



Appeal Decision

Site visit made on 9 June 2017

by Paul Freer BA (Hons) LLM MRTPI

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

Decision date: 03 July 2017

Appeal Ref: APP/E0345/C/17/3170558

Land and buildings at 46 Watlington Street, Reading, Berkshire RG1 4RS

- 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 Mr Ross Joyner against an enforcement notice issued by Reading Borough Council.
- The enforcement notice was issued on 18 January 2017.
- The breach of planning control as alleged in the notice is, without planning permission, the:
 - (a) erection of a two storey rear extension on the Land
 - (b) removal of chimneys to the principal elevation of the building on the Land
- The requirements of the notice are:

EITHER

(a) Take down and remove from the Land the two-storey rear extension

OR

(b) Alter the two storey rear extension so that it qualifies as permitted development as a single storey rear extension under Class A, Part 1 of Schedule 2 General Permitted Development Order 2015

OR

(c) Alter the two storey rear extension in accordance with plan PL-03 Revision A approved by planning permission 152298 and attached to the notice as Plan 'D'

AND

(d) Re-build the chimneys to the principal elevation of the building in the same design and materials as previously existed as shown in photograph 'C' attached to the notice

AND

(e) Make good any damage to the existing building as a result of the works carried out under either (a) to (d) above and remove from the Land all building and other excess materials associated with the said works.

- The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended.
-

Summary Decision: The appeal is dismissed and the enforcement notice upheld as corrected

Procedural Matters

1. The requirements at paragraph 5 of the notice include, as requirement (b), the option of altering the two storey rear extension so that it qualifies as permitted development as a single storey rear extension under Class A, Part 1 of Schedule 2 General Permitted Development Order 2015¹. Two procedural points flow from this.
2. Firstly, the reference to the 'General Permitted Development Order 2015' constitutes an abridged and incomplete citation of this secondary legislation. An enforcement notice is a legal document and it is therefore important that there is no ambiguity in terms of legislation cited within it. Although it is evident that in this case the appellant has understood the terms of the notice, I shall nevertheless correct the notice to refer to the full citation. I am satisfied that no party would be prejudiced by so doing.
3. The main point, however, is that permitted development rights cannot be gained retrospectively and unlawful development cannot be modified so as become permitted development. In this sense, the use of the term 'qualifies as permitted development' in requirement (b) is technically not correct. The appellant concedes that the two-storey rear extension has not been lawfully constructed. Consequently, insofar as a single-storey extension constructed by altering the two-storey rear extension would constitute the modification of unlawful development, that single-storey rear extension could not qualify as permitted development.
4. This does not, however, mean that requirement (b) is invalid. The underlying principle, to alter the two-storey extension to a size that normally would not require express planning permission, remains valid. Nevertheless, it is necessary to re-word requirement (b) to avoid any inference that the single-storey extension would constitute permitted development when completed. I shall correct the notice with appropriate wording to that effect. I am again satisfied that no party would be prejudiced by correcting the notice in this way.

The appeal on ground (a) and the deemed planning application

5. The ground of appeal is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The Council has stated two substantive reasons for issuing the enforcement notice, from which the main issues raised are:
 - the effect of the two storey rear extension on the character of the host building, and
 - whether the two storey rear extension and the demolition of the chimneys preserves or enhances the character or appearance of the Eldon Square Conservation Area.

¹ *Sic*. The full citation is the Town and Country Planning (General Permitted Development) (England) Order 2015.

Character of the host building

6. The appeal property is at the northern end of a terrace of four houses on the west side of Watlington Street, immediately north of The Grove. The terrace displays three storeys plus basement when viewed from Watlington Street but, due to a difference in ground level, appears as four full storeys when viewed from the rear. The front elevation is of well-ordered composition with, from ground level upwards, window heights decreasing at each storey. This elevation is finished in a dull red brick with window surrounds and other architectural detailing depicted in white. This combination of architectural composition and detailing results in the building having a cohesive and distinctive character and appearance when viewed from Watlington Street
7. By contrast, the rear elevation is less well ordered with windows of a various sizes and in seemingly unrelated positions, and is finished in plain white render. This combination gives the rear elevation a simple and somewhat utilitarian character and appearance. This is very apparent in public views from The Grove, from where the upper parts of the rear elevation of the appeal property are visible above a brick wall that runs along the edge of pavement.
8. The two-storey rear extension occupies practically the full width of the rear elevation. The extension is finished in a white render, in keeping with the remainder of the rear elevation, with patio doors at basement level and windows at ground floor level. The extension features a flat roof but this roof has a deep fascia and an overhanging soffit.
9. By reason of the combination of its height, width and depth, the two-storey extension is out of scale with the host building. This excessive scale is exacerbated by the substantial overhang of the soffit but the latter is not the main cause of the harm, which is derived principally from the dimensions of the extension in relation to those of the main house. The incongruous appearance of the deep fascia and the overhanging soffit does, however, add to the harm by drawing attention to the extension. Although the white render finish to some extent assists in blending the extension in with the remainder of the rear elevation, this is not in itself sufficient to obviate the harm caused by the scale of extension.
10. I conclude that, by reason of its scale and form, the two storey rear extension unacceptably harms the character of the host building. I therefore conclude that the two storey rear extension is contrary to Policy CS7 of the Reading Borough Local Development Framework Core Strategy (Core Strategy), as well as Policy DM9 of Reading Borough Local Development Framework Sites and Detailed Policy Document. These policies require, amongst other things, that all development must be of a high design quality and that extensions respect the character of the house in terms of scale and design. For the same reasons, the rear extension also fails to accord with the Council's Supplementary Planning Document: Residential Conversions, which indicates that where conversions include an extension to the property the latter will be assessed against the Council's adopted policies.

