



Appeal Decision

Site visit made on 10 December 2019

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH

an Inspector appointed by the Secretary of State

Decision date: 25th February 2020

Appeal Ref: APP/J1535/C/19/3226321

46 Russell Road, Buckhurst Hill, Essex IG9 5QE

- 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 Paul Halama against an enforcement notice issued by Epping Forest District Council.
- The enforcement notice was issued on 5 March 2019.
- The breach of planning control as alleged in the notice is without planning permission: The erection of a 2-storey side extension, a 2-storey rear extension and a loft extension with box dormer.
- The requirements of the notice are to:
 - (i) Demolish the unauthorised 2-storey side extension, the unauthorised 2-storey rear extension and the unauthorised loft extension and box dormer.
 - (ii) Remove all resulting debris from the Land following compliance with (i) above.
- The period for compliance with the requirements is 3 months.
- The appeal 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 Act). Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act falls to be considered

Decision

1. It is directed that the enforcement notice be corrected by substituting the words "four years" for "ten years" in paragraph 4.
2. Subject to this 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.

The enforcement notice

3. As the relevant time limit for enforcement action in respect of building operations without planning permission is 4 years¹, rather than 10 years as suggested in paragraph 4 of the notice, I am making the corresponding correction of the notice. I am satisfied that this will cause no significant injustice to the parties.

Ground (a) and the deemed planning application

Main Issues

4. The main issues in this appeal are:
 - the effect of the extensions on the character and appearance of the host dwelling, its semi-detached pairing and the surrounding area; and

¹ Section 171B(1) of the Act

- The effect of the 2-storey rear extension on the living conditions of the occupiers of 44 Russell Road (No 44) as regards outlook.

Reasons

Character and appearance

5. Notwithstanding works of alteration and extension permitted by EPF/2016/15 (the permitted scheme), the appeal development represents a substantial increase in the size, bulk and mass of the host dwelling involving all elevations. The result is a semi-detached dwelling which is significantly different in scale and appearance than pre-existing, and when compared to the relatively unaltered property next door (No 44) in the semi-detached pairing.
6. I accept that the permitted scheme, including a 3-metre-deep rear extension at ground floor level and other works, would unbalance the pre-existing broad symmetry of the pairing to a moderate degree. However the appeal development including a 6 metre rear extension at both ground floor and lower ground floor levels, and when taken together with the 2-storey side extension and additional box dormer on the rear roof slope, substantially distorts the semi-detached pairing to such an extent that No 44 appears from the rear as unacceptably subordinate to the appeal property. This is notwithstanding a proposed stepped-in element to the ground floor extension (which is mentioned in the appeal papers and indicated in the 'As-built' plans, but was not in place on my site visit).
7. Although the unacceptable dominance of these combined features relative to context is largely unseen from the street, adverse visual impact is experienced in the direction of properties to the rear of the row of semi-detached houses. Consequently, significant harm is caused to the character and appearance of the host dwelling, pairing and row of semi-detached properties.
8. Notwithstanding that planning permission has been granted for a flatted development at No 48 Russell Road (No 48), that site is characteristically distinct from the row of paired properties due to its larger size and the presence of a detached bungalow. Consequently, an increase in scale and bulk of built-form within that site would not adversely impact on the character of the row of semi-detached houses to the material extent that the appeal development does, as one of the paired properties in the row.
9. Further, the harm I have identified is not diminished by presence of a 2-storey side extension associated with one of the semi-detached properties in the row, which in any event appears as smaller and more subservient to the host dwelling than in the appeal scheme, or by a dormer window at 38 Russell Road visible within the streetscene.
10. I give limited weight that the Council, in assessing the refused application EPF/1974/18, considered that a 2-storey side extension with additional box dormer was acceptable since the dimensions of each were smaller than in the appeal development and it does not affect my decision that what has been built is unacceptably harmful for the reasons I have given.
11. The building-out of the 2-storey side extension to the boundary with No 48 would not in my view cause material adverse harm in that respect alone, due to the pre-existing position of the ground floor garage on the boundary and reasonable distance between the extension and the dwelling at No 48 (both the

current bungalow and the approved flatted development were it to be built). Likewise, the very slight projection of the first floor beyond the main façade of the original dwelling would not in itself cause any degree of significant harm to character and appearance given varied design within the streetscene, and its alignment with the projection of the garage below. Taken together with the appeal development as a whole, however, the elements of the scheme in combination represent harmful overdevelopment.

