
Appeal Decision

Site visit made on 26 April 2018

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 17 May 2018

Appeal Ref : APP/X1545/C/17/3181771

Land at 4 Longship Way, Maldon, CM9 6UG.

- 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 A. Peach against an enforcement notice issued by Maldon District Council.
- The notice was issued on 11 July 2017.
- The breach of planning control as alleged in the notice is unauthorised single storey rear extension and rear dormer and partially completed front dormer.
- The requirements of the notice are a. remove the unauthorised development and any related or resulting materials, paraphernalia, debris or detritus from the land; b. restore the dwelling to its condition before the unauthorised development took place.
- The period for compliance with the requirements is two months.
- The appeal is proceeding on the grounds set out in section 174(2) (a),(b),(c) (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with variations.

Ground (b) appeal

1. This ground of appeal is that the alleged breach of planning control has not occurred as a matter of fact. The onus of proof falls upon the Appellant and the test of evidence is the balance of probabilities.
2. At the time of my site visit there was no front dormer. But I must consider the appeal site as it existed at the time of issue of the notice.
3. The Appellant says that works to the front dormer never commenced and therefore the partially completed front dormer cited in the notice has not occurred as a matter of fact. He produces a photograph which he says was taken on 8 August 2017 showing the front slope without a dormer or any external works to create one.
4. The Council produce photographs taken at a site visit on 21 June 2017 which they say show that works had commenced to construct a front dormer. They say that it was verbally confirmed to the officer who undertook the site visit that works to construct the front dormer had commenced. The Council refer to the plans submitted with an application for planning permission which show a front and rear dormer and argue that the front dormer is necessary to accommodate a staircase.

5. The Appellant says that when the Council visited the site roofing tiles were being removed from the lower part of the front roof plane. He claims that the Council's assumption that the works were to create a front dormer was erroneous and denies that anyone told the Council that the works were to create a front dormer. He says that the rear dormer has been constructed without the need for a front dormer.
6. The photographic evidence before me is not conclusive. The photograph produced by the Appellant is undated and the Council photograph whilst it shows works to the front slope it does not show a partially completed front dormer and the image could be consistent with the Appellant's explanation. It is a matter of fact that the rear dormer has been completed without a front dormer. The parties make contradictory claims as to the alleged conversation with the Council officer but there is no supporting evidence, such as a contemporaneous file note, from either party.
7. The burden of proof in this ground of appeal rests on the Appellant. The Appellant's evidence does not need to be independently corroborated in order to be relied upon. The evidence produced by the Council does not cast serious doubt on the Appellant's version of events. I cannot conclude with any certainty that the partially complete front dormer was in place at the time of issue of the notice. Taking into account all the evidence before me I consider on the balance of probability that a partially completed front dormer has not occurred as a matter of fact.
8. For the reasons given, this ground of appeal succeeds and, if appropriate, I will vary the notice to delete reference to the partially completed front dormer from the description of the alleged breach of planning control.

Ground (c) appeal

9. This ground of appeal is that there has not been a breach of planning control. A breach of planning control comprises the carrying out of development without planning permission. Permitted development rights grant planning permission for certain householder development. The onus of proof rests upon the Appellant and the test of evidence is the balance of probabilities.
10. The Appellant argues that the rear dormer and single storey rear extension benefit from permitted development rights and therefore do not require planning permission.
11. Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) provides permitted development rights for the enlargement, improvement or other alteration of a dwellinghouse subject to certain specified conditions and limitations.
12. Class A.1 (f) provides that development is not permitted if the enlarged part of the dwellinghouse would have a single storey and extend beyond the rear wall of the original dwellinghouse by more than 4 metres in the case of a detached dwellinghouse or 3 metres in the case of any other dwellinghouse.
13. The appeal site is a two-storey dwelling in a residential area. The parties are in dispute as to whether the property is detached. If the property is detached the Class A.1 (f) threshold is met but if it is not detached the threshold is not met and planning permission is required.

14. The interpretation of the GPDO provides that 'detached dwellinghouse' means a dwellinghouse which does not share a party wall with a neighbouring building.
15. In this case the garage serving no. 4 (the appeal site) adjoins the garage serving no 2. The garage on the other side of no 4 serves no 6. Whilst it is correct that the main dwellinghouses are not attached they are connected via their garages. The dwellinghouse on the appeal site shares party walls with garages either side. The Appellant suggests that the purpose of the distinction in the GPDO is to protect residential amenity of occupiers of houses immediately attached to each other but there is nothing in the GPDO that suggests that a neighbouring building does not include a garage. The physical reality is that the appeal site is not detached from its neighbours. I therefore consider as a matter of fact and degree in the circumstance of this case that the appeal site is not a detached dwellinghouse and therefore the limitation in Class A.1 (f) is not met. Consequently, it requires planning permission.
16. In light of my ground (b) findings it is not necessary for me to consider the ground (c) appeal in relation to a front dormer.
17. For the reasons given above the ground (c) appeal does not succeed.

Ground (a) appeal and deemed application

Main Issues

18. The main issues in the determination of this appeal are the effect of the development on (i) the character and appearance of the host dwelling and surrounding area and (ii) the living conditions of current and future occupiers of the appeal site with particular regard to the adequacy of private amenity space.