Character and appearance of the Eldon Square Conservation Area

11. The character and appearance of the Eldon Square Conservation Area as a whole is derived in part from the high quality of the residential buildings within it and the formal arrangement of Eldon Square itself as an example of a 19th

century formal town square. In the immediate vicinity of the appeal site, this character is reflected by the terrace of houses of which the appeal property forms a part and Watlington House, a Grade II* listed building that adjoins the terrace to the north. The imposing scale and form of the Church of the Sacred Heart, located on the east side of Watlington Street and directly opposite the appeal property, is also a prominent landmark in the conservation area and makes a significant contribution to its overall character.

12. The rear elevations of the houses in the terrace are clearly visible from The Grove, within the boundary of the conservation area. The other properties in the terrace all feature two-storey projections on the rear elevation, albeit of various sizes. I have no evidence to indicate whether these projections are original features or subsequent extensions, or are a hybrid of both. In any event, these two storey projections are each of considerably lesser scale than the two storey rear extension to the appeal property.
13. When viewed from The Grove, the two storey rear extension to the appeal property appears as an incongruous addition that is harmful to the character of the host property. Because the rear extension is clearly visible from within the conservation area, it is for that reason harmful to the character and appearance of the conservation in its own right.
14. Although the terrace is not statutorily listed and has not been afforded any particular architectural status, in my opinion it nevertheless constitutes an example of the high quality residential buildings from which the character and appearance of the Eldon Square Conservation Area is in part derived. As such, the terrace makes a positive contribution to that character and appearance. Insofar as the rear extension harms the character of the host property, by association it also harms the character of the terrace as a whole.
15. The two storey rear extension is of notably greater scale and bulk than the rear extensions to other houses in the terrace. For this reason, it detracts from the character and appearance of the rear elevation of the terrace as a whole when viewed from The Grove. From this vantage point, the rear of the terrace is viewed with the prominent spire of the Church of the Sacred Heart as a backdrop and the presence of the extension distracts from this view of that prominent landmark. As a consequence, the two storey rear extension harms the character and appearance of this conservation area in this respect also.
16. The enforcement notice alleges the removal of chimney(s) on the principal elevation of the building, and includes a photograph of these chimneys when in situ. The Council considers that the lively roofscape of brick chimneys and pots makes a positive contribution to the historic character of this section of the Eldon Square Conservation Area, and that the loss of these chimney(s) results in an unacceptably detrimental impact on the conservation area.
17. As part of my site visit, I walked through much of the Eldon Square Conservation Area and I noted that substantial chimneys are a common feature on the residential properties in the area. Indeed, one of the other houses in the terrace retains its chimney and substantial chimney stacks are prominent feature on the adjoining listed building. I therefore concur with the Council that chimneys make an important contribution to the character and appearance of the conservation area. It follows that the loss of the chimney(s) on the appeal property detracts from the character and appearance of the conservation area.

18. I conclude that the two storey rear extension and the demolition of the chimney(s) fail to preserve or enhance the character or appearance of the Eldon Square Conservation Area. I therefore conclude that the two storey rear extension is contrary to Policies CS7 and CS33 of the Core Strategy. These policies indicate, amongst other things, that historic features and areas of historic importance will be protected and where appropriate enhanced.
19. I have a duty under section 72 of the Planning (Listed Building and Conservation Areas) Act 1990 to pay special attention to the desirability of at least preserving the character and appearance of the conservation area. For the reasons given above, I consider that the two storey rear extension and the demolition of the chimney(s) fail to achieve that objective. In terms of the National Planning Policy Framework, the harm to the character and appearance of the conservation area as a whole can be described as "less than substantial" harm to the significance of the heritage asset. Nevertheless, given the statutory duty, that harm carries considerable importance and weight. No public benefits have been advanced to weigh against that harm. That harm is sufficient reason by itself to refuse planning permission on the deemed application.

