
Appeals Decision

Site visit made on 2 March 2017

by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA

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

Decision date: 12 April 2017

Appeal A Ref: APP/J1915/C/16/3157342

Appeal B Ref: APP/J1915/C/16/3157343

The Cottage, Green End, Dane End, Ware, Hertfordshire SG12 0NY

- 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 appeals are made by Mr Craig Stevens and Mrs Joanna Stevens against an enforcement notice issued by East Hertfordshire District Council.
 - The notice was issued on 28 July 2016.
 - The breach of planning control as alleged in the notice is the erection of an unauthorised two storey rear extension.
 - The requirement of the notice is: remove the unauthorised two storey rear extension as hatched in red on the attached plan PD1.
 - The period for compliance with the requirement is 6 Months.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a) and (f) of the 1990 Act. Appeal B is proceeding on the ground set out in section 174(2)(f) of the 1990 Act. Since the prescribed fees have not been paid within the specified period for Appeal B, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended in relation to that appeal have lapsed.
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Summary of Decision

1. The appeals are dismissed and the enforcement notice is upheld with a correction.

Costs Application

2. An application for costs was made by Mr Craig Stevens and Mrs Joanna Stevens against the decision of East Hertfordshire District Council. This application is the subject of a separate Decision.

Preliminary Matter

3. By s173(9) of the Act an enforcement notice must specify a period (which by definition must have an ascertainable start and end date) at the end of which any steps are required to have been taken or any activities are required to have ceased. The notice does not state when the six month period starts. The period for compliance must not begin before the notice has taken effect and there is nothing within the notice to suggest that the period begins at a later time after it becomes effective. It is reasonable to infer from the notice read as a whole that the period commences after the notice takes effect and I will correct the notice to clarify the position under powers in s176(1)(a) of the Act.
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Ground (a) and the deemed application for planning permission

Main issue and policy background

4. The main issue is the effect of the unauthorised extension on the character and appearance of the main property and the surrounding area.
5. The appeal site is in an area designated in Policy GBC2 and the Proposals Map of the East Herts Local Plan Second Review 2007 (LP) as Rural Area Beyond the Green Belt. Policy GBC3 restricts planning permission in such areas to, among other matters, limited extensions or alterations to existing dwellings in accordance with LP Policy ENV5.
6. Policy ENV5 requires extensions to dwellings to be of a scale and size that, taken on its own or together with other extensions, do not disproportionately alter the size of the original dwelling or intrude into the openness or rural qualities of the surrounding area. The reasoned justification (RJ) for this policy includes that the Council is concerned about the effect of extensions on the character and appearance of an existing dwelling, including in relation to adjoining dwellings and the wider area.
7. In addition LP Policy ENV1 requires development to be designed to a high standard to reflect local distinctiveness. The policy also requires development to respect living conditions of neighbouring occupiers.
8. Although these LP policies pre-date the National Planning Policy Framework (Framework) they are in my view consistent with the aims of high quality design espoused in that document, in particular section 7, and are accorded significant weight.
9. The draft East Herts District Plan has only recently been submitted for independent examination. I have considered relevant draft policies but as there is no certainty they will remain as drafted their weight is slight.

Reasons

10. The appeal site is bounded by the gardens of a small cluster of cottages whilst to the south-east it is adjacent to open countryside. Since it was originally erected, the host dwelling has been altered and extended to a significant degree.
11. A previous appeal decision¹ refused permission to add an upper floor to the existing single storey rear projection from the main section of the house. The unauthorised two-storey extension is located at the rear to one side of the house. It is broadly comparable in size to the previous appeal proposal, being narrower but over two storeys. The decision is a material consideration in this appeal. The Inspector noted that the proposed extra gross floor area, taken with other extensions that have occurred, would increase the floor area of the building to over twice its size when first converted to a dwelling. He concluded that this would be a disproportionate increase, contrary to LP Policy ENV5.
12. It is accepted by the appellants that the roof of the constructed two-storey rear extension does not comply with the plans submitted with the application for a Lawful Development Certificate (LDC) that was granted in 2015 under Ref 2/14/2308/CL. However they suggest that there is no significant difference as,

¹ APP/J1915/D/10/2139562

having amended the roof pitch from a mono to a dual pitch design, the development is more in keeping with the roofscape of the existing house.

