



Appeal Decision

Site visit made on 15 June 2021

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 August 2021

Appeal Ref: APP/J1915/C/20/3260113

5 Havers Lane, Bishops Stortford, Hertfordshire CM23 3PA

- 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 'Act').
- The appeal is made by Mr Richard Servidei against an enforcement notice issued by East Hertfordshire District Council.
- The enforcement notice was issued on 2 September 2020.
- The breach of planning control as alleged in the notice is: *Without the benefit of planning permission the erection of a rear dormer, a single storey side extension and a two-storey rear extension to create a wrap-around extension.*
- The requirements of the notice are:
 1. Remove the wrap-around extension comprising of a single storey side extension and a two-storey rear extension. Highlighted in green and blue on the attached plan.
 2. Remove the rear facing dormer extension. Highlighted in yellow on the attached plan.
- The period for compliance with the requirements is 4 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a),(f) and (g) of the Act.

Summary decision: The appeal is dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Procedural Matters

1. During the course of the appeal, a revised National Planning Policy Framework (the 'Framework') was published on 20 July 2021. It officially replaces the previous version published in February 2019. The main parties have had the opportunity to comment on the revised Framework. I have had regard to the latest version and new paragraph numbers in reaching my decision.

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

2. 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. The deemed planning application arising under the ground (a) appeal is for the "erection of a rear dormer, a single storey side extension and a two-storey rear extension to create a wrap-around extension" as enforced against.

Main Issue

3. The Council refers to the combined extensions having a detrimental impact on the amenity of occupiers of neighbouring properties. However, there is no explanation in the notice or in the Council's evidence as to whether this is in relation to overlooking, light, outlook or other effects. I did not see anything on site that would cause me to consider there was.

4. Therefore, I consider the main issue in this case is the effect of the appeal development on the character and appearance of the appeal property and the surrounding area.

Reasons

5. The appeal site comprises a detached two-storey dwelling with pitched roof, projecting pitched roof front gable and attached garage, set in a good sized garden. Havers Lane comprises a mix of detached and semi-detached properties of varying designs, styles and sizes, and where pitched roofs are a prevailing feature. The site is in a predominately residential area and lies south of the town centre and outside the Bishop's Stortford Conservation Area (the 'CA'). A number of dwellings, including the appeal property, have been extended and some have had roof extensions. The variety of individual designs and styles of dwellings positively contributes to the character and appearance of the area.
6. The neighbouring property No.7 Havers Lane is located close to the appeal property. It is a large detached dwelling with projecting gables and light blue coloured render, and has a large roof extension. On the other side of the appeal property is a pair of hipped-roof semi-detached dwellings that sit close to the corner of Havers Lane and South Street. No.3 Havers Lane (No.3) is set some distance away from the shared boundary with the appeal property, separated by a driveway, double garage and pedestrian access to the side. This creates a wide gap between the properties. Furthermore, Havers Lane is on an incline, rising gently up from the junction with South Street, such that the appeal property is elevated above No.3 and visually prominent.
7. The appeal property has been extended by the addition of a number of extensions. There is a large rear flat-roofed dormer across much of the width of the roof. In height it extends from ridge to eaves, emphasised by the almost full height array of glazed doors and windows on its rear elevation. It also extends a substantial distance out from the rear roof slope because the base of the dormer is set some distance out from the eaves of the main house roof. The cheeks of the dormer are flush with the sides of a two-storey rear extension that wraps-around with a single storey side extension.
8. Protruding beyond the furthest rear elevation of the dormer is a two-storey rear extension. Any shallow roof pitch it may have is hardly discernible, such that it looks to be a flat roof extension, particularly when viewed from Havers Lane.
9. The single storey extension, shown approximately outlined in green on the enforcement notice plan, occupies the space between the side of the appeal property and shared boundary with No.3. It comprises a flat roof wrap-around element that is attached to, and integral with, the two-storey extension. It also includes an extension from front to back of the property that contains a garage at the front and a partially enclosed area currently used for storage of domestic and domestic paraphernalia. It has a narrow hipped roof along its side and front elevation.
10. The property is rendered white at ground level. The upper floors and the cheeks of the dormer have been covered in light grey/blue timber-effect horizontal cladding. As a result, the dormer appears as a third storey and

