The Planning Inspectorate

Appeal Decision

Site visit made on 25 February 2020

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 March 2020

Appeal Ref: APP/D5120/C/19/3227448
2 West Heath Road, London SE2 0RX

- 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 Mrs Baljinder Kaur Khun Khun against an enforcement notice issued by the Council of the London Borough of Bexley.
- The enforcement notice was issued on 20 March 2019.
- The breach of planning control as alleged in the notice is without planning permission:
  1. The increase in height of the roof of the dwelling house, whose location is approximately shown outlined in blue on the attached plan;
  2. The erection of a rear flat roof dormer extension, whose location is approximately shown outlined in green on the attached plan;
  3. The erection of a single storey rear extension whose location is approximately shown outlined in pink on the attached plan;
  4. The insertion of 3 windows in the north (side) elevation, shown marked 1, 2, 3 on the attached photograph without obscure glazing.
- The requirements of the notice are:
  1. Reduce the height of the roof of the dwelling, shown in the approximate location outlined in blue on the attached plan, to that which was permitted under reference 18/02505/FUL on the 20/11/18, drawing number PD-01.
  2. Remove the rear flat roof dormer extension, whose location is approximately shown outlined in green on the attached plan;
  3. Remove the single storey rear extension whose location is approximately shown outlined in pink on the attached plan;
  4. Replace the 3 clear glazed windows on the north elevation, shown on the attached photograph numbered 1,2,3) with obscure glazing in accordance with the details shown on the approved plans (drawing number PD-01).
  5. Remove all resultant materials from the land in respect of 1-3 above.
- The period for compliance with the requirements is 2 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. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Decision

1. It is directed that the enforcement notice be:

   - varied by deleting the words "two (2) months" within section 6 (Time for Compliance) and their replacement with "six (6) months".

- corrected by deleting the words, "The extension at first floor" within section 4 of the enforcement notice (reasons for issuing this notice) and their replacement with "The extension at second floor"

2. Subject to this variation and 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.

Background and Preliminary Matters

3. Section 4 (reasons for issuing this notice) of the enforcement notice referring to "the extension at first floor" is incorrect. The Council accepts that this is a typographical error and state that this should refer to the extension at second floor/roof level. However, the appellant appears to have understood the allegation and what they are required to do, and, in my opinion, this error does not render the notice unclear. It is necessary however to replace the incorrect words. This would not cause injustice and I can therefore use my powers under the provisions of s176(1)(a) to achieve this correction

4. Planning permission was granted for the "two storey side extension, the infill of existing covered area to the rear elevation, alterations to the roof line to provide a second-floor extension with roof light windows to the side and rear roof slopes[1]".

5. A part retrospective application for a revised scheme was refused by the Council for a "two storey side extension and single storey rear extension, alterations to roof line to provide a second floor extension and rear dormer extension with roof light windows to front and side roof slopes[2]". The appellant has confirmed that this appeal does not seek to obtain planning permission for the variations applied for under this refused scheme[3], since the drawings submitted under that application do not reflect the development which has been carried out on site, and which is the subject of the notice. I shall therefore deal with the unauthorised works, as alleged within the notice, below.

The Appeal on Ground (a) and the Deemed Planning Application

Main Issues

6. The main issues are:

- the effect of the extension at second floor/roof level and rear dormer extension on the character and appearance of the host building and the surrounding area;

- the effect of the single storey rear extension on the living conditions for the occupiers of No 4 West Heath Road with particular regard to outlook; and

- the effect of the insertion of 3 clear glazed windows in the side elevation, labelled 1, 2 and 3 on the photograph attached to the Enforcement Notice on the living conditions for the residential occupiers of Woolwich Road with particular regard to privacy.

[1] Council ref: 18/02505/FUL granted on 20 November 2018.
[2] Council ref: 19/00204/FUL refused on 19 March 2019.
[3] as shown on plan reference PD-11

Character and appearance

7. The property is a two storey semi-detached property, located in a residential area characterised by houses set back from the road behind modest sized front gardens, with relatively long rear gardens. Owing to the position of the appeal property, close to the junction with Woolwich Road, the flank wall/side elevation of the property is visible from the street.

8. The London Borough of Bexley Design and Development Control Guideline 2 (DDCG2), states that "in general extensions should be subordinate to the existing building. In addition, the siting, design and external appearance should respect the character of the existing building and adjacent building". Whilst the DDCG2 is guidance only, its emphasis on good design is consistent with the National Planning Policy Framework, 2019 (the Framework).

