



Appeal Decisions

Site visit made on 20 August 2020

by J A Murray LLB (Hons), Dip.Plan Env, DMS, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 02 September 2020

Appeal A: APP/E2530/C/20/3250139

Land at 78 Denton Avenue, Grantham, Lincolnshire, NG31 7JH

- 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 Jonathan Askham against an enforcement notice issued by South Kesteven District Council.
 - The enforcement notice was issued on 13 March 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the construction of a flat roofed, side and rear extension to the dwellinghouse, raised decking area to the rear of the extension, alterations to windows and doors in the western elevation of the original dwellinghouse, the insertion of a rooflight window in the eastern facing roof slope of the original dwellinghouse and the construction of fencing above 2m in height to the eastern boundary.
 - The requirements of the notice are:
 1. Demolish the raised decking, steps and balustrade from the rear of the extension.
 2. Demolish the extension to the side and rear of the dwellinghouse.
 3. Reinstate the northern and eastern elevations of the dwellinghouse to their state prior to commencement of the unauthorised development (as indicated in the Existing Plans and Elevations Plan 19013-01 attached¹).
 4. Remove from the land any materials and arisings resulting from the demolition of the decking and extension.
 - The period for compliance with the requirements is 9 months from the date the notice takes effect.
 - 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.
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Appeal B: APP/E2530/W/20/3250115

Land at 78 Denton Avenue, Grantham, Lincolnshire, NG31 7JH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr J Askham against the decision of South Kesteven District Council.
 - The application Ref S19/2242, dated 27 December 2019, was refused by notice dated 13 March 2020.
 - The development proposed is a single storey side and rear extension.
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Decision on appeal A: APP/E2530/C/20/3250139

1. It is directed that the enforcement notice be varied:

(i) in section 5 by inserting the following words after requirement 4:

“OR

¹ i.e. attached to the enforcement notice.

5. Alter the extension so that it is in complete accordance with drawing Nos MSP.1696/008 and MSP.1696/004 submitted with application Ref S20/0534, copies of which are attached.

6. Remove from the land any materials and arisings resulting from the alteration of the extension in compliance with alternative requirement 5.”; and

- (ii) by attaching copies of drawing Nos MSP.1696/008 and MSP.1696/004.

Subject to these variations 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.

Decision on appeal B: APP/E2530/W/20/3250115

2. The appeal is dismissed.

Appeal A (ground (a)/the deemed application for planning permission)/Appeal B

Main Issue

3. The main issue is the effect of the development on neighbours’ living conditions in terms of visual impact, overlooking and loss of privacy.

Reasons

4. The scheme the subject of appeal B is the same as the as-built development, save that it is proposed to render the extension and the side elevations of the dwelling in a pale brown / mushroom colour intended to complement the existing brickwork.
5. The bungalow at No 80 Denton Avenue lies immediately to the west of the appeal property. The side elevations of each bungalow run in parallel, with a fence in between, and their original rear elevations are in line. Although the appellant’s single storey extension projects some 7.2m beyond the original rear elevation, it is set back from the common boundary with No.80. The bungalow at No 80 is also set back from that boundary and has no windows directly facing the extension. In these circumstances, and from my own inspection of the appeal site, I am satisfied that the appeal development does not have an unacceptable visual impact on the occupiers of No 80.
6. By contrast, the appeal property’s eastern side boundary forms the rear garden boundaries of the bungalows at 42 to 46 Hunt Lea Avenue. The extension abuts that common boundary, extending the full width No 44’s garden and overlapping a little with that of No 46. The conservatory at the rear of No 44 faces the side wall of the appellant’s extension at a distance of about 10m.
7. The gardens slope down towards the north, but the floor level of the extension is the same as that of the host bungalow. A raised decking area and steps provide access to the bi-fold doors in the rear of the extension. The change in ground levels means that, on the appellant’s estimate, the blank side elevation of the extension rises above the common boundary fence to an overall height of about 3.5m – 4m. This is broadly consistent with what the occupier of No 44 says.