dominates the dwelling, particularly as it extends out beyond the eaves of the roof. The two-storey extension and dormer combine to create extensions that are overly large, overbearing and out of proportion with the host dwelling, such that they are not subservient to it. Furthermore, these large flat-roof boxy extensions and resulting stepped profile are at odds with the prevailing pitches and triangular roof forms of the property.

11. In addition, the wide gap between the appeal property and No.3 coupled with the difference in ground levels means that the side elevation of the dwelling, with its flat roofed dormer and two-storey extension, are clearly visible and unduly prominent from Havers Lane when approaching up from South Street. They can also be easily seen further away in a wider streetscape from the bottom of Havers Lane, from South Street, and from its junction with Southmill Road. There are also clear and open views across the bowling green on the corner of Havers Lane.
12. Despite the high specification build quality, I find the size, shape, profile, massing and flat roof design of these extensions, together with the extensive use of contrasting coloured cladding, combine to create an unsympathetic form of development that is visually discordant and out of character with the design and form of the dwelling and the prevailing street scene.
13. The Council considers that the single storey extension does not allow any space between the flank wall of the extension and boundary with a neighbouring property, such that it alters the street scene contrary to Policy HOU11. However, criterion (b) of Policy HOU11 of the East Herts District Plan (EHDP) concerns itself with ensuring there is appropriate space when considering side extensions at *first floor or above* [my emphasis] to safeguard the street scene and prevent a 'terracing effect'.
14. In my view, this does not apply to the single storey extension. I consider the single storey extension itself does not significantly increase the bulk and massing of the dwelling and remains subservient to it. Furthermore, only the garage door and low hipped roof are visible from the street, and being single storey it does not cause a terracing effect. I therefore find the single storey extension does not cause harm to the character and appearance of the dwelling or the surrounding area.
15. With regards to the two-storey extension, the side of it is set a substantial distance away from the shared boundary with No.3. Furthermore, as already described, there is a substantial gap between the shared boundary and the side elevation of No.3. As a result, I find the two-storey extension does not cause a terracing effect.
16. The appellant draws my attention to section 12 of the Framework and the importance it gives to good design. In paragraph 130 planning decisions should ensure that development will, amongst other things, (a) add to the overall quality of the area, (b) are visually attractive and (c) are sympathetic to local character. The appellant's quoted text, that planning policies and decisions should not attempt to impose architectural styles or particular tastes and should not stifle innovation, appears to be taken from the 2012 version of the Framework, which was not included in the 2019 version and does not appear in the revised 2021 version.

