both elements of the test are failed then a significant reduction of light is likely. Furthermore it advises at paragraph 2.2.15 that in the case of a floor-to-ceiling window such as a patio door, a point 1.6m above the ground on the centre line of the window may be used, rather than the centre of the window. The 1.6m point is not marked on Diagram 1 but by taking an approximate extrapolation from the marked 2m point I consider that it would lie marginally outside the 45 degree line, thus narrowly meeting the test in elevation.

11. However, the patio doors in this case are not fully glazed, having a uPVC panel section at the bottom. Nonetheless, even if the glazed section alone is considered to be the 'window', and an estimated centre point of that 'window' area is extrapolated from Diagram 1, instead of a point at 1.6m, that centre point would also lie just outside the 45 degree line, again indicating the test would be met in elevation.
12. Notwithstanding, it must be acknowledged that the test is only a rule of thumb and needs to be interpreted flexibly in relation to the circumstances of the case. Here, there would be no two-storey element to the proposed development, and no other larger structure beyond the proposed extension that would also block daylight from that direction. There is also no extension to the rear of 3 Embassy Close on the other side of the patio doors so no significant 'tunnel effect' would result from the proposed extension, albeit the rear elevation of No 3 is staggered a little behind that of No 2.
13. I note that the proposed extension would have a greater effect on daylight than the existing canopy, which due to its smaller scale, and relatively lightweight construction and materials would currently have little impact on the level of daylight experienced at No 2. Notwithstanding, for the reasons given above, I consider that while the extension would cause some perceptible reduction in the level of daylight received at the patio doors, this would not be significant and accordingly would not constitute harm to the living conditions experienced there.
14. I therefore conclude that the proposed development would not harm the living conditions of neighbouring occupiers, with particular regard to daylight. Accordingly, I find no conflict with saved Policy BNE2 of the MLP, which among other things seeks to ensure that development would protect the amenities enjoyed by nearby and adjacent properties, including with regard to daylight.

Other Matters

15. I have considered the various other matters raised by an interested party including that the proposed extension would block light from the rear garden of No 2. I have found that the extension would not cause significant harm to daylight to the living room of that property and while there would be some effect on the garden area, this would be less significant than to the habitable room. Accordingly, while I have given this some weight, it does not outweigh my conclusion in relation to the main issue above.
16. The pruning of trees outside the appellants' control is beyond the scope of this appeal. Any alterations previously made to the pedestrian access to the public highway are also beyond the scope of this appeal. Noise insulation for the proposed extension would be principally a matter for the current Building Regulations. I note the concerns about incidents relating to a blocked main drain in the road. However, there is no firm evidence before me that it would not be feasible to adequately drain the proposed development. The submitted plans show that it is proposed to retain the existing off-street parking at No 1. While some additional parking relating to construction vehicles would be probable, this would be a temporary effect that may be inconvenient but is unlikely to be severe. Therefore, these matters can only attract limited weight, which also does not outweigh my conclusion in relation to the main issue.

17. Representations were also made to the effect that the rights of the adjoining occupier, Ms Janet Wood, under the Human Rights Act 1998, Article 1 of the First Protocol, would be violated if the appeal were allowed. I do not consider this argument to be well-founded, because I have found that the proposed development would not cause unacceptable harm to the living conditions of Ms Wood. The degree of interference that would be caused would be insufficient to give rise to a violation of rights under Article 1 of the First Protocol.
18. I note the appellants' suggested fallback position that the rear part of the proposed development could be implemented separately with the benefit of permitted development rights. I also note that an application for a certificate of lawful development has been submitted to the Council in this regard and that the Council advises that the property is subject to a condition removing permitted development rights for rear extensions. However, it is not a matter for me, in the context of an appeal made under Section 78 of the Town and Country Planning Act 1990, to determine whether the appellants might be able to rely on permitted development rights as a fallback. I have therefore considered the proposed development before me on its own merits.

Conditions

19. In addition to the standard three year time limit for commencement, I have imposed a condition requiring the development to be carried out in accordance with the submitted plan, as this provides certainty. I have also imposed a condition relating to external materials as this is necessary to ensure the satisfactory appearance of the development.

Conclusion

20. For the reasons given above, and having regard to all matters raised, I conclude that the appeal should be allowed.

Catherine Jack

INSPECTOR