8. Having regard to the height and width of the flank wall and the photographs provided, the extension appears unduly dominant and obtrusive. This is despite steps taken to soften the effect of the building by the application of trellising with artificial foliage. Furthermore, I am not persuaded that the rendering proposed on appeal B would overcome the detrimental visual impact.
9. I note the appeal property previously included a sectional garage adjacent to the boundary with No 44. However, this had a shallow pitched roof, with eaves only marginally higher than the fence. Furthermore, unlike the extension, it did not stretch the full width of the common boundary and was much less obtrusive.
10. The appellant refers to other developments, including rear extensions permitted nearby at Nos 88 and 149 Denton Avenue. However, to the rear of No 88 there are just trees and open space. The relationship between the extension at No 149 and the dwelling to the rear is not closely comparable to that between the appeal development and No 44 Hunt Lea Avenue. The separation distance is significantly greater and there are intervening trees and an electricity substation.
11. The appellant also refers to examples of 2-storey gable elevations facing rear habitable room windows at a distance of around 10m or less in new developments at Wilks Road, Kedlestone Road, Coles Way and Bolsover Road. In addition to considering the photographs provided by the appellant, I viewed these developments unaccompanied. These are comparable relationships and I attach weight to the fact that the Council found them acceptable, irrespective of the 'buyer beware' principle referred to by the Council in the context of new developments.
12. However, because these are new developments, the relationships are part of a coherent overall design. In the case before me, the bulky flat roofed addition has an uncomfortable relationship with the host bungalow. Given the absence of significant public views, there is no objection from the Council on the grounds of harm to the character and appearance of the area, but the design exacerbates the detrimental visual impact on the occupiers of No 44.
13. Raising the boundary fence would reduce views of the extension wall, but the resulting fence would be obtrusive and oppressive in itself. A rear extension could be constructed using permitted development rights. However, this close to the common boundary, it would have to be lower and the extension could not include a verandah, balcony or raised platform, like the decking area currently provided to bridge the difference in land levels.
14. I note the appellant's evidence that, having regard to the BRE Guidance: 'Site layout planning for daylight and sunlight: A guide to good practice', the appeal development does not reduce daylight to any neighbouring dwelling. Whilst loss of daylight would certainly add to an overbearing visual impact, a structure can still be visually overbearing, even if there is no unacceptable reduction in daylight. I consider that to be the case here.
15. Despite the extensive glazing in the rear elevation of the extension and raised decking area, the existing fences, which are not enforced against, ensure that there is no significant overlooking. Any overlooking is unlikely to be materially different to that which existed before the extension was built and which would

be commonly found in a residential estate environment. I see no harm in terms of overlooking or loss of privacy.

16. In appeal A, the appellant has asked me to consider an alternative scheme, detailed on Drawing Nos MSP.1696/008 and MSP.1696/004. These plans were not available when the Council issued the enforcement notice but have been submitted to the Council with a recent application Ref S20/0534. That application has not been determined, but the plans show a wedge section taken out of the eastern elevation of the extension to form a pitched roof facing the rear of No 44 Hunt Lea Avenue. However, in the context of ground (a) and the deemed application for planning permission, I can only grant planning permission for the whole or part of the matters alleged in the notice. In reality, the alternative proposed is not part of the as-built development to which the notice relates; it is a different scheme. I will therefore consider that alternative in the context of ground (f) only.

Conclusion on the main issue and planning balance

17. Whilst I find no harm in terms of overlooking and loss of privacy, I conclude that the development causes unacceptable harm to the living conditions of the occupiers of No 44 Hunt Lea Avenue, in terms of visual impact.
18. The Council refers to Policy DE1 of the South Kesteven District Council Local Plan (LP), adopted January 2020. Among other things, this indicates that there should be no adverse impact on the amenity of neighbouring users in terms of noise, light pollution, loss of privacy and loss of light. Having found no harm in terms of loss of privacy, the visual impact does not give rise to conflict with Policy DE1. No conflict with any other development plan policies has been identified and I therefore find that the development accords with the development plan.
19. However, the National Planning Policy Framework indicates that the creation of high quality buildings and places is fundamental to what the planning and development process should achieve. Furthermore, decisions should create places with a high standard of amenity for existing and future users which do not undermine quality of life. The unacceptable impact on a neighbour's living conditions is a material consideration which indicates that planning permission should be refused, even though the development accords with the development plan.
20. For the reasons given above, Appeal B will be dismissed along with ground (a) of appeal A and the deemed application for planning permission will be refused.

Appeal A

Ground (f)

21. Given that the notice sought to under-enforce by not requiring removal of new openings or the removal of the new fence, its purpose was to remedy injury to amenity, rather than to remedy the breach of planning control in full. In this case, ground (f) is therefore that the requirements of the notice exceed what is necessary to remedy any injury to amenity caused by breach.
22. The alternative scheme proposed by the appellant would introduce a pitched roof at the elevation facing No 44 Hunt Lea Avenue, consistent with the pitch of the main dwelling roof. This would significantly reduce the height of the

elevation at the common boundary, removing the overbearing visual impact and improving the relationship between the host bungalow and the addition.