17. Revised Framework paragraph 134 goes on to advise that 'development that is not well designed should be refused, especially where it fails to reflect local design policies'. The Council's Policy HOU11 clearly sets out design expectations for extensions and alterations to dwellings in a number of criteria. In criterion (a) extensions and alterations should be of a size, scale, mass, form, siting, design and materials that is appropriate to the character, appearance and setting of the existing dwelling and/or surrounding area and the extensions should generally appear as a subservient addition to the dwelling. I have found the dormer and two-storey extensions are not subservient and not appropriate to the dwelling or the surrounding area. I have dealt with criterion (b) above.
18. Criterion (c) explains that flat roofed extensions, except those on the ground floor, will be refused as visually undesirable other than in exceptional circumstances. I have already described how the flat roofs to the dormer and two-storey extension are undesirable and no exceptional circumstances have been presented to me. Criterion (d) states that roof dormers may be acceptable if appropriate to the design and character of the dwelling and its surroundings, and dormers should generally be of a limited extent and modest proportions so as not to dominate the existing roof form. I have found the roof dormer is an inappropriate design and form to the dwelling and its surroundings and that it dominates the existing roof form. Policy DES4 of the EHDP is more general but still requires extensions to be of a high standard of design and improve the character of the site and area in terms of matters such as scale, height and massing.
19. For the reasons above I find that the rear dormer and two-storey rear extension harm the character and appearance of the dwelling and the surrounding area and are contrary to the Policies HOU11 and DES4 of the EHDP, as already outlined above.
20. In isolation, I find the single storey extension does not harm the character and appearance of the dwelling or surrounding area to contravene Policies HOU11 and DES4 of the EHDP.
21. I have the power to grant planning permission for 'part of the matters' alleged and so I have considered whether planning permission could be granted for the single storey extension only. There would invariably be additional works required to do this and make good any parts affected. In itself, that does not prevent the grant of planning permission. However, the single storey extension is integrated into, and forms part and parcel of, the wider extension and so is not severable such that I could not grant planning permission for it. There are no plans before me to indicate otherwise.
22. The previous applications for extensions do not represent a 'fallback' position for the appellant, because they have been refused and therefore cannot be implemented lawfully.
23. Therefore there is no alternative scheme which would either justify permitting the alleged extensions or which could itself be permitted through this ground (a) appeal.

Other Matters

24. The appellant has drawn my attention to a number of examples in Bishop's Shortford where alterations have changed the appearance of the host property. The remodelled house at 48A Windhill is located within the CA. I saw that it occupies a different streetscene context, closely located to properties either side such that its side elevations are not readily visible from the street. I also understand that the alterations did not include a rear dormer, unlike the appeal property. The property known as Gable End is located outside the CA. I can see from the appellant's 'before and after' photographs it has undergone significant remodelling. However, on my I visit saw it also occupies a very different street context, situated in a leafy cul-de-sac, set a greater distance back from the road in an extensive and secluded plot. I therefore find both of these examples are not directly comparable to the appeal proposal, which in any event I must consider on its own merits.
25. The visual diversity of Havers Lane 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 is acceptable.
26. I acknowledge the appellant's concerns with the Council's handling of the case and previous applications. The term 'duty to cooperate' is more often used where local planning authorities need to work with other authorities and prescribed bodies on strategic matters that cross administrative boundaries. However, the Framework does encourage pre-application discussions and early engagement between Councils and applicants when considering design. Nonetheless, in reaching my decision I have been concerned only with the planning merits of the case.
27. I am also sympathetic to any misleading advice the appellant may have received and any misunderstanding about permitted development. However, this makes no difference to the consideration of the planning merits of the case before me and what has been built. Nor is it justification for allowing development that causes harm to the character and appearance of the appeal dwelling and surrounding area.

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

28. I find the single storey extension does not cause harm to the character and appearance of the appeal dwelling and surrounding area. However, it is integrated within and forms part of the wider extension, which I have found to be harmful. My findings on the single storey element do not outweigh the harm caused by the rear dormer and the two-storey rear extension. Therefore, the extensions do not accord with the development plan taken as a whole and there are no material considerations to indicate otherwise.
29. For the reasons above, the appeal on ground (a) should fail and the deemed planning application should be refused.

The Appeal on Ground (f)

30. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. To determine this, it is essential to first understand the purpose of the notice. Section 173(4) of the Act provides that the purpose of the notice

shall be either to remedy the breach of planning control or to remedy any injury to amenity.

