



Appeal Decision

Site visit made on 10 November 2020

by Simon Warder BSc(Hons) MA (DipUD(Dist) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 16 November 2020

Appeal Ref: APP/Z1510/W/20/3249432

90 Highfields Road, Witham CM8 2HH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr and Mrs Moore against the decision of Braintree District Council.
 - The application Ref 19/01347/HH, dated 27 July 2019, was approved on 23 September 2019 and planning permission was granted subject to conditions.
 - The development permitted is retention of single storey rear ground floor extension.
 - The condition in dispute is No 3 which states that: *'Within 6 months of the date of this decision the overhanging eaves of the roof shall be removed in accordance with Drawing 2019:131:C02 Rev. E. Notification shall be given in writing to the Local Planning Authority upon completion of the work.'*
 - The reason given for the condition is: *'To protect the amenities of the occupiers of nearby residential properties.'*
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Decision

1. The appeal is allowed and the planning permission Ref 19/01347/HH for the retention of single storey rear ground floor extension at 90 Highfields Road, Witham CM8 2HH granted on 23 September 2019 by Braintree District Council, is varied by deleting condition 3.

Preliminary Matters

2. The application form dated 27 July 2019 gives the agent's name, rather than the name of the applicant, in the applicant's details box. However, it has subsequently been confirmed that the then applicant, and now appellant, is Mr and Mrs Moore.
3. The appeal extension has been constructed with the side and rear overhangs of the flat roof in place.

Main Issue

4. The main issue is the effect of deleting the disputed condition, and thereby retaining the side and rear roof overhangs, on the living conditions of the occupiers of 88 Highfields Road with particular regard to their outlook.

Reasons

5. The extension is separated from the common boundary with No 88 by a walkway. The side wall of the extension steps out from the side wall of the original house and, therefore, slightly narrows the gap to the boundary with No 88. The side overhang reduces the gap further at roof level.
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6. Nevertheless, a reasonable distance between the edge of the side overhang and the boundary line has been maintained. Moreover, a walkway also separates the dwelling at No 88 from the common boundary. That property is also set forward of No 90. As such the rear wall of its single storey rear extension sits forward of the appeal extension. Therefore, even in the case of the openings in the side and rear walls of No 88 which are closest to the side overhang, there is sufficient separation to prevent the overhang having an overbearing effect on the outlook of occupiers.
7. The rear garden of No 88 has a fairly open aspect and the area closest to the side overhang is occupied by an outbuilding. Consequently, I consider that the overhang does not have an overbearing effect on the garden area of No 88. The rear overhang of the appeal extension does not directly affect the outlook of the occupiers of No 88 or No 92. Nor is there anything to suggest that the overhangs would have an adverse effect on the amount of sun or day light reaching either of the neighbouring properties.
8. I find, therefore, that the retention of the side and rear roof overhangs would not have a harmful effect on the living conditions of the occupiers of 88 Highfields Road with particular regard to their outlook. As such, the extension with the overhangs in place would accord with Braintree District Local Plan Review (2005) Policies RLP17 and RLP90 insofar as they require extensions to dwellings to have no unacceptable impact on the amenity of adjoining residential properties. It follows that condition 3 of planning permission Ref 19/01347/HH is unnecessary and should be removed.

Other Matters

9. The history of the appeal extension set out in the appellant's and the Council's evidence indicates that the appellant initially understood that it could be constructed under permitted development rights and only subsequently made a planning application. However, my decision is based solely on the planning merits of the retention of the roof overhangs.
10. The Council has suggested that, if condition 3 is removed, the extension as constructed would not benefit from planning permission and could be subject to enforcement action. It is for the Council to consider the lawfulness or otherwise of the extension and whether it would be expedient to take enforcement action having regard to the provisions of the development plan and other material considerations.
11. There appears to have been a misunderstanding on the part of the appellant over whether or not the occupiers of No 88 had written in support of the proposal for the extension. Subsequent correspondence indicates that they have not written in support or indeed expressed a view on the merits of the extension. Whilst the neighbouring occupiers remain concerned regarding the effect of the 'build scenario' on the saleability and value of their property, that is not a planning matter which I can take into account.

Conclusion

12. For the reasons set out above, the appeal should be allowed.

Simon Warder

INSPECTOR