



Appeal Decision

Site visit made on 21 October 2020

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 November 2020

Appeal Ref: APP/P1940/C/20/3248124

170 Highfield Way, Rickmansworth, Hertfordshire WD3 7PJ

- 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 Kalpesh Mistry against an enforcement notice issued by Three Rivers District Council.
 - The enforcement notice was issued on 29 January 2020.
 - The breach of planning control as alleged in the notice is: *Without planning permission the erection of a two storey front and side extension, front porch, conversion of garage to habitable accommodation, single storey rear extension, alterations to the roof form to include a rear dormer/roof extension and alterations to fenestration detail.*
 - The requirements of the notice are:
 1. Demolish the rear dormer/roof extension (as shown outlined in red and marked 'Unauthorised Rear Dormer') on attached drawing Nos. 09 and 10.
 2. Following compliance with step 1 above, remove from the land all debris and waste materials resulting from the requirement.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought under ground (a) an application for planning permission is deemed to have been made under section 177(5) of the Act.
-

Decision

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

Preliminary Matters

Background

2. Planning permission¹ has been granted for a "two-storey front and side extension, front porch, conversion of garage to habitable accommodation, single storey rear extension, alterations to the roof form and alterations to the fenestration". These works have been undertaken and I have no issue with them.
3. A rear dormer/roof extension (the 'roof extension') has been erected. As it is attached to part of the approved extensions and the works were all carried out as a single operation, even if erected on a different day to the other works, then the approved development has not been built in accordance with the approved plans. All of the matters alleged in section 3 of the notice have to be

¹ LPA planning application reference 18/1247/FUL granted 10 August 2018

considered as that is what forms the deemed planning application before me. The appeal, however, is focused on the alleged roof extension in the context of the effect it has on the whole appearance of the house in conjunction with the numerous other alterations and remodelling that have been undertaken.

Hidden ground (c)

4. The appellant intended to construct the roof extension under 'permitted development' (PD). This amounts to a hidden ground (c) appeal in which the matters alleged in the notice do not constitute a breach of planning control if planning permission is granted or the development is otherwise deemed to be lawful. It is a legal ground of appeal, distinct from any planning merits.
5. Schedule 2, Part 1, Class B of The Town and Country (General Permitted Development) (England) Order 2015 (as amended) ('the GPDO') grants planning permission for 'the enlargement of a dwellinghouse consisting of an addition or alteration to its roof'. Paragraph B.1(b) provides that development is not permitted by Class B if any part of the dwellinghouse would, as a result of the works, exceed the height of the highest part of the existing roof.
6. There is no dispute between the parties that the ridge of the roof extension is raised above the highest part of the existing roof. Therefore there is no injustice to either party in me dealing with ground (c).
7. As the roof extension conflicts with limitation B.1(b) it is not PD. In addition, the appellant considers there is no breach regarding the eaves and set back of the dormer in the roof slope. But any breach of any such condition or limitation renders the roof extension not PD. The ground (c) appeal therefore fails.

Ground (a) appeal and the Deemed Planning Application

Main Issue

8. The main issue is the effect of the proposed development on the character and appearance of the host dwelling and area.

Reasons

9. The appeal property is a two-storey detached dwelling in a road of suburban residential housing. Dwellings are generally set back from the road in generous sized plots with front gardens and driveways/parking and low boundary enclosures, creating a spacious feel. I saw a mixture of roof heights and designs, including examples of modest flat and sloping roof dormers on both front and rear elevations, sited subserviently within their roof slopes. But pitched roofs are the prevailing roof form. Some dwellings, including the appeal property, have been substantially extended and have undergone significant contemporary remodelling. The variety of individual designs and styles of dwellings positively contributes to the character and appearance of the area.
10. The alleged roof extension extends across the full width of the roof of the main house (approximately 10m in length) and straddles the main pitched rear roof gable. The roof extension has a flat roof that extends a considerable distance back from the ridge of the main house. It also exceeds the highest part of the existing roof and protrudes beyond the ridge by approximately 100mm, due to a horizontal rooflight that has been added to the roof extension. The side flank

walls of the roof extension are in line with the flank walls of the main house. The roof extension also extends down the entire roof slope and is built up off the original rear wall of the house, effectively flush with it.

11. As a result the roof extension appears as a flat-roofed third storey, rather than a roof extension. This is further marked by the rendered and brick elevations of the roof extension that match the retrospective parts of the dwelling they join. Furthermore, the large flat-roof boxy form, occupying an elevated position, is a dominating addition to the rear of the property that is not a subservient feature. Its form is also at odds with the prevailing pitches and triangular roof forms of the property.
12. These factors combine to create an overly large roof extension, with a mass that the appellant himself concedes is not insignificant, that represents an incongruous and disproportionate addition to the remodelled house as a whole. Despite the high specification build quality and the contemporary design, I find the roof extension is harmful to the character and appearance of the remodelled host property.
13. The roof extension also fails to have regard to the design guidance for dormers and roofs set out in Policy DM1 Appendix 2: Design Criteria in the Local Plan². This advises that dormers should be subordinate to the main roof; set below the existing ridge level; set in from either end of the roof; set back from the plane of the rear wall, and respect the character of the house. Any increase to ridge height is to be assessed on its own merits.
14. The visual diversity of Highfield Way means there is scope for individual householders to enlarge their properties without harming the character or appearance of the area. However, it does not follow that *any* extension or alteration would be acceptable.
15. I accept there are limited views of the roof extension from the public realm. From Highfield Way, views towards the east side of the dwelling are partly obscured by the two storey front/side extensions. Nonetheless, the roof extension can still be seen, particularly when approaching the dwelling from the west due to the gaps between properties. The reprofiled flank walls of the property and the large flat roof of the roof extension, which extends back and protrudes above the existing ridge of the main house, results in an incongruous form of development that diminishes the prevailing roof form and harms the character and appearance of area.
16. It is now necessary to consider whether there is some alternative scheme or 'fallback' that would either justify permitting the alleged roof extension or which could itself be permitted through this ground (a) appeal.
17. The appellant contends that the amount of development falling outside the limitations of PD are so minor in nature that the roof extension has limited impact. Also, because the vast majority of the roof extension would be within PD this represents a strong fallback position³.
18. The limitations to the size of PD are expressed precisely in the GPDO and as already stated, there cannot be a 'bit' or a 'minor' infringement. Something is either PD or it isn't and an assessment of impact or harm does not come into

