



Appeal Decision

Site visit made on 4 August 2020

by Sarah Dyer BA BTP MRTPI MCMi

an Inspector appointed by the Secretary of State

Decision date: 10 August 2020

Appeal Ref: APP/W1525/C/19/3224037

Land at Flat 33, Duke Street, Chelmsford, Essex CM1 1HY

- 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 Ismail Salih against an enforcement notice issued by Chelmsford City Council.
 - The enforcement notice was issued on 4 February 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the construction of a first floor rear extension (shown outlined in blue at the approximate location on the attached plan).
 - The requirements of the notice are:
 - i. Demolish the first floor rear extension shown outlined in blue at the approximate location on the attached plan.
 - ii. Remove from the land all waste materials arising from the action taken at step (i) above.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (d), (e), (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.
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Decision

1. The appeal is dismissed, and the enforcement notice is upheld.
2. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matters

3. The Council advised that the Chelmsford Local Plan (May 2020) (the Local Plan) was adopted on 27 May 2020. It has provided copies of the relevant policies from the Local Plan and both parties have had the opportunity to comment on the relevance of these policies to the appeal.
4. The appellant has stated in his appeal form that he considers that the works which are the subject of the notice were 'permitted development' when they were carried out. This is an argument under ground (c), and it can be regarded as a 'hidden ground', consequently, I have considered it below.

Ground (e)

5. An appeal under ground (e) is made on the basis that copies of the enforcement notice were not served as required.

6. Section 172(2) of the Town and Country Planning Act 1990 (as amended) requires that a copy of an enforcement notice be served (a) on the owner and on the occupier of the land to which it relates and (b) on any other person having an interest in the land being an interest which, in the opinion of the authority, is materially affected by the notice.
7. The appellant says that the landlord of the property was not served with a copy of the notice. The Council argues that it properly served the notice on the basis of its investigations regarding material interest in the land.
8. The Land Registry document dated 08 June 2016 identifies the proprietor as Birak Properties Limited and the Council has confirmed that the notice was served on this company. The Land Registry document dated 23 February 2017 identifies the proprietor as the appellant. The Planning Contravention Notice which is dated the same date as the second Land Registry document appears to cite the freehold owner as 'Brock Property' which is at odds with the other evidence. Nevertheless, the appellant has not provided any information to identify the party which he contends has an interest in the land or to establish that that party was not served with a copy of the notice.
9. The onus is on the appellant to demonstrate that a party who should have been served with the notice was not served and this has not been shown in this case.
10. For the reasons set out above, I conclude that the appeal on ground (e) should fail.

Ground (b)

11. An appeal under ground (b) is that the matters to which the notice relates have not occurred. This is a legal ground of appeal and the onus of proof lies with the appellant. The standard of proof is the balance of probabilities.
12. The appellant says that the structure was in place when he took over the lease in 2002 and that he applied for planning permission for it 2017 (Council Ref.17/01534/FUL) (the 2017 application). It follows that the matters which are the subject of the notice have occurred.
13. For the reasons set out above, the appeal under ground (b) fails.

Ground (c)

14. An appeal on ground (c) is on the basis that the matters alleged in the notice do not constitute a breach of planning control. This is also a legal ground of appeal and the onus of proof lies with the appellant. The standard of proof is the balance of probabilities.
15. The appellant states on his appeal form that what is alleged in the notice, and what he describes as alterations, was permitted development at that time it was carried out. However, he has not provided any substantive evidence to support his argument. Consequently, he has not shown that on the balance of probabilities the extension as constructed does not constitute a breach of planning control.
16. For these reasons, an appeal under ground (c) fails.