9. Contrary to this guidance, the extension at second floor level together with the rear dormer extension, extends the building considerably. The adjoining semi-detached property has not been extended at second floor level / roof level, and in this regard, the scale, bulk and height of the extension on the appeal property introduces a 'top heavy', overly dominant and visually discordant feature. Furthermore, these extensions at high level are visible in public views from West Heath Road. In this respect, the extension diminishes unacceptably the integrity, character and appearance of the host building with consequent harm to the character and appearance of the surrounding area.

10. Whilst I note that an extension was previously approved for an extension at second floor level, the current extensions at this level are significantly more substantial than the approved scheme, and therefore have a greater impact on the character and appearance of the host building and area. Therefore, I do not consider that the approved scheme lends support for the current development before me. Nor do I consider that the height of the extension, which remains lower than the main ridge height of the property, or that it is set within the confines of the main property overcomes the harm identified above.

11. Therefore, in relation to the first main issue, the extension at second floor/roof level and rear dormer extension has a harmful effect upon the character and appearance of the host building and the surrounding area. The development is therefore contrary to policies ENV39 and H9 of the London Borough of Bexley Unitary Development Plan, 2004 (UDP). Amongst other things, these states that all developments are of a high standard of design, that the siting, design and external appearance of development should be compatible with the character of the existing building, adjacent building and the surrounding area, and would not prejudice the streetscene by reason of its (a) scale, (b) massing, (c) height, (d) layout.

12. The development also runs contrary to the advice contained within the London Borough of Bexley Design and Development Control Guideline 2, as outlined above.

Living conditions for the occupiers of No 4 West Heath Road – outlook

13. With regard to rear extensions, the DDCG2, states that on "semi-detached and terraced houses, single storey extensions at the rear and on the boundary with the adjoining half of the property should not normally exceed 3.1 metres in

height (to eaves level with pitched roofs) above existing ground level or 3.5 metres in depth from the rear of the property.

14. Contrary to the above guidance, the single storey rear extension exceeds 3.1m in height from the existing ground level[4] and extends significantly further than 3.5m in depth from the rear main wall of the property, along the shared boundary with the adjacent property at No.4.

15. The unauthorised rear extension results in a large expanse of the flank wall of the extension, built along the shared boundary with No 4. As a result, the current single storey rear extension appears as a dominant feature in the outlook from windows in the rear elevation of this property at ground floor level and from the garden itself. In this respect the single storey rear extension harmfully reduces the sense of openness of the rear gardens and creates an increased sense of enclosure to neighbouring occupiers of No 4, and harm to their living conditions.

16. I appreciate that the there was a previous pergola in the rear garden in a similar position as the current single storey rear extension, but this was not solid like the current single storey rear extension. I also acknowledge the presence of a large single storey outbuilding built in the rear garden of a neighbouring property on Woolwich Road. However, I do not consider that this development justifies the current single storey rear extension, nor does the lack of objection from neighbours at No 4.

17. I therefore conclude that the single storey rear extension results in harm to the living conditions of the occupiers of No 4 West Heath Road with regard to outlook, contrary to Policies ENV39 and H9 of the UDP. Amongst other things, these require that all development should not adversely affect the amenity of residents of adjoining properties including outlook.

18. The development also runs contrary to the advice contained within the London Borough pf Bexley Design and Development Control Guideline 2, as outlined above.

Living conditions for the residential occupiers of Woolwich Road - privacy

19. With regards to the three clear glazed upper floor windows in the flank elevation facing towards properties on Woolwich Road, I note that the appellant states that these windows have now been obscured glazed. Whilst in principle this would appear to overcome any harm in terms of loss of privacy and intrusive overlooking to neighbouring occupiers of Woolwich Road, limited details have been provided to demonstrate how this has been achieved and that these windows would remain permanently obscure glazed. If the appeal were allowed, a condition would be attached requiring specific details of the obscure glazing to be submitted to the Council for approval, including how the windows would remain permanently obscured. I am therefore satisfied that subject to this condition the three new upper floor windows in the flank elevation would not result in any harmful overlooking to neighbouring occupiers on Woolwich Road.