23. This alternative would remedy the injury to amenity at less cost and disruption than total demolition and can be specified with enough precision by reference to the plans. Accordingly, the appeal succeeds on ground (f) and I will vary the notice by requiring alterations to the development in accordance with those plans, as an alternative to demolition

Ground (g)

24. This ground is that the period for compliance is unreasonably short.
25. The appellant sought 12 months rather than 9, on the basis that this would allow enough time for the submission of an alternative scheme to the Council. However, I am satisfied that the alternative scheme will remedy the injury to amenity and there is nothing to indicate that the alterations could not be made within a period of 9 months. The appeal was lodged on 1 April 2020, when greater restrictions were in place in response to the Covid-19 pandemic, but the appellant did not ask for more time on that basis. The appeal on ground (g) therefore fails.

Conclusion on appeal A

26. For the reasons given above, I shall uphold the enforcement notice with variations and, as indicated, refuse to grant planning permission on the deemed application.

J A Murray

INSPECTOR



Plans

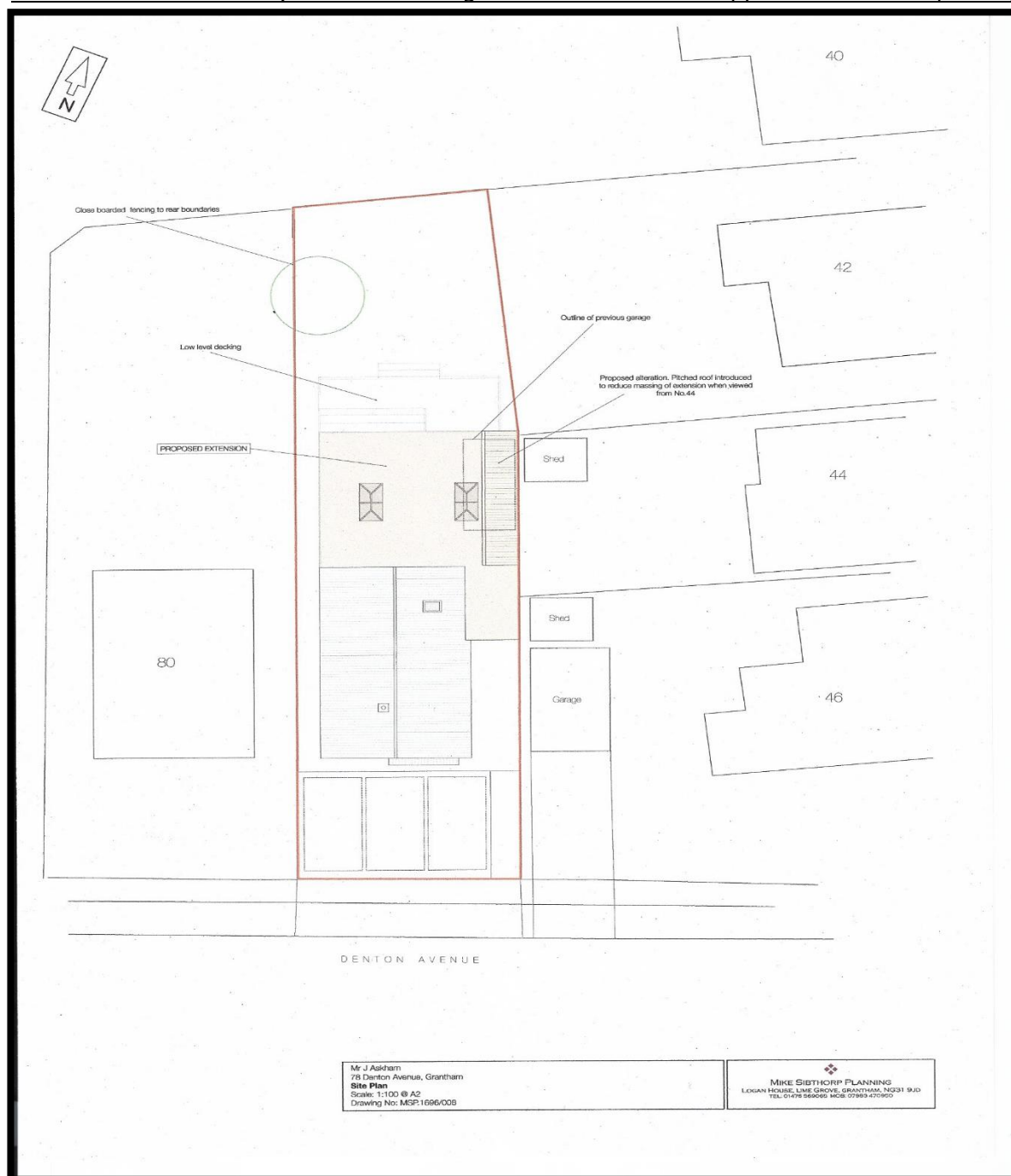
These are the drawings Numbered MSP.1696/008 and MSP.1696/004 (2 pages) referred to in my decision dated: 02 September 2020