Ground (d)

17. An appeal under ground (d) is also a legal ground and the onus of proof lies with the appellant. The standard of proof is again the balance of probabilities. In this case it is necessary for the appellant to demonstrate that the extension which amounts to operational development was substantially complete and has been in place for a four-year period. The relevant date in this case is 4 February 2015 being four years prior to the date of issue of the notice.
18. The appellant says that in addition to being present at the time when he took over the lease, the alterations which he made to the structure were carried out in 2011. He also states that the building has only been used for storage since the determination of the 2017 application, however the use of the extension is not a matter before me for determination.
19. The Council has provided a photograph which is dated April 2016 which shows the extension as an unfinished structure with some windows missing. Further photographs dated June 2016 show the extension with a consistent external surface treatment and fully glazed windows. The appellant has not disputed the information provided by the Council and which indicates that the first floor extension was completed between April and June 2016, thus well after 4 February 2015.
20. On the basis of the evidence before me the appellant has failed to demonstrate, on the balance of probabilities, that at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. Therefore, the appeal under ground (d) fails.

Ground (a) and the Deemed Planning Application (DPA)

21. An appeal under ground (a) is on the basis that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to have been granted.

Main Issues

22. The main issues are the effect of the first floor rear extension on:
 - the character and appearance of West End Conservation Area (West End CA), which is a designated heritage asset; and
 - the living conditions of occupiers of the adjoining property with particular regard to light and outlook.

Reasons

Character and appearance

23. The main building to which the extension has been added fronts Duke Street and is a three-storey terraced form. To the rear there are a number of structures which surround an external yard. Access to this area is via Wells Street and the same access serves as rear access to a number of commercial premises.
24. The first floor extension appears to be an addition to a flat roofed projecting element of the building and in combination these parts of the building are

- visible from Railway Street which as its name suggests provides access to Chelmsford train station. Railway Street falls well within the boundary of West End CA, this part of which is characterised by a mix of older, domestic scale architecture in the form of the commercial uses and more recent, larger scale development in the form of offices and a multi storey car park.
25. The predominant building material in the vicinity of the site is brick, although some brickwork has been painted white on buildings in the wider area. Detailing such as soldier courses over windows, terracotta ridge tiles and crisp lines on parapets are apparent on the majority of buildings and structures around the appeal site.
26. The Council's key concerns are with regard to the materials and finishes of the first floor extension. At close quarters the insubstantial nature of the construction is obvious and in stark contrast to the solid appearance of the surrounding brick buildings. The timber panels which form the structure are visible through the surface treatment and exaggerate the impermanent nature of the design. Overall, there is limited attention to detail and the extension has a harmful effect on the surrounding West End CA.
27. It appears that the extension has been painted since the Council's photographs showing its appearance in January 2018 were taken. Where the walls were painted to depict brickwork, they have now been painted white to match the main building and the two flat roofed first floor elements are of a consistent colour. On the basis of a comparison between the photographs and my observations, it is reasonable to conclude that the appearance of the extension when viewed from a distance has been improved by the painting. However, this change does not outweigh my concerns regarding the materials and finishes given the context of the West End CA.
28. The appellant refers to number 34 Duke Street (No. 34) in comparison with the appeal site and suggests that an inconsistent approach has been adopted in relation to that building. I have very limited information before me regarding the extension to No. 34, including whether or not this structure is authorised, and whilst I noted its appearance during the site visit it does not dissuade me from the conclusions which I have reached in terms of the development which is the subject of this appeal.
29. The appellant argues that the extension makes good use of the space, is tidy and waterproof and makes good use of amenities. However, these points do not outweigh my concerns regarding the effect of the development in terms of its materials and design.
30. I conclude that the first floor rear extension has a harmful effect on the West End CA. The development is therefore contrary to Strategic Policy S3 of the Local Plan which places great weight on the preservation or enhancement of designated heritage assets.
31. The statutory duty in Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 is a matter of considerable importance and weight. As a consequence of its materials and design, the first floor extension would have a harmful impact on West End CA. However, I find that the harm would be less than substantial.

