
Appeal Decisions

Site visit made on 24 August 2021

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th August 2021

Appeal A: APP/V1505/W/21/3269810

6 Constable Avenue, Basildon, Essex SS14 3TN

- 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 Stanislav Prokopovic against the decision of Basildon District Council.
 - The application Ref 20/01017/FULL, dated 16 August 2020, was refused by notice dated 7 January 2021.
 - The development proposed is an outbuilding for use as a home office.
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Appeal B: APP/V1505/C/21/3269812

6 Constable Avenue, Basildon, Essex SS14 3TN

- 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 Stanislav Prokopovic against an enforcement notice issued by Basildon District Council.
 - The enforcement notice, numbered 20/00055/UBW, was issued on 5 February 2021.
 - The breach of planning control as alleged in the notice is without planning permission the erection of an outbuilding.
 - The requirements of the notice are to remove the outbuilding identified in the plan attached to the notice in annexe 1 from the land including all fixtures, fittings and resultant debris.
 - The period for compliance with the requirements is 3 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 (the Act).
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Decisions

Appeal A: APP/V1505/W/21/3269810

1. The appeal is dismissed.

Appeal B: APP/V1505/C/21/3269812

2. 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.

Procedural Matters

3. The Council submitted the Basildon Borough Local Plan 2014 -2034 to the Secretary of State on 28 March 2019. The evidence indicates that this Local plan has not yet been adopted. I do not therefore afford it significant weight,

as a material planning consideration, as part of the determination of this appeal.

4. The National Planning Policy Framework was revised on 20 July 2021 (the Framework). This post dates the refusal of planning permission (Appeal A) and the issue of the enforcement notice (Appeal B). The main parties were afforded the opportunity to comment on the implications of the revised Framework in terms of the determination of both appeals.

Linked Appeals and Main Issues

5. The enforcement appeal is made on ground (a) of s174 of the Act which is that planning permission ought to be granted in respect of any breach of planning control which may be constituted by the matters stated in the notice. From an operational development point of view, the breach of planning control in the enforcement notice (Appeal B) is identical to the development that was considered in respect of the planning application and the associated appeal made under s78 of the Act. In respect of Appeal A, it is proposed to use the outbuilding as a home office.
6. Given the above, and taking into account the reasons for refusal of planning permission, as well as the reasons for issuing the enforcement notice, the main issues in respect of Appeals A and B are the effect of the outbuilding on (i) the character and appearance of the area and whether it constitutes good design, and (ii) the living conditions of the occupiers of neighbouring properties in respect of outlook and privacy.

Reasons

Character and appearance

7. The evidence indicates that the outbuilding is being used in connection with No 6 Constable Avenue which is a modern semi-detached dwelling surrounding by relatively tight knit residential properties. The gardens to the properties in Constable Avenue are not large, but in the main they remain relatively open. While there exist some outbuildings in the rear gardens, they are generally subordinate in scale to their host properties, take up minimal garden space and most are not much higher than the surrounding boundary fences. This ensures that there remains a sense of spaciousness around properties and a general appreciation of a more open buffer between the rear of properties on Constable Avenue and Whittle Road.
8. In the context of the above, the appeal outbuilding is both bulky and high and takes up almost the full width of the rear garden space. Owing to its height, it projects well above the height of the common boundary fences. For these collective reasons, it has a very noticeable and dominant impact when seen from the rear gardens and windows of neighbouring properties thereby detracting from the prevailing character and appearance of the immediate locality. Furthermore, and unlike most of the other outbuildings in the area, the development fails to appear subordinate in scale to the host dwelling. It is wider than the dwelling on the appeal site and given its significant footprint takes up much of the rear garden space. It therefore materially detracts from the otherwise more spacious and undeveloped rear garden setting in the locality.

9. I acknowledge that the outbuilding is not very conspicuous when seen from Lincoln Road, given the position and extent of existing residential properties. Nonetheless, glimpses of the development can be seen between dwellings when travelling along this road. Given its striking white colour and overall height/size, it is seen as a jarring and out of keeping structure when seen from this public view as well as from the rear of properties on Constable Avenue. While the adverse effect of the development is appreciated more from private views, I do not consider that limited public visibility obviates the need to achieve good design. Indeed, paragraph 126 of the Framework (the Framework) states that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve.
10. I therefore conclude that the development has caused significant harm to the character and appearance of the area and that it does not constitute good design. Consequently, it does not accord with the design, character and appearance requirements of saved policy BAS BE12 of the adopted Basildon District Local Plan 2007 (LP) or the Framework.
11. In reaching this conclusion, I have taken into account the appellant's comment that over time more outbuildings might be erected in the rear gardens of properties and hence the character and appearance of the locality may change. However, the evidence is such that permitted development rights have been removed in respect of some of the dwellings in the area and, in any event, it is necessary that I determine this appeal on the basis of the circumstances that exist now. I have also taken into account what appears to be a large white structure in a rear garden close to the appeal site. This is the exception rather than the norm and, furthermore, I am not aware of the circumstances which led to it being constructed. Its existence does not alter or outweigh my conclusion on this main issue.

Living conditions

12. As part of my site visit, I was able to consider the relationship of the development with neighbouring properties. The outbuilding is positioned tight up to the rear garden fence of the appeal site and in close proximity to the boundary with No 95 Whittle Road albeit separated from it by a narrow rear access. Owing to the close position, width and height of the outbuilding, it has had some adverse effect on the outlook afforded to the occupiers of this property, particularly when viewed from the rear garden area and rear windows of this dwelling, in so far that it appears as a dominant and intrusive form of development.
13. The above harm is compounded, to a limited extent, in so far that there are rear windows to the outbuilding that face towards No 95 Whittle Road. The boundary fencing and existing vegetation does not fully screen these windows. While the existing clear windows could be fitted with obscure glass, I do not doubt that the occupiers of No 95 Whittle Road would have to unacceptably endure the perception of being overlooked in association with the use of the building. Furthermore, and on occasion, the illumination of these windows arising out of internal use of the outbuilding would only serve to remind the occupiers of this neighbouring property of the existence of this dominant and intrusive structure in close proximity to their home.

14. I have considered the effect of the development on the living conditions of the occupiers of the nearest neighbouring dwellings on Constable Avenue. Taking into account the close position and height of the outbuilding, and the position of one of the widows, I consider that material harm has been caused to the living conditions of the occupiers of No 4 Constable Avenue in respect of loss of outlook and privacy relative to the rear garden and ground floor rear window of this neighbouring property. Indeed, the outbuilding, including its windows, project well above the party fence and consequently it is seen as a dominant and intrusive form of development by the residents of this neighbouring property.
15. I therefore conclude that the breach of planning control has caused harm to the occupiers of No 95 Whittle Road and No 4 Constable Avenue in respect of outlook and overlooking and accordingly it does not accord with the amenity requirements of policy BAS BE12 of the LP or paragraph 130(f) of the Framework. For the above reasons, and in respect of the s78 appeal, the inclusion of obscure glazed windows to the rear of the outbuilding would not mitigate all of the identified harm to an acceptable extent.

Conclusions

Appeal A: APP/V1505/W/21/3269810

16. The development does not represent good design, harms the character and appearance of the area, and even with the inclusion of obscure glazing to rear windows would still lead to harm being caused to the living conditions of the occupiers of 95 Whittle Road in respect of outlook and the perception of being overlooked and No 4 Constable Avenue in respect of outlook and privacy. Therefore, the development conflicts with the development plan taken as a whole and there are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should be dismissed.

Appeal B: APP/V1505/C/21/3269812

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

D Hartley

INSPECTOR