



Appeal Decisions

Site visit made on 8 October 2019

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 9 December 2019

Appeal Ref: APP/J1535/C/18/3215832 & 3215833

10 Woodside, Buckhurst Hill, Essex IG9 5DR

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are by Nicola Kerridge (3215832) and Robert Paul Kerridge (3215833) against an enforcement notice issued by Epping Forest District Council.
 - The enforcement notice, ref. ENF/0233/18, was issued on 5 October 2018.
 - The breach of planning control alleged in the notice is the construction of a flat roofed rear extension with parapet wall on the Land.
 - The requirements of the notice are to:
EITHER: Remove from the land the unauthorised rear extension together with all resulting debris.
OR: Build the rear extension in accordance with the plans approved under the 2009 permission.
 - The period for compliance with the requirements is 3 months.
 - Appeal 3215832 is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended. The prescribed fees have been paid within the specified period, so the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act fall to be considered.
 - Appeal 3215833 is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended. The prescribed fees have not been paid within the specified period, so the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.
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This decision is issued in accordance with section 56 (2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 13 November 2019.

Decision

Appeal Refs: APP/J1535/C/18/3215832 & 3215833

1. The appeals are allowed on ground (g), and I direct that the enforcement notice be varied by:
DELETION of *3 months*; and,
SUBSTITUTION of *6 months* as the period for compliance.
Subject to this variation the enforcement notice is upheld.

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2. The appeal is dismissed and 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.

Background matters

3. The appeal property is a detached house, originally of two storeys but now of two storeys and a basement. It stands on a wedge-shaped site at the internal corner of a right-angled bend in Woodside. The site slopes significantly towards the back to the extent that the front entrance is at ground level, but the basement opens onto the small back garden at the lower level.
4. In 2009 planning permission was granted for a revised scheme for a two-storey side extension, rear extension, basement conversion and internal alterations¹. The proposals included a basement swimming pool/gym/shower room partly below the side extension and extending rearwards as single-storey building with a mono-pitch glazed roof. The back wall of this is on the back boundary of the plot, and the flank wall runs along a narrow alleyway that gives access from the house to the woodland at the back. On the western side of the alleyway is the close-boarded timber boundary fence with the neighbouring house, no. 12 Woodside.
5. At the time of my visit, works were still in progress, mainly at basement level.
6. As built, the pool extension has a flat roof with a rooflight, and a parapet wall about a metre high above the flat roof around its western and southern sides. In 2018, and again in 2019, retrospective planning permission was refused for change of the pitched roof over the swimming pool to a flat roofed balcony². The proposals included construction of an obscured glass screen around the western and part of the southern parapet of the flat roof, which would have been 1.8 metres high above that roof.

Appeal APP/J1535/C/18/3215832 on ground (a) and the deemed planning application.

7. Ground (a) is that planning permission should be granted for the matters stated in the enforcement notice.
8. From my inspection of the appeal site and all that I have read I consider the main issue in the case to be the effect of the development on living conditions for occupants of neighbouring property in terms of loss of privacy and outlook.
9. Standing on the flat roof over the pool I saw there was a direct view at short range down into the garden of no. 12, and into the window of a ground floor room in the back extension of that house. The back gardens of the houses in this part of Woodside are relatively small, and the view from the flat roof covers the great majority of the area. In my opinion this is highly intrusive
10. It can be seen in photographs taken from the no. 12 garden that the appellants have had a gazebo erected on the flat roof equipped with outdoor furniture. It is clear that this area has been used for entertaining or leisure purposes, and the appellants state it is used as a balcony area. I consider this part of the development, as built, causes serious harm in terms of loss of privacy.
11. As to the effect of the pool extension on outlook from no. 12, the parapet is some 400mm above the timber fence on the boundary between the two properties, which is approximately the same height as the 2009 approved scheme. It is little seen from inside no. 12, and do not consider this causes

¹ Decision notice ref. PL/EPF/2346/08, dated 13 February 2009.

