
Appeal Decision

Site visit made on 11 March 2020

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 August 2020

Appeal Ref: APP/W1715/W/19/3243409

85 Hocombe Road, Chandler's Ford SO53 5QB

- 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 and Mrs Bright against Eastleigh Borough Council.
 - The application Ref H/19/86686 is dated 18 October 2019.
 - The development proposed is described as *'two storey front and rear extensions, single storey side extensions, raising of the roof and alterations to fenestration'*.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr and Mrs Bright against Eastleigh Borough Council. This application is the subject of a separate Decision.

Procedural Matters

3. This appeal against the Council's failure to give notice of a decision results from a validation dispute between the main parties. An assessment by the Council of the scheme's planning merits has now taken place at appeal stage. I have identified the main issues in this appeal having considered the Council's Statement of Case, which sets out their main concerns should it be determined that a valid planning application was in fact made.

Main Issues

4. The main issues are:
 - Whether or not the planning application should have been validated by the Council; and, in the event that I find it should have been validated,
 - The effect of the proposal on the character and appearance of the area.

Reasons

Validation

5. The planning application that is now the subject of this appeal, was made on 18 October 2019 as a householder application for planning permission for works or extension to a dwelling. The Council wrote to the appellants on 6 November 2019 stating that the application was invalid due to the development comprising the demolition and rebuild of the dwelling rather than

- extensions and alterations. This was disputed by the appellants, who cited case law arising from *Shimizu (UK) Ltd v. Westminster City Council (1997)* (the Shimizu case) in support of the validation of the application.
6. On 22 November 2019 the Council confirmed that it considered that the proposal comprises the demolition and rebuild of the dwelling, and that, as such, it would require the submission of a full planning application together with the balance of application fees and that the submitted application under Householder Development was deemed to be invalid.
 7. The appellants disputed the Council's conclusion and served a notice under Article 12 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended) (DMPO) on 22 November 2020 stating that the Council's requirements were not reasonable or proportionate or reflective of the development being applied for, and that the development would be implemented in stages, with continued occupation of the dwelling. In response, on 26 November 2019, the Council requested a phasing plan of the proposed development. The appellants did not provide the requested plan but confirmed that the works would be carried out in a manner that is convenient to both the builder and the appellants.
 8. On 29 November 2019, the Council issued a Non-Validation Notice under DMPO Article 12, advising that insufficient information had been provided with the application to demonstrate that the scheme comprises extensions to, rather than demolition and rebuild of, the dwelling, and that a full application and appropriate fee would be required to enable the application to be validated.
 9. The outcome is that the application is classified as a non-validated application, and the time periods for decisions set out under DMPO article 34 apply. This enables an appeal to be made under section 78(2) of the 1990 Act where the Council has not given notice of their decision on the application. The relevant time period for making an appeal is set out under article 37(2) of the DMPO, which I am satisfied has been met in this case.
 10. I find that the Council's approach accords with the Planning Practice Guidance (PPG) which sets out what is required to make a valid application for planning permission¹, including a completed application form and the correct application fee. Both of these are determined by the type of application, and therefore, in this respect, I find the Council's concerns about whether or not the application constitutes a householder application to be reasonable.
 11. It is a question of fact and degree as to whether the appeal scheme comprises staged extensions or works to remodel the existing building or the construction of a new dwelling, having regard to the continuing existence of the original structure and the continuing existence of a dwelling on the site which would be occupied as such.
 12. In respect of the former, the amount of the original dwelling which is proposed to be retained is a key factor. With this in mind, I have had regard to planning application drawing no.544.PL.001 A1 titled '*plans and elevations proposed*' which indicates in red, the elements of the existing dwelling which would remain situ as part of the appeal scheme. I find that this drawing when read in conjunction with drawing no. 544.SU.001 A2 titled '*plans and elevations as*

¹ Paragraph: 016 Reference ID: 14-016-20140306

existing' appears to show that, when compared to the existing building as a whole and the proposed finished development, the amount of building to be retained comprises only a very small proportion of the existing overall structure, mainly comprising small sections of external walls.

