



Appeal Decision

Site visit made on 11 August 2020

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 August 2020

Appeal Ref: APP/W1715/C/18/3218884

Land at 4 New Road, Netley Abbey, Southampton, Hampshire SO31 5DL

- 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 Owen Callaghan against an enforcement notice issued by Eastleigh Borough Council.
- The enforcement notice was issued on 20 November 2018.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a single storey side extension exceeding 4 metres in height and including a canopy projecting beyond the principal elevation.
- The requirements of the notice are: 5.1 Remove the canopy along the front elevation of the single storey side extension to the extent that it protrudes beyond the principal elevation. 5.2 Reduce the overall height of the single storey side extension to no more than 4 metres. 5.3 Remove all debris arising from compliance with requirements 5.1 and 5.2 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) and (c) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed subject to the enforcement notice being corrected and planning permission is granted in the terms set out below in the Formal Decision.

Preliminary Matter

1. The plan attached to the enforcement notice is inaccurate, as part of the unauthorised extension is situated on land outside of the area shown edged in red. However, there is no dispute or uncertainty over what is attacked by the notice. Moreover, I am given to understand that the land in question is in the appellant's ownership, with no other parties having an interest. Therefore, the plan has had no implications for service of the notice. Accordingly, I shall correct the notice to delete the plan and the references thereto. In doing so, there would be no injustice. Regulation 4(c) of the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 would still be satisfied, as by referring to the address the notice specifies the precise boundaries of the land to which it relates.

Ground (c) appeal

2. It is for the appellant to show that the matter alleged in the notice did not constitute a breach of planning control, the relevant test of the evidence being on the balance of probability.
3. A single storey extension has been erected at the side of the dwelling. Building operations fall within the definition of development at s55 (1) of the 1990 Act,

for which planning permission is required by s57 (1) of that Act. The planning permission to enlarge a dwelling granted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) Article 3, Schedule 2, Part 1, Class A is subject to certain limitations and conditions.

4. Part of the extension, namely the overhanging canopy on the front elevation, extends beyond the wall which forms the front elevation of the dwelling. The front elevation of the dwelling is the 'principal elevation', as it is the part which fronts the main highway serving the dwelling and contains the main architectural features. Therefore, the extension exceeds the limitation in Class A, paragraph A.1 (e) (i). As there was no dispute that the extension is over 4 metres in height, the limitation at Class A paragraph A.1 (f) is also exceeded. Due to these factors, the extension is not permitted by Class A, even if all the other limitations and conditions had been met. No other Class in Part 1 or any other Part of the GPDO permits the extension. Neither has there been a grant of express planning permission in respect of the extension.
5. None of the matters raised by the appellant in their ground (c) appeal materially affect the absence of planning permission for the extension. Therefore, on the balance of probability erection of the extension constitutes a breach of planning control. The ground (c) appeal fails.

Ground (a) appeal

Main Issue

6. The main issue in this ground of appeal is the effect of the extension on the character and appearance of the area.

Reasons

Character and appearance

7. The dwelling is one of a pair of semi-detached properties, probably originating in the mid-20th Century. It is located in an established residential area, largely made up of terraced and semi-detached dwellings which differ in terms of their age and architectural style, also being set back varying distances from the street. Therefore, the environs of the dwelling possess a mixed suburban character and appearance.
8. As the notice requirements are to remove the canopy and reduce the height the extension would remain if the notice were to be upheld, albeit slightly modified and reduced in size. By under-enforcing, the Council were no doubt mindful of what would otherwise have been permitted by the GPDO in terms of enlarging the dwelling. Be that as it may, the Council advanced no definitive case as to how or why, with reference to the canopy and its overall height, the extension harmed the character and appearance of the surroundings.
9. The extension has a similar roof pitch to the dwelling and utilises similar external materials. The canopy is simply an elongation of the extension roof and is aligned with the front porch on the adjoining property on the north side (2 New Road). On the south side, the canopy aligns with the front elevation of the adjoining property (1 Morse Court). This means that the extension does not project significantly forward of adjoining dwellings or other dwellings in the street. Also, canopies are an established feature of the front elevations of dwellings in the locality, albeit usually of more modest size than at this site. In

terms of its overall height, the apex of the extension roof sits well below that of the main roof, being approximately level with the eaves line. This assists in the extension being viewed as a subordinate addition to the dwelling.

10. Given the above factors, the extension is viewed as a reasonably modest enlargement, complementary to the dwelling in terms of its scale and design as well as to that of adjoining dwellings and the pattern of local development. It follows that the canopy and the overall height have not resulted in the extension appearing as an alien feature in the street scene.
11. In reaching the above conclusion, I have been mindful that the Council refused planning permission for a two-storey side extension to the dwelling in November 2017¹. However, given the scale of that scheme its visual impact would in my view have been materially different to the extension in this appeal.
12. Therefore, the extension safeguards the character and appearance of the area and in doing so, accords with criterion in Policy 59.BE of the Eastleigh Borough Local Plan Review 2001-2011, as full and proper account of the site context has been taken and the extension is appropriate in terms of scale, materials, design and siting in itself and in relation to adjoining buildings. For similar reasons, the extension accords with Policy DM1 of the emerging Eastleigh Borough Local Plan Review 2016-2036.

Other matters

13. The extension has no adverse effect on the living conditions of occupiers of adjoining residential property, either in terms of outlook or overshadowing. Erecting the extension without first obtaining planning permission does not weigh for or against allowing it to remain. Possible future use of the dwelling as flats or for multiple occupation is not relevant to this appeal. Property values are not a planning matter.

Conclusion

14. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted. No conditions are necessary.

Formal Decision

15. It is directed that the enforcement notice be corrected by: deleting the attached plan, and; at paragraph 2 deleting the words "shown edged in red on the plan attached to this Notice ("the Plan")", and; at paragraph 3 deleting the words "the extension being shown in the approximate position edged in green on the Plan". Subject to these corrections the appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177 (5) of the 1990 Act as amended, namely the erection of a single storey side extension exceeding 4 metres in height and including a canopy projecting beyond the principal elevation at 4 New Road, Netley Abbey, Southampton, Hampshire SO31 5DL.

Stephen Hawkins

INSPECTOR

¹ Council Ref: F/17/80352.