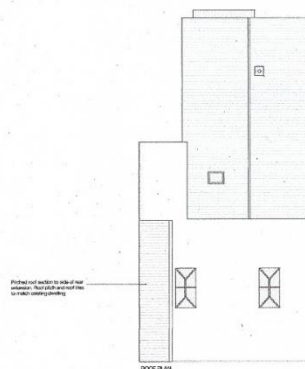
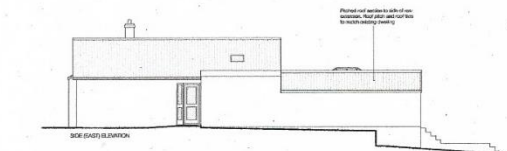
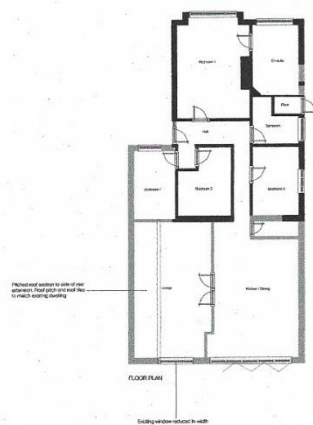
by **J A Murray LLB (Hons), Dip.Plan Env, DMS, Solicitor**

Land at: 78 Denton Avenue, Grantham, Lincolnshire, NG31 7JH

Reference: APP/E2530/C/20/3250139

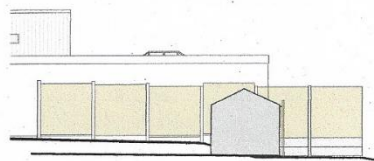
Scale: DO NOT SCALE (Refer to the originals submitted with application Ref S20/0534)



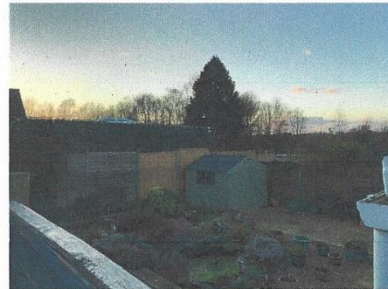


Mr J. Ashman
78 Danton Avenue, Grantham
Dwelling Extension proposed revisions
Scale: 1:100 @ A2
Drawing No: MSP 1016/004

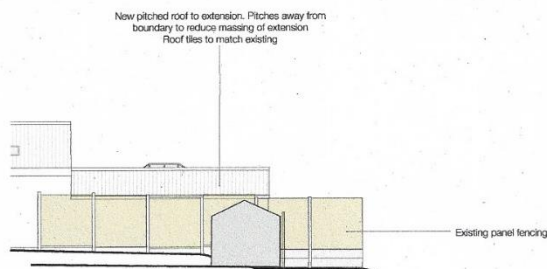
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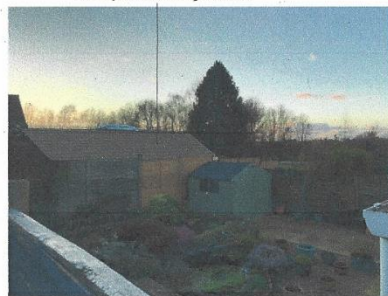
AS BUILT VIEW FROM REAR GARDEN OF 44 HUNT LEA AVENUE



AS BUILT VIEW SHOWING REAR GARDEN OF 44 HUNT LEA AVENUE



PROPOSED VIEW FROM REAR GARDEN OF 44 HUNT LEA AVENUE



PROPOSED VIEW SHOWING REAR GARDEN OF 44 HUNT LEA AVENUE

Mr J Askham
78 Denton Avenue, Grantham
Dwelling Extension: Comparison of as built and proposed relationship to 44 Hunt Lea Avenue
Scale: 1:100 @ A3
Drawing No: MSP1695/004

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