Character and appearance

19. In determining the deemed application I must apply the development plan as it stands at the time of my decision. Since the issue of the notice the Maldon District Local Development Plan (the LDP) has been adopted. I shall also take into account as a material consideration the Maldon District Design Guide Supplementary Planning Document (the MDDG).
20. The LDP mirrors the National Planning Policy Framework (the Framework) in emphasising the need for high quality development. Policy D1 of the LDP seeks to ensure that all development respects and enhances the character and local context and makes a positive contribution in terms of specified criteria including size, scale, form, massing and proportion. The Appellant suggests that policy D1 relates more to new development than residential extensions but I find the policy to apply to all development.
21. In this case the rear dormer dominates the host dwelling. Its flat roof structure is disproportionately large and out of keeping with its setting. Although not visible from the streetscene it is highly visible from neighbouring properties. Its rendered finish does not match the host dwelling and creates visual harm. It fails to make a positive contribution to the locality and causes harm to the character and appearance of the host dwelling and surrounding area by reason of its large and dominant appearance.

22. The single storey rear extension adds bulk to the property. It creates an overly dominant appearance which together with the rear dormer is not subservient to the host dwelling.
23. The Appellant draws my attention to other development in the locality. But I do not find development similar to the appeal to be so widespread as to be characteristic of the area. In any event I determine this appeal on its own particular facts and any harm caused by other development does not justify the identified harm in relation to the appeal site.
24. I note the views of neighbours both in favour and objecting to the development. I find that the unauthorised development is overbearing and incongruous relating poorly to its surroundings. By reason of its size, scale, form and proportion it is out of character with its host building and surrounding area. I conclude that the development causes harm to the character and appearance of the host dwelling and surrounding area contrary to policies in the development plan, including policy D1 of the LDP.
25. I have taken into account the fall back position by virtue of permitted development rights and the conservatory demolished to facilitate the works. I do not agree with the Appellant that the difference is so insignificant as to be de-minimus.
26. For the reasons given I conclude that the single storey rear extension and rear dormer cause undue harm to the character and appearance of the host dwelling and surrounding area contrary to policies in the development plan, including policy D1 of the LDP. I have considered whether conditions could overcome this harm and have taken into account the Planning Practice Guidance. I note the Appellant's suggested condition concerning materials but this would not overcome the identified harm by reason of size and scale. I do not consider that conditions could overcome the identified harm.

Living conditions

27. Policy D1 of the LDP requires development to provide sufficient and usable private and public amenity space. The development has resulted in the loss of rear amenity space. There is no dispute that the resulting space fails to meet the MDDG standard for a five bedroom property.
28. But the standards in the MDDG must not be slavishly adhered to and I have considered the extent of any harm to the living conditions of current and future occupiers of the appeal site with regard to the adequacy of private amenity space. On balance I conclude that there remains adequate space for occupiers to enjoy quiet recreation. It contains an area for the drying of clothes and space for the quiet enjoyment of the domestic setting, including space for recreational activities. As a matter of fact and degree in this particular case I find the rear amenity space not to cause undue harm to the living conditions of occupiers.
29. For the reasons given, I conclude that no undue harm is caused to the living conditions of current and future occupiers of the appeal site by reason of adequacy of private amenity space.

Conclusion

30. Whilst I have concluded that there is no harm to the living conditions of current and future occupiers of the appeal site by reason of private amenity space I have also concluded that the development causes undue harm to the character and appearance of the host dwelling and surrounding area. The harm to the character and appearance outweighs the absence of harm by reason of the private amenity space and planning permission should not be granted.
31. For the reasons given above I conclude that the appeal under ground (a) should not succeed and planning permission should not be granted on the deemed application.

Ground (f) appeal

32. This ground of appeal is whether having regard to the purpose for which the notice was issued, the steps exceed what is necessary to meet that purpose.
33. There are two purposes which the requirements of an enforcement notice can seek to achieve. The first is to remedy any breach of planning control that has occurred. The second is to remedy any injury to amenity which has been caused by the breach. In this case the notice provides for the restoration of the land to its condition before the breach took place and therefore its purpose is to remedy the breach of planning control and no lesser steps would satisfy that purpose.
34. The Appellant argues that the requirement to reinstate the site to its condition before the breach of planning control took place includes reinstatement of a conservatory which has been demolished.
35. The condition of the site before the breach took place is a matter of fact best determined by the parties. The Council confirms in its representations that the notice does not require reinstatement of the conservatory. There is therefore no dispute between the parties as to the requirements on the notice. In those circumstances it is not necessary for me to amend the requirements of the notice.
36. For the reasons given above this ground of appeal does not succeed.

Ground (g) appeal

37. This ground of appeal is that the period for compliance is unreasonably short. The notice requires compliance in two months. The Appellant argues that a period of six months would be reasonable to enable the commissioning of specialists and contractors.
38. Whilst I am not persuaded that there is a need for the commissioning of specialists contractors in order to satisfy the requirements of the notice interference with the way the Appellant uses land must be proportionate taking into account competing public and private interests. I consider that four months would be a reasonable time in which to expect the requirements of the notice to be met. It would strike an appropriate balance between competing interests and be proportionate so as not to violate individual rights. To this limited extent the ground (g) appeal succeeds.

39. For the reasons given above I conclude that a reasonable period for compliance would be four months and I am varying the enforcement notice accordingly, prior to upholding it. The appeal under ground (g) succeeds to that extent.

Other Matters

40. The Appellant criticises the Council for its timing of the issue of the notice, unnecessary submission of building regulation approval and alleged failing to undertake a thorough examination leading to an unreasonable decision to issue the notice. He also explains that he did not intend to construct the development without planning permission believing the works to be permitted development. But these are not grounds of appeal and therefore not within my remit to consider.

Formal Decision

41. It is directed that the enforcement notice be varied by deletion of reference to a partially completed front dormer, deletion of the period for compliance and the substitution of four months as the period for compliance. Subject to these variations 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.

S. Prail

Inspector