² Decision notices ref. EPF/1846/18 & EPF/3099/18, dated 13 August 2018 and 10 January 2019 respectively.

significant harm in terms of outlook. Furthermore, given the lack of harm in terms of outlook, a suggested reduction in the height of the parapet would not have a particularly significant effect.

12. Although I find no significant harm in terms of outlook, I conclude that the development causes significant harm to living conditions for occupants of neighbouring property in terms of loss of privacy. The development does not accord with the development plan, notable with respect to Policy DBE9 of the Epping Forest District Local Plan (1998) and Alterations (2006). This includes aims to ensure that extensions or new development do not cause loss of amenity to neighbouring properties in terms of overlooking.
13. The appellant suggests that the previously existing ground level at the back of no. 10 gave rise to significant overlooking. However, drawings of the house as existing prior to development show what may be a patio, but this did not extend significantly further beyond the main back wall of the house than the new kitchen in the side extension, and the walkway shown on the approved plans.
14. It is suggested that a limit might be imposed on the extent of the flat roof balcony so that it would extend no further than the previously existing patio. It is also suggested that obscured glass screens could be erected, set back from the inside face of the parapet wall by about a metre, and the parapet height reduced. However, in a ground (a) appeal and deemed planning application under the provisions of s.177(1)(a) of the Act I am limited to considering grant of permission for the whole or part of the matters stated as being in breach of planning control. These alternative proposals are not elements of the matters enforced against and would need to be subject to scrutiny under other planning applications.
15. As regards other appeal decisions put forward³, these deal with a relatively small second floor balcony between one and one-and-a-half metres deep with screen walls to either side, positioned roughly centrally on the back elevation of that appeal property. This is not comparable with the development before me, which has a flat roof extending to the back boundary and is extremely close to the neighbour's boundary.
16. Given the significant harm arising from the development enforced against, the appeal on ground (a) does not succeed.

The appeal on ground (f)

17. This ground is that the steps required by the notice exceed what is necessary to remedy any breach of planning control. The appellant puts forward the same suggestions as in ground (a) regarding the obscured glazed screen set back behind a lowered parapet, and a limit on the extent of the balcony.
18. However, as noted above these are matters that need to be subject to scrutiny by means of formal planning applications, and do not constitute obvious alternatives that would overcome the planning difficulties. The appeal on ground (f) therefore fails.

³ Appeal refs. APP/J1535/C/11/2144618 & APP/J1535/A/11/2145267 dated 7 June 2011.

The appeal on ground (g)

19. This ground is that the compliance period is too short. The appellant argues that a period of 12 months should be allowed, on the basis that 3 months would not be adequate to secure a contractor and materials and execute the works. This would be difficult in an occupied family house and subject to constraints such as health, finance and the right to a decent home.
20. The pool extension was unfinished at the time of my visit and does not form part of the general living areas of the house. It appears to me that the family could readily live in the main parts of the house without the required works coming into conflict with everyday life to a significant degree.
21. It appears to me that a period of 12 weeks would be reasonable to obtain quotations, appoint a contractor and obtain materials, and a further 12 weeks to carry out the works. On this basis I consider that 6 months would provide a reasonable compliance period.
22. Should the compliance period prove inadequate for any good reason, it is open for the Council to relax a requirement of the notice under s.173A(1)(b) of the Act, and in particular they may extend the compliance period. If the appellant were able to properly substantiate any delay, I can see no reason why the Council would not exercise this option.
23. The appeal therefore succeeds on ground (g) and I shall vary the notice accordingly.

Reasons

24. For the reasons given above I conclude that a reasonable period for compliance would be 6 months, and I am varying the enforcement notice accordingly, prior to upholding it. The appeal succeeds to the limited extent on ground (g), but otherwise the appeal is dismissed and the enforcement notice is upheld.

Stephen Brown

INSPECTOR