32. Paragraph 196 of the National Planning Policy Framework directs that where a development proposal will lead to less than substantial harm, this harm should be weighed against the public benefits of the proposal. In this case I have limited evidence before me regarding the public benefits which would arise save for the appellant's reference to the potential for the space formed by the extension to be used for the benefit the community, which is not substantiated. This public benefit would not outweigh the harm to the designated heritage asset that I have found in this instance.

Living conditions

33. The extension encloses the windows serving a kitchen, bathroom and toilet on the first floor of the building which would previously have overlooked the yard and adjacent buildings. Within the extension itself the kitchen window been mainly papered over and a shelving unit obscures part of the toilet window. It is not apparent from the internal arrangement of the remainder of the building who has access to the kitchen, bathroom and toilet.
34. The presence of the extension effectively removes any potential for outlook from the internalised windows. Whilst this may not be an issue for the users of the toilet and the bathroom, it has a significant adverse impact on the experience of the kitchen which feels enclosed and lacks daylight as a result.
35. The appellant argues that the views from the windows are not of a 'scenic nature' and that the same applies to other windows in surrounding buildings. Whilst the outlook over the adjacent yards and towards office buildings would not have been of a particularly high quality, it is preferable in design terms to having no outlook.
36. The appellant also refers to No. 34 in relation to the comparable effect of an extension on living conditions. However, in common with the other main issue there is no information to establish that the two cases are directly comparable and even if they are it would not outweigh my concerns regarding the impact of the first floor extension on the living conditions of the occupiers of the adjoining property.
37. I conclude that the first floor rear extension has a harmful effect on the living conditions of occupier of the adjoining property with particular regard to light and outlook. The development is therefore contrary to Policy DM29 of the Local Plan which seeks to ensure that development safeguards the living environment of the occupiers of any nearby residential property.
38. I do not find Policy DM26 which relates to design specifications for dwellings to be relevant to this main issue.

Conclusion in respect of ground (a) and the DPA

39. For the reasons given above, I conclude that the appeal on ground (a) should fail and the deemed planning application should be refused.

Ground (f)

40. An appeal under ground (f) is on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted

by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.

41. The appellant says that he would be happy to work with the Council to 'remedy the situation' and that he is already in contact with building control officers. He considers that it would be possible on this basis to satisfy the concerns of the Council without removing the whole structure and says that, contrary to the Council's view, he has sought to have an open dialogue with officers.
42. The view of the Council is that nothing short of full compliance would remedy the breach of planning control. I am also mindful of the location of the appeal site in West End CA, which is a heritage asset.
43. The degree to which the appellant has or has not engaged in dialogue with the Council is not a matter for my consideration as part of the appeal. However, in the absence of any detailed alternative proposals which would result in the retention of all or part of the first floor extension, it has not been shown that there is a viable alternative to full compliance with the requirements of the notice. On this basis the requirements of the notice do not exceed what is necessary and for these reasons the appeal fails on ground (f).

Ground (g)

44. Ground (g) is that the period specified for compliance with the notice falls short of what should reasonably be allowed. The appellant considers that the compliance period of three months is too short because there will be a 'quite an upheaval' to remove the extension and to weatherproof the building. He also wants to work with the Council to find an alternative way forward. Furthermore, he refers to an Assured Short Term Tenancy (ASTT) being in place, however there is no information regarding the notice period for the ASTT.
45. The Council is of the view that the structure can be removed with minimum effort and minimal disruption. The Council also notes that the extension was inaccessible from the main building. However, there is now access from the main building into the extension, consequently there is more potential for the occupiers to be disturbed by the works to comply with the notice. Nevertheless, there is no substantive evidence before me to demonstrate that the extension will take longer than 3 months to be removed and the building protected from the weather.
46. Taking all of these matters into consideration I find that the 3-month period afforded by the notice does not fall short of what is a reasonable period of compliance. For the reasons given above, I conclude that the appeal on ground (g) should fail.

Conclusion

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

Sarah Dyer

Inspector