² Local Plan Development Management Policies Local Development Document- adopted July 2013

³ Zurich Assurance v North Lincolnshire Council (2014) and Stentor Music Co Ltd v Reigate and Banstead BC (2014).

it. Furthermore, the existence of PD rights cannot be used to justify a grant of permission for the roof extension as it is. The notice could not be varied to require the removal of the offending element so as to modify the residual roof extension in line with the parameters of PD, because the GPDO does not grant permission retrospectively and the breach of planning control would not be remedied. A fallback position has to be lawful.

19. Once the roof extension has been removed, the roof made good and all resulting debris removed from the land so that the enforcement notice is fully complied with, the appellant would have permitted development rights to erect another dormer or roof extension on the rear roof slope⁴. I also have the power to grant planning permission for 'part of the matters' alleged and that term could be applied to a smaller roof extension. However, I could not tie any permission granted for a smaller roof extension to any plans showing a smaller one describe the works in words with sufficient precision.
20. Where it would be possible to modify the development so as to remedy the harm that it causes, permission may be granted for what is alleged subject to a condition requiring a scheme of works to be submitted to the Council, approved and implemented. But again it would not be possible to word such a condition with the necessary precision that would make the alleged roof extension acceptable.
21. The deemed planning application before me relates to what is alleged and has been built and includes the other extensions and alterations approved under planning permission 18/127/FUL. Whilst I have found the roof extension is not acceptable, I have no objections to the other extensions and alterations as shown on the approved plans and I could make a split decision. However, the approved plans were not followed because the permitted extensions are modified by the alleged roof extension. Therefore I cannot grant planning permission for the other elements as they are existing on the ground and subject to the enforcement notice.
22. Therefore there is no alternative or fallback scheme available to me which would either justify permitting the alleged roof extension or which could itself be permitted through this ground (a) appeal. I accept that large roof and dormer extensions can be built under PD and are not uncommon, but I must consider the appeal before me on its merits.
23. I find the roof extension causes unacceptable harm to the character and appearance of the host dwelling and to the area. Accordingly the appeal proposal is contrary to Policies CP1 and CP12 of the Core Strategy⁵ and Policy DM1 and Appendix 2 of the Local Plan. These collectively seek to ensure that development has regard to local context in order to conserve or enhance the character and quality of the area.

Other matters

24. I note the appellant did not intend to carry out a breach of planning control believing the works to the roof to be PD. But this makes no difference to the consideration of the merits.

⁴ Condition 4 of planning permission 18/127/FUL removes permitted development rights for windows/dormer windows on the flank elevations of the dwelling.

⁵ Core Strategy Local Development Framework - adopted October 2011

25. I acknowledge the appellant's comments about the Council's advice and position regarding PD, but in reaching my decision I have been concerned only with the planning merits of the case.
26. A number of interested parties raise a series of other concerns about the appeal proposal. However, given my findings in relation to the main issue there is no need for me to address these in the current decision.

Conclusion on Ground (a) Appeal and the Deemed Planning Application

27. For the reasons above, the appeal on ground (a) should fail and the deemed planning application should be refused.

The Appeal on Ground (f)

28. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to remedy any breach of planning control or injury to amenity that has been caused by any such breach, as the case may be. The notice only requires removal of the roof extension, but it nonetheless seeks to remedy the breach of planning control and hence the requirements are not excessive.
29. The appeal process is meant to be remedial and not punitive. I shall therefore consider whether there is any obvious alternative or whether the appellant can show that the requirements of the notice are excessive to remedy the breach and 'lesser steps' would achieve the same end.
30. Since I have already considered the planning merits of the roof extension on ground (a), there is no scope for me to consider amenity issues afresh under a ground (f) appeal, including whether some alternative form of development would remedy the injury to amenity.
31. The appellant has referred, as noted above, to the fact that the house could be extended under PD rights. However, the notice could not be varied with sufficient precision to require that the roof extension is modified in line with the limitations of PD to remove the offending parts, because PD rights cannot be claimed retrospectively - the breach of planning control would not be remedied. And I have not been presented with any plans showing a modified scheme.
32. I find, therefore, that the appellant has not proposed any lesser steps that would remedy the breach of planning control. It follows that it is essential and not excessive to require that the unauthorised roof extension is removed.
33. The appeal on ground (f) fails.

Conclusion

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

K. Stephens
INSPECTOR