



Appeal Decision

Site visit made on 27 November 2019

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 December 2019

Appeal Ref: APP/Q5300/W/19/3235935
18 Old Farm Avenue, Southgate N14 5QP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Pohnetal against the Council of the London Borough of Enfield.
 - The application Ref 19/01499/HOU, is dated 2 April 2019.
 - The development proposed is creation of a first floor involving rear dormer with associated parking, cycle parking and refuse storage.
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Decision

1. The particulars of the householder application for planning permission do not appropriately reflect the nature of the development shown to be proposed. The appeal is therefore dismissed and, for the avoidance of doubt, planning permission is refused.

Procedural Matters and Background

2. The appellant submitted a 'householder application for planning permission' dated 2 April 2019. This gave a description of proposed works as 'Replacement of an existing single story (sic) detached house with a detached double story (sic) house with a habitable attic, associated car parking and bin and bike storage'.
3. The appellant subsequently advised the Council on 16 April 2019 that there had been a mistake in the description of the proposal given on the application form. The appellant advised that it was intended to keep much of the existing building and requested that the description was amended to 'erection of a first floor and roof extension to existing dwelling house, and associated amendments for; front and rear façade, car parking, cycle storage, refuse storage and recycling bins storage'.
4. The Council confirmed on 23 April 2019 that the proposal had been registered as a householder application with a description of 'creation of a first floor involving rear dormer with associated parking, cycle parking and refuse storage'.
5. The appellant indicates at section E of the appeal form that the description of development had not changed from that stated on the application form. Nevertheless, the description given to the proposal by the Council has been entered. I have therefore used this description in the banner heading above.

6. The appeal follows the Council's failure to determine the application within the prescribed period. Following submission of the appeal, the Council have prepared an appeal statement. This outlines the Council's position that the proposal involves the demolition of the existing property and erection of a new property. The failure to provide an accurate description of the proposal, the correct planning application form and fee are therefore said to prevent assessment of the proposal. The Council has given no indication of how it would otherwise have been minded to determine the application.

Reasons

7. The dwelling currently on the appeal site comprises a detached bungalow which is set at a higher land level than the street to the front of the site. It is finished in brick and has a hipped roof form. There is a single-storey projection with a flat roof across part of the rear elevation. As proposed, the development would result in a two-storey dwelling with additional accommodation at roof level. This would project forward of and deeper than the existing dwelling on the site, and would be finished in pale coloured render.
8. The proposal would considerably alter the scale and appearance of the existing dwelling on the site. The appellant considers that this would be through retention and extension of the existing dwelling while the Council disagree and consider that the proposal involves the demolition of the existing property and erection of a new property.
9. The application was made using the application form titled 'Householder Application for Planning Permission for works or extension to a dwelling. Town and Country Planning Act 1990'. The Town and Country Planning (Development Management Procedure (England) (Order) 2015 ('the DMPO') stipulates at article 2(1) that 'householder application' means:
 - (a) an application for planning permission for development for an existing dwellinghouse, or development within the curtilage of such a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse, or
 - (b) an application for any consent, agreement or approval required by or under a planning permission, development order or local development order in relation to such development,but does not include an application for change of use or an application to change the number of dwellings in a building.'
10. It therefore follows that to be considered a householder application for planning permission, the existing dwellinghouse must be retained. Otherwise, a proposal would not be development for an existing dwellinghouse or development within the curtilage of such a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as required by article 2(1)(a) of the DMPO, and would not relate to works or extension to a dwelling as described by the householder application for planning permission form.
11. The appellant agrees that there would be demolition involved to facilitate the proposed works, but considers that the development nevertheless relates to alteration and enlargement of a single house. However, while the appellant initially commented in response to the Council's appeal statement that the majority of three of the existing exterior walls and several internal walls are proposed to be retained, subsequent comments instead state that two of the

main walls would be retained. Furthermore, the submitted drawings do not clearly illustrate (by use of hatching or other means) which walls, both internal or external, would be retained and which would be demolished or newly built. The appellant has not provided any further information to clearly demonstrate the extent of the existing structure which would be retained.