13. Moreover, some walls shown to be retained would be altered by the installation or removal of window and door openings, thereby reducing the amount of building to remain in situ. Also, the drawings also appear to show the retention of part of the existing first floor external wall without the retention of the ground floor element below. I am not, therefore, persuaded by the planning application drawings, that the development would retain and extend the existing dwelling.
14. In support of their position, the appellants have referred to the Shimizu case, which held that the demolition of only part of a listed building, not amounting to demolition of the whole, or substantially the whole, of the building is to be regarded as an alteration to the building rather than as demolition. I find that the extent of building works involved in the appeal scheme is significantly greater than that proposed in the case of Shimizu, which related to the removal of chimney breasts. Furthermore, the Shimizu case ruled that whether a proposal comprises alterations or demolition must be considered within the context of the building as a whole, and that this was a question of fact and degree in each case. I find that, on the basis of the evidence before me, it has not been satisfactorily demonstrated that the proposal does not involve demolition comprising substantially the whole of the building.
15. It follows from this that the planning application drawings do not sufficiently demonstrate that the proposal comprises alterations and extensions to the existing dwelling instead of demolition and rebuild. As such, the plans fail to accord with the national information requirements² set out in the PPG, which state that, in addition to a location plan, additional plans and drawings will in most cases be necessary to describe the proposed development as required by article 7(1)(c)(ii) of the Town and Country Planning (Development Management Procedure) (England) (Order) 2015.
16. In addition to the continuing existence of the original dwelling structure, it is also relevant to consider whether the dwelling would continue to be occupied as such during the course of the development. Accordingly, I acknowledge the stated intention of the appellants to continue to reside in the building whilst the building works are carried out. I have also had regard to the letter from Carlton Civil Engineering Ltd, submitted by the appellants, which states that in the opinion of the civil engineer, it would be possible for the appellants to reside at the property whilst the work is being undertaken.
17. However, I note that the letter advises that such a proposal would involve ongoing reconfiguration of the essential living, bathroom and kitchen areas and would be costly and disruptive and would require planning in respect of the phasing of the works. In the absence of a detailed phasing plan before me and having regard to the substantive nature of the proposed building works, I am not persuaded by the evidence before me that it would be feasible or realistic for the building to continue to be occupied as a dwelling whilst construction takes place. On the basis of the information before me I am unable to reach a

² Paragraph: 022 Reference ID: 14-022-20140306 & Paragraph: 023 Reference ID: 14-023-20140306

definitive conclusion on this matter. Thus, I find the Council's request for a phasing plan is reasonable.

18. The appellants consider that it is for them to decide the nature of the planning application and that confirmation that the works would not comprise demolition and rebuild should be sufficient to enable the application to be validated. Should the dwelling subsequently be demolished, the appellants contend that this would be a matter to be dealt with under the Council's enforcement powers. I am not persuaded by this argument which fails to take account of the validation requirements as set out in the PPG.
19. Therefore, having regard to the evidence before me, I can only dismiss the appeal on the basis that the information before me does not allow me to conclude that the proposals do not comprise demolition and rebuild. As such, the application does not contain adequate information to allow me to conclude that it should have been validated by the Council.
20. I acknowledge that I have a scheme before me which includes sufficiently detailed information in respect of the existing situation and the proposed development, to enable me to exercise professional planning judgement to determine the merits of the scheme. However, the structure of the legislation is that it is a dispute about the need for the required information to enable the application to be validated that provides the right to appeal. Hence this appeal determination must first resolve that dispute before going on to consider whether a grant of planning permission is justified.
21. Given my conclusion on the first main issue, there is no need for me to consider whether or not the proposal would harm the character or appearance of the area, as this would not alter the outcome of the appeal.

Conclusion

22. For the reasons set out above, I conclude that the appeal should be dismissed.

S Leonard

INSPECTOR