12. Therefore I find that the extensions cause significant harm to the character and appearance of the host dwelling, its semi-detached pairing and the surrounding area. As such the development is contrary to Policies CP2 and DBE10 of the Epping Forest District Council Local Plan (1998) and Alterations (2006) (LP&A) which together seek to ensure residential extensions protect the character and appearance of buildings and places.
13. An emerging plan, the Epping Forest District Local Plan (2011-2033) (Submission Version) 2017 (EP), is under examination by the Secretary of State. It is not part of the adopted development plan. As it is not clear the extent to which any objections to its policies are unresolved or the extent to which its policies are consistent with the National Planning Policy Framework (the Framework), I give them limited weight and they do not alter my conclusions.

Living conditions, occupiers of No 44

14. The 2-storey rear extension projects significantly from the rear of the semi-detached pair along the shared boundary. This substantial amount of built-form causes a strong sense of enclosure to the property at No 44. The proposal (not found implemented on my site visit) to step-in the ground floor extension 3 metres after extending 3 metres from the rear elevation, would not sufficiently diminish the harm caused. This harm to outlook would be heightened by the proximity of ground floor habitable room windows to the new structure. In addition, both new floors of the rear extension would be particularly oppressive and overbearing to the occupiers of No 44 while enjoying the external amenity space to the rear of the house which is set at a lower ground level than the appeal property.
15. The nature of any relationship between the appeal property and any flatted development approved by the Council at No 48 would not diminish the harm the appeal development causes to the occupiers of No 44.
16. I find that the appeal development causes significant harm to the living conditions of the occupiers of No 44 as regards outlook. As such the development is contrary to Policy DBE9 of LP&A which seeks to ensure that extensions do not cause an excessive loss of amenity to neighbouring properties. For the reasons given earlier, I give the policies of the EP relating to this main issue limited weight and they do not alter my conclusions.

Ground (f)

17. It is clear from the way that the notice requirements have been drafted that the Council is pursuing the purpose of remedying the breach of planning control resulting from the construction of the extensions, by their demolition (paragraph 5, step 1), rather than remedying injury to amenity.

18. Notwithstanding this purpose, the appellant has put forward an alternative scheme removing the first-floor element of the two-storey forward projection beyond the principal elevation of the original dwelling. The appellant suggests that this would deal with one of the Council's concerns.
19. However, this alternative to what is required in the notice would not remedy the breach of planning control as it would not cause the development to comply with planning permission which has been granted or restore the land to its condition before the breach took place. Further, even had I found that the purpose of the notice was to remedy injury to amenity caused by the breach, the alternative scheme would not achieve this. In particular, no alternative has been put forward as part of this appeal to address the harm caused by the substantial rear extension.
20. Therefore, the appeal under ground (f) does not succeed.

Ground (g)

21. To succeed under ground (g), I must be satisfied that the 3 months period specified for compliance in the notice falls short of what reasonably should be allowed. However, the appellant has not made a case that the required steps cannot reasonably be completed within that period. It seems to me, in the absence of submitted evidence to the contrary, that the demolition works and removal of debris can be reasonably completed within 3 months.
22. The appellant has asked me to vary the period in the notice to 6 months to allow an opportunity to achieve an amended scheme taking into account my findings in this Decision. The appellant's final comments of 5 November 2019 state that following a meeting with the Council's Development Management Manager on site on 8 August 2019 an architect had drawn up three new applications which would be submitted within a few days. These applications seek to address the Council's concerns, and I note that two of them seek to address harm caused by the size and bulk of the rear extension which is particularly relevant to my findings in this Decision.
23. Therefore, in this context, I do not consider that 6 months is reasonably required to remedy the breach of planning control or that 3 months falls short of what should be reasonably allowed. Consequently, the appeal under ground (g) does not succeed.

Conclusion

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

Andrew Walker

INSPECTOR