



Appeal Decision

Site visit made on 8 September 2020

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 November 2020

Appeal Ref: APP/Q9495/C/20/3250764

Land at 48 Lakeland Park, Keswick, CA12 4AT

- 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 Eddie Dumphy against an enforcement notice issued by Lake District National Park Authority.
 - The enforcement notice, numbered E/2019/0186, was issued on 28 February 2020.
 - The breach of planning control as alleged in the notice is, without planning permission, operational development consisting of the erection of a single storey extension to the north-west elevation that projects beyond and wraps around the south-west and north-east elevations.
 - The requirements of the notice are to permanently remove the single storey extension.
 - The period for compliance with the requirements is four months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.
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Summary Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Procedural Matters

1. A site visit was scheduled for the morning of 8 September 2020 and I attended the site accordingly. It would appear that the main parties were not aware of that arrangement and did not attend the site visit. However, I observed that the occupier of a neighbouring dwelling, No. 49 Lakeland Park, was at home and I took the opportunity to view the extension subject to the enforcement notice from that property. All the usual protocols for an Access Required Site Visit were adhered to. I am satisfied that I was able to see from that property and from the public highway all that I needed to determine this appeal. The main parties were offered the opportunity to attend a further accompanied site visit but no response was received to that communication. Accordingly, I did not make a second site visit.

Reasons

2. The appeal has been made on ground (a) only. This ground of appeal is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The Authority has stated one substantive reason for issuing the enforcement notice, from which the main issue raised is the effect of the development on the living conditions of the occupiers of the surrounding residential properties, specifically in relation to outlook and light.

3. The appeal property is a modern two-storey detached house and is the end unit in a line of detached properties that front onto this section of Lakeland Park. To the north-west of the appeal properties are two further detached properties, Nos 49 and 50, that front onto a shorter section of Lakeland Park. The rear elevation of No 49 Lakeland Park faces directly onto the appeal property, whereas the rear elevation of No 50 Lakeland Park faces obliquely onto the appeal property and at a greater distance from it.
4. The single-storey extension subject to the enforcement notice is to the north side of the appeal property and projects to the rear (west elevation) almost to the boundary of the plot. The plot on which the appeal property sits is of an irregular shape and for much of its length the extension is set some distance from the boundary with the adjoining property at No 49 Lakeland Park. However, towards the rear of the plot, the site narrows and the extension does project closer to the boundary with No 49 and to the rear elevation of that property.
5. The rear garden to No 49 Lakeland Park is relatively small and is enclosed by a close boarded fence. The eaves height of the extension projects above the height of this fence. The roof of the extension adds to the overall height of the structure. However, the roof of the extension pitches away from No 49 and this has the effect of reducing the visual impact of the structure as a whole. As a result, whilst the extension is clearly visible from the garden of No 49, in my view is not intrusive to the extent that it unacceptably detracts from the amenity value of this space.
6. As part of my site visit, I was able to view the extension from within the main living room of No 49 Lakeland Park. When standing close to the patio doors in that room, an element of sky component is visible above the extension to the appeal property. The extension is therefore not overbearing when viewed from this position. Although that element of sky component disappears when moving deeper into that room, given the existence of the close-boarded fence on the boundary and the already intrusive presence of the main house at the appeal site, I am not convinced that the outlook from deeper in the room has been significantly altered by the construction of the extension. In my view, whilst the outlook from this property as has undoubtedly changed as a result of the construction of the extension, that change has not unacceptably harmed the living conditions of the occupiers of this property.
7. The Authority has also cited loss of light in the reason for issuing the enforcement notice. Whilst it is likely that the extension to the appeal property has resulted in some of light to the main living room of No 49 Lakeland Park, the Authority has not supported its concerns in this respect with any technical calculations to demonstrate the amount, if any, of light lost as a result of the extension. In the absence of that evidence, I am not persuaded that any loss of light to No 49 Lakeland Park has unacceptably harmed the living conditions of the occupiers of this property.
8. Whilst I was not able to view the extension to the appeal property from No 50 Lakeland Park, I note the concerns raised by the occupiers of that property in their representation. Nevertheless, having regard to the juxtaposition between that dwelling and the appeal property, I am not convinced that any impacts resulting from the single-storey extension in terms of outlook or loss of light unacceptably harm the living conditions of the occupiers of that property.

9. I conclude that the single-storey extension subject to the enforcement notice has not unacceptably harmed the living conditions of the occupiers of the neighbouring residential property, specifically No 49 Lakeland Park, in relation to outlook. I therefore conclude that the development accords with Policies CS10 and CS11 of the Lake District National Park Core Strategy. These policies require, amongst other things, that development is of high-quality design and suitable for its location.
10. For the same reasons, the development subject to the notice also accords with paragraph 127(f) of the National Planning Policy Framework which, amongst other things, indicates that development should create a high standard of amenity for existing and future users.

Other matters

11. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise. I have found that the single storey extension subject to the enforcement notice accords with the development plan. It is therefore necessary for me to consider whether there are any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.
12. The Authority has referred me to Witten Ministerial Statement of 17 December 2015 in which it was confirmed that intentional unauthorised development is a material consideration. The Authority notes that the appellant obtained planning permission for a single-storey extension of a specified design (Ref: 7/2018/2335) but then proceeded to build something different. In the view of the Authority, it is reasonable to conclude that was a conscious decision on the part of the appellant. Although not stated in terms, I understand from the above that the Authority is suggesting that this is a material consideration which weighs against the grant of planning permission in this case.
13. In response, the appellant explains that construction works for the approved scheme commenced in early February 2019 but that, during the course of construction, an issue became apparent regarding the position of foundations at the rear of the dwelling in relation to a drain. This problem was overcome by moving the position of the rear wall, which was believed to comply with permitted development rights.
14. Setting aside whether the position of this drain was known before commencing construction of the extension as approved, as might be expected, I have some difficulty with the explanation put forward by the appellant. Having sought and obtained express planning permission for the single-storey extension originally proposed, the appellant does not explain why he then considered a larger extension to benefit from permitted development rights. I therefore consider that the Authority is, on the balance of probability, correct to conclude that it was a conscious decision on the part of the appellant to proceed without the benefit of planning permission.
15. The actions of the appellant to construct the extension without the benefit of planning permission are therefore a material consideration that weighs against the grant of planning permission in this case. However, it remains a

fundamental principle of the enforcement of planning control that the merits of a development built without the benefit of planning permission must be assessed in exactly the same way as any proposed development. That is what I have done in this case and have found that the single-storey extension accords with the development plan. Although it is a material consideration that works were knowingly commenced without the benefit of planning permission, in my view that is not of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.

16. The Authority has suggested two conditions in the event that I am minded to allow the appeal. The first, that the development shall be commenced within three years, is superfluous given that the extension has already been constructed and is subject to the enforcement notice. The second is that the development be carried out in accordance with specific drawings that, as I understand it, were submitted with a previous retrospective planning application to retain the extension as built (Ref: 7/2019/2266). At the time of my site visit, it appeared to me that some elements of the extension had yet to be completed. I shall therefore impose that condition.

Conclusion

17. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the single storey extension as described in the notice.

Formal Decision

18. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely operational development consisting of the erection of a single storey extension to the north-west elevation that projects beyond and wraps around the south-west and north-east elevations at land at 48 Lakeland Park, Keswick, CA12 4AT as shown on the plan attached to the notice and subject to the following condition:

The development hereby permitted shall not be carried out otherwise than in conformity with the following submitted plans and details:

Drawing No. 1996/05 Rev 'B'; and Drawing No. 1996/03 Rev 'O'.

Paul Freer
INSPECTOR