13. It is also suggested that in any event the rear extension as built would benefit from permission granted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) save that, as is now accepted, the extension has been erected with a depth of 3.5m from the rear elevation of the original dwellinghouse. This breaches the limitation in Class A.1(h)(i) of Part 1 of Schedule 2 to the GPDO that the enlarged part of the dwellinghouse, having more than a single storey, must not extend beyond the rear wall of the original dwellinghouse by more than 3m.
14. The extension would also breach the limitation set out in Class A.1(d) that the height of the eaves of the part of the dwellinghouse enlarged, improved or altered must not exceed the height of the eaves of the existing dwellinghouse. From the drawing provided by the appellants that is attached to the notice, it is evident that the eaves of the extension are higher than those of the existing dwelling. This position now appears to be acknowledged by the appellants who in their final comments state that the eaves height should be reduced by 0.6m.
15. The increase in depth of the extension represents slightly more than 16% of the depth that would have been tolerated as permitted development, with a commensurate increase in the bulk of the building at ground and first floor levels. Taken with the alterations to the roof, the differences between what has been built and what might be permitted, in my judgement add significantly to the disproportionate effect of the extension.
16. The overall design of the extension as I saw it has resulted in a prominent and overpowering addition to the main dwelling. There has been a material increase in footprint and volume from the original, which taken with the previous additions to the property, amount to a disproportionate increase over and above the size of the original dwelling, detracting considerably from its character and appearance, contrary to the aims of LP Policy ENV5.
17. I turn to the effect of the extension on the wider area. The main house is in a large plot and the extension is a considerable distance from the boundaries, however the building maintains a commanding presence in the locality.
18. The Inspector in the previous appeal decision found that although the main building "is located towards the centre of a large plot of land it has become a large structure which has a substantial urbanising effect, and which diminishes the openness and rural qualities of the area". I have read or seen nothing in this appeal that causes me to disagree with that view. The extension only serves to detract further from the rural openness of the surroundings.
19. Part of the RJ to Policy ENV5 which restricts extensions in rural areas, relates to the need to maintain supplies of smaller properties. The appellants rightly point out that previously permitted extensions have established the house as a 4 bedroomed property. However it is clear from the RJ, as from the policy itself, that disproportionate additions constitute inappropriate development, whether or not there is an effect on housing supply in the district. This aspect of the policy is neutral upon, and does not positively support the appellants' case.

Other Matters

20. The materials used reflect those used in some parts of the dwelling as already extended and I do not consider that there would be conflict with LP Policy ENV6 in that regard.
21. The concerns of interested persons have been considered, including those alleging overshadowing of the garden of Chauffeurs Cottage. However from what I saw during my visit I am satisfied that the separation distances involved between the properties are not such that the extension causes significant loss of sunlight or daylight as to be oppressive to the neighbouring residents.

Conclusion on ground (a)

22. I conclude that the two-storey rear extension, taken together with previous extensions to the property has resulted in a disproportionate addition to the original dwellinghouse that causes substantial harm to the character and appearance of the host dwelling. Its increased size, bulk and massing, as compared with what might be erected under permitted development rights, materially detracts from the character and appearance of the main house. In addition the development has caused harm in terms of its detrimental effect on the rural openness of the locality.
23. The harm caused fundamentally conflicts with the aims of LP Policies GBC3 and ENV5 described earlier. It would also fail to comply with the aims in Policy ENV1 and the National Planning Policy Framework, in particular Paragraph 17, of securing in all development a high standard of design.
24. Accordingly the appeal fails on ground (a).

Ground (f) – that the steps required to be taken are excessive

25. The issue on this ground is whether the steps required by the notice exceed what is necessary to remedy the breach of planning control, or, as the case may be, to remedy any injury to amenity caused by the development. The aim of the notice in requiring complete removal of the extension, is clearly to remedy the breach of planning control pursuant to s173(4)(a) of the Act.
26. For the reasons I have described it is inappropriate to grant planning permission for the extension as erected. It is suggested that the notice should require the extension to be altered to reduce its depth to 3m to bring it under the provisions of the GPDO and the roofline altered to lower the eaves height by 0.6m. The dual pitched roof would be retained but it is not fully explained how its appearance in terms of degree of pitch and/or the overall height would alter as a result of the reduction in depth of the extension. In addition some changes to fenestration details, for instance the upper floor window openings might be required as envisaged by the appellants, but no details are provided.
27. The alternative remedy put forward lacks clear details, and is not an obvious solution to remedy the breach of planning control identified in the enforcement notice. If a notice is issued to remedy a breach of planning control, it is not appropriate on an appeal on ground (f) to explore whether lesser steps would achieve the alternative purpose of remedying injury to amenity. Once the notice is complied with the appellants might seek an alternative solution whether by a planning application by or relying on permitted development rights.

Overall Conclusion

28. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the notice with a correction and refuse to grant planning permission on the deemed application.

Formal Decision

29. It is directed that the enforcement notice be corrected by inserting after "Months" the wording "after this notice takes effect". Subject to this correction the appeals are dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under s177(5) of the 1990 Act as amended.

Grahame Kean

INSPECTOR