12. Nevertheless, comparison of the existing and proposed plans show that the existing roof would need to be removed to facilitate the development, and that the walls to the front and rear elevations of the dwelling would also be removed along with sections of the internal walls. By any assessment, this would represent a substantial proportion of the existing dwelling.
13. Moreover, the submitted elevations and sections illustrate that the proposed ground levels around and within the dwelling would be notably reduced from the existing situation. Presumably, the proposal may also require further structural or ground works to provide foundations to support the building.
14. I note that the proposed plans indicate that the external walls to the sides of the dwelling and some of the internal walls would be positioned in line with existing walls. I also acknowledge the appellant has advised that the increased thickness of two main walls indicated by the plans would result from additional internal insulation and linings. However, in the absence of details to demonstrate otherwise, I cannot be certain that the extent of construction works that would be necessary to achieve both the lowering of the ground level and the removal of the roof and the walls to the front and rear of the dwelling would in practice enable the remaining walls to be retained.
15. In any event, the common meaning of demolition is the act of pulling or knocking down a building. This does not necessarily signify that all of a structure would necessarily need to be removed to comprise demolition. Instead, whether works would constitute demolition as opposed to alteration will be a matter of judgment according to the circumstances of a case.
16. I cannot be certain that demolition would be to the extent that it would result in the complete removal of the existing dwelling on the appeal site. Nevertheless, even if it were possible to retain some existing walls as the appellant has suggested, in my view the proposed works entailing removal of the roof and the front and rear walls would be comprehensive and would go far beyond what could reasonably be described as alteration of the dwelling. These works are such that there would be a significant change to the existing dwelling, and for all practical purposes, I find that the removal of the existing structure would be so extensive as to amount to demolition.
17. I note the appellant's comments, but on the basis of the evidence before me I find that in practice, the proposed development would effectively entail demolition of the existing dwelling and the construction of a replacement, larger, dwelling rather than works or extension to the existing dwelling.
18. With regard to the definition of a 'householder application' at article 2(1)(a) within the DMPO, the proposal could not therefore reasonably be described as an application for development for an existing dwellinghouse or development within the curtilage of such a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse. Accordingly, the development would be outside of the scope of a 'householder application' as defined within the DMPO.

19. Moreover, the proposed development was subject to consultation with interested parties as a 'householder application'. The development subject to this consultation was described as 'creation of a first floor involving rear dormer with associated parking, cycle parking and refuse storage'.
20. In light of my findings above, the consultation with interested parties would not fairly reflect the substance of the development that is proposed. Accordingly, interested parties may have been deprived of an appropriate opportunity to comment on the proposal. This would be a breach of the principle of natural justice, and I am not satisfied that this is a shortcoming that can be appropriately remedied at the appeal stage so as to ensure that the interests of all parties would not be prejudiced.
21. Having regard to the evidence before me, I find that the householder planning application and consultation undertaken with interested parties on the proposal does not appropriately reflect the nature of the development. Consideration of the proposal at the appeal stage would therefore be contrary to the principle of natural justice. Accordingly, I am unable to consider the planning merits of the case and can only dismiss the appeal. While I also note that the Council have raised concern over the application form used and fee paid, given this conclusion, I do not need to consider these matters further.

Other Matters

22. My attention has been drawn to a grant of planning permission for two dwellings on the appeal site¹. The appellant has advised that the design of the current proposal is identical in appearance to the consented scheme save for the front elevation where one door is proposed rather than two. However, I have not been provided with full details of the permitted scheme. In any event, any potential fallback position in this case would not justify the potential harm to natural justice were I to proceed to further consider and determine the appeal.
23. I note comments on the proposal submitted by interested parties, but in light of my findings above, I am unable to consider further the planning merits of the case.

Conclusion

24. I conclude that the householder planning application and consultation on the development undertaken with interested parties does not reflect the nature of the development proposed on the site. I am therefore unable to proceed to consider the planning merits of the case and the appeal should be dismissed.

J Bowyer

INSPECTOR

¹ Application ref 19/01254/FUL