Other Matters

20. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise. I have found that the two storey rear extension and the demolition of the chimney(s) conflict with the development plan. It is therefore necessary for me to consider whether there are any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.
21. The appellant has explained the events leading up to the enforcement notice being issued. I understand that pre-application discussions were held with Council officers and that these discussions were initially positive. The appellant considers that these discussions were subsequently hindered by changes in personnel at the Council and by last-minute requests for amendments to the scheme. The appellant was also acting under financial constraints, the resolution to which was dependent upon the issuing of the planning permission. The Council has not commented on these matters, but I can understand the situation in which the appellant found himself. Nevertheless, as the appellant himself concedes, the delay in obtaining planning permission is not a valid reason for starting work without the necessary permissions in place. The appellant's situation leading up to the enforcement notice being issued is therefore a consideration to which I attach very little weight.
22. The appellant has indicated that he is prepared to reinstate the chimney(s) and indeed has already appointed contractors to replace the chimney stack. Whilst this is commendable, it does not alter the fact that the chimney(s) were removed in the first place or the effect this had on the character and appearance of the Eldon Square Conservation Area. This is therefore also a consideration to which I attach very little weight.
23. As indicated above, the appeal property adjoins Watlington House, a Grade II* listed building. Neither the appellant nor the Council has addressed the effect,

if any, of the development alleged in the enforcement notice on the setting of this statutorily listed building. Nevertheless, I have a duty under section 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990 to pay special regard to the desirability of preserving the listed building or its setting, and it is to that duty that I now turn.

24. I have been provided with a copy of the List Entry for Watlington House. This indicates that the building dates (in part) to 1688 and describes in detail the architectural features of the building. The List Entry describes the building as having two front elevations: the East Front and the West Front. On my reading of the List Entry, the architectural features that led to the listing of the building are confined to these main elevations of the building. There is no reference to outbuildings or boundary treatments forming part of the statutory listing.
25. The East Front elevation of Watlington House sits back from the front elevation of the appeal property. Although the flank elevation of the two storey extension is visible from the land in front of the East Front elevation of Watlington House, the extension is at some distance and not viewed directly in association with the East Front elevation of Watlington House. Similarly, the two-storey extension is not viewed in direct association with the West Front elevation of Watlington House. In longer views from The Grove, the two-storey extension is viewed with the south elevation of Watlington House in the background. In these views, the prominent chimney stack on the south elevation of Watlington House remains visible and none of the features identified in the List Entry are obscured. For these reasons, I am satisfied that the setting of Watlington House is preserved.
26. Having regard to the above, I consider that there are no material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan. Accordingly, the appeal on ground (a) fails.

The appeal on ground (f)

27. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the Town and Country Planning Act 1990 sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) the remedying of the breach of planning control by discontinuing any use of the land or by restoring the land to its condition before the breach took place or (b) remedying any injury to amenity which has been caused by the breach. In this case, the requirements of notice are, in summary, to remove or alter the two storey rear extension and to re-build the chimneys to the principal elevation of the building. The purpose of the notice must therefore be to remedy the breach of planning control that has taken place.
28. The appellant has proposed three alterations that, in his view, would overcome the reasons for issuing the enforcement notice. These alterations are, in summary: incorporating a parapet in place of the soffit and fascias; replacing the flat roof with a shallow pitched roof; and amending the rendered flank wall with matching brick slips. The appellant has provided drawings to illustrate these proposed amendments. The first two options are expressed in the alternative but, whilst not expressly stated, it occurs to me the last mentioned could be combined with either of the first two.

29. I have carefully considered the alternatives proposed by the appellant which, I recognise, would involve less cost and disruption than full compliance with the steps stated in the notice. I acknowledge that the replacement of the overhanging fascia and soffit with either a parapet or a shallow pitched roof would result in an improvement in the appearance of the extension, and would have the additional benefit of not drawing attention to the extension in the same way that the deep fascia and overhanging soffit do at present. I am not convinced that the rendering of the flank wall of the extension with brick slips to match the flank wall of the main house result in any significant benefit, given that the rear elevation is finished in white render and that extensions to other houses in the terrace are also largely finished in white render.
30. However, none of the alterations proposed by the appellant would result in a significant reduction in the external dimensions of the rear extension. Consequently, none of the alterations proposed would address the fundamental cause of the harm stated in the enforcement notice and which I have identified above: specifically, the scale and form of the extension. Moreover, whilst the alterations proposed by the appellant would result in an improvement in the appearance of the extension, none would achieve the purpose of the notice, which is to remedy the breach of planning control that has occurred.
31. Accordingly, the appeal on ground (f) fails.

Conclusion

32. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice as corrected and refuse to grant planning permission on the deemed application.

Formal Decision

33. It is directed that the enforcement notice be corrected by deleting the words "Alter the two storey rear extension so that it qualifies as permitted development under Class A, Part 1 of Schedule 2 General Permitted Development Order 2015" in paragraph 5, requirement (b) of the notice and replacing them with the words "Alter the two storey rear extension so that it accords with the limitations and conditions set out in Class A, Part 1, Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015".
34. Subject to that correction, the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Paul Freer

INSPECTOR