20. I therefore conclude that subject to a condition requiring the details of the obscure glazing to be submitted to the Council for approval, the three windows do not result in harm to the living conditions for residential occupiers of

[4] Measured on the boundary with No 4 West Heath Road.

Woolwich Road with particular regard to privacy. As such I find no conflict with Policies ENV39 and H9 of the UDP. Amongst other things, these require that all development should not adversely affect the privacy and amenity of residents of adjoining properties. However, this is just one matter in the overall assessment of the development and does not alter my judgement set out earlier.

Other matters

21. With regards to the single storey rear extension, the appellant refers to permitted development legislation which in in certain scenarios, allows for larger extensions to be built. However, that particular legislation requires a prior approval application to be made to the Council, in order to assess the development under the requirements of permitted development legislation. Furthermore, there is no detailed evidence presented as part of this appeal which demonstrates that the unauthorised development would comply with this legislation. As such, reference to permitted development legislation is of limited relevance to the current appeal which must be considered on its own merits and in accordance with the relevant planning policies.

22. Under Ground (f) the appellant has submitted a further revised drawing[5] which she considers would overcome the harm to the neighbouring occupiers at No 4. This alternative drawing shows the removal of part of the single storey extension, located closest to No 4 together with the introduction of a 1.2m separation distance from the shared boundary with this neighbouring property. This would reduce the width of the rear extension, and removed the existing roof lantern, replacing it with a plateau roof light to reduce the overall height the single storey extension. The revised drawing also proposed to increase the height of the boundary wall between Nos 2 and 4 to 2m, in accordance with permitted development rights.

23. Whilst I appreciate that the changes proposed to the rear extension would assist in improving the relationship with the adjoining semi-detached property, I am not convinced that these changes would be sufficient to overcome the harm identified above, since it is the combined height, depth and bulk of the extension which is excessive and harmful to the living conditions of No 4. Therefore, in my opinion, the revised proposal would also be harmful to the living conditions of neighbouring occupiers of No 4.

24. I also appreciate that there are a number of other extensions/alterations, and outbuildings, on neighbouring properties. However, the existence of these does not justify the harm identified above under the first two main issues above.

Conclusion on Ground (a) and the Deemed Planning Application

25. For the reasons given and with regard to all other matters raised, I conclude that the appeal on ground (a) should fail and the deemed planning application should be refused.

The appeal on Ground (f)

26. The appeal on this ground is that the steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections. The enforcement notice requires the extension at second floor level

[5] Drawing No PD-21, Appendix 5 of the appellant's grounds of appeal statement.

and three windows in the flank elevation to accord with the previously approved planning permission, together with the removal of the unauthorised rear flat dormer extension and the unauthorised single storey rear extension. As such, the purpose of the notice is to remedy the breach of planning control rather than only remedy any injury to amenity.

27. I have found under ground a) that the unauthorised development as built, and the proposed revised scheme[6], are harmful to the character and appearance of the building and the surrounding area, and to the living conditions of the occupiers of No 4 West Heath Road with regard to outlook. Therefore, the requirements of the enforcement notice are not excessive, and do not go beyond what is appropriate to remedy the breach of planning control. It is not therefore possible to vary the notice in the ways suggested by the appellant whilst achieving the purpose of the notice, and there are no obvious solutions which would overcome the harm identified.

28. Therefore, the appeal on ground (f) fails.

The appeal on Ground (g)

29. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant asks that the time for compliance is extended from two months to nine to twelve months, in order to provide the appellant with additional time to make arrangements for contractors to undertake the necessary works during the busy summer months. It is also contended that given that the extensions provide much of the main living space, there is the likelihood that the appellant's young family would need to be rehoused whilst the works are taking place.

30. I have identified under ground (a) that the development results in harm to both the character and appearance of the host building and the surrounding area, and to the living conditions of neighbouring occupiers of No 4 with regards to outlook. However, the time for completing the requirements should be what is reasonably considered necessary to complete the requirements. In my view, six months would strike a more reasonable and proportionate balance in these circumstances in order to allow the appellant to seek alternative accommodation and for the appellant to obtain quotations, appoint a contractor and carry out the works. I shall therefore extend the period from two to six months for compliance with the notice.

31. The appeal succeeds on ground (g), and I shall vary the notice accordingly.

Conclusion

32. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations and corrections and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

R Satheesan

INSPECTOR

[6] Plan reference PD-21 (attached at APPENDIX 5 of the appellant's appeal statement).