31. The notice requires the removal of the rear dormer and the wrap-around extension comprising of a single storey side extension and two-storey rear extension. The purpose of the notice is therefore to remedy the breach of planning control. For an appeal on ground (f) to therefore succeed, the appellant must show that the requirements of the notice are excessive to remedy the breach and that 'lesser steps' would achieve the same end.
32. The appellant considers the requirements to remove the extensions are excessive without first seeing if there is a solution on how the works that have been undertaken could be amended. He wishes to seek a compromise between what has been constructed and what is 'permitted development' and submit a pre-application scheme.
33. I have already considered the arguments in relation to ground (a) and found that planning permission ought to be refused. There is no scope for me to revisit that conclusion or any other aspect of the planning merits through a ground (f) appeal.
34. As already mentioned, I have the power to grant planning permission for 'part of the matters' alleged. For that reason I have considered whether permission could be applied to a smaller extension. Neither the rear dormer nor the two-storey extension is acceptable and that would not change if only one were to remain. Whilst I have found no harm from the single storey extension in isolation, I have not been satisfied that it is severable from the remainder. In any event, there are no plans before me showing a smaller scheme to illustrate with any level of clarity how permission for part might be achieved, so I could not tie any permission granted to such a scheme.
35. I have not been advised that there is an alternative scheme that has been submitted and pending consideration by the Council that could be a lawful fallback.
36. The notice could not be varied to require that the extensions are modified in line with the limitations of 'permitted development' because the GPDO¹ does not grant permission retrospectively and the breach of planning control would not be remedied. Moreover, the GPDO permits extensions of different sizes, subject to conditions and maximum limits. There would be many different possible designs and configurations that could meet the permitted development parameters. Therefore, I could not vary the notice to require that the extensions are modified within any of the permitted development parameters because that would be too vague. Nor could I describe the works in words with sufficient precision for it to be clear what could be built. Every enforcement notice should tell the appellant clearly what they must do in order to comply. Indeed this was the reason the appeal² Inspector quashed the previous enforcement notice when the Council suggested complying with permitted development as an alternative to removal.
37. The retention of any part of the development would not remedy the breach of planning control. I find that no lesser steps have been put forward that would

¹ The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

² Appeal ref: APP/J1915/C/20/3247948 dated 11 August 2020

remedy the breach. To that end, it is essential and not excessive to require that the alleged matters are removed. Therefore, the appeal on ground (f) fails.

The Appeal on Ground (g)

38. Ground (g) is that the period specified for compliance with the notice falls short of what is reasonable. In all cases the test remains whether the compliance period is reasonable, which needs consideration of what must be done in practice to carry out the remedial steps, and how much time is reasonable to allow for that purpose.
39. The notice requires the alleged extensions to be removed within 4 months. In the context of the current Covid-19 pandemic, the appellant wants 12 months in order to get a survey done, prepare revised drawings and for the Council to consider them.
40. Taking into the account the size of the extensions that would need to be removed, their integration with the dwelling and the likely need to work at high level and erect scaffolding, I consider that 4 months would not be a realistic period for compliance.
41. I am aware of the appellant's concerns about the Council's handling of the case, which he considers may impact on trying to resolve matters. The appellant has already submitted various applications for extensions to the property that have been refused so he should be aware of the Council's concerns that he needs to address. I have not been presented with any revised drawings or evidence that alternative schemes are being considered. Nor have I been presented with any other evidence to explain why 12 months is needed, such as a schedule of works or a timetable of the various demolition stages. I have also had regard to the reasons for issuing the enforcement notice and that effective enforcement is important to maintain public confidence in the planning system. Therefore I find 12 months is too long.
42. In light of the pandemic, the Council is prepared to extend the compliance period to 6 months. As I find 4 months inadequate time and 12 months too long and unjustified, I consider that a period of 6 months would be an appropriate time period. It would allow the appellant time to discuss alternative schemes with the Council and submit a new application if necessary, as government targets for Councils to determine planning applications is 8 weeks. It would also, in my view, strike the balance between remedying the breach and the interests of the appellant.
43. To this extent, the appeal on ground (g) succeeds and I shall vary the notice accordingly.

Conclusion

44. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variation and refuse to grant planning permission on the application deemed to have been made under Section 177(5) of the 1990 Act as amended.

Formal Decision

45. It is directed that the enforcement notice be varied by extending the compliance period by ***deleting*** 4 months and ***substituting*** with 6 months.
46. Subject to this variation, 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.

K Stephens
INSPECTOR