



Appeal Decision

Site Visit made on 13 August 2021

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 September 2021

Appeal Ref: APP/B1550/C/20/3256636

Land at 5 Connaught Road, Rayleigh, Essex SS6 8UT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Stewart Cooper against an enforcement notice issued by Rochford District Council.
 - The notice was issued on 22 June 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a detached outbuilding, the approximate position of which is shown hatched and labelled B on the attached Plan 2 (and referred to in this notice as “the New Building”).
 - The requirements of the notice are to:
 1. Make alterations to the new building by reducing its overall finished height down to 2.5metres, measured from the natural ground level immediately adjacent the new building.
 2. Remove the corrugated steel cladding installed on the South elevation (elevation facing boundary shared with property at 361 Eastward Road) and West elevation (elevation facing boundary shared with property at 6A Lancaster Road) of the new building and install timber cladding to match the North and East elevations of the new building.
 3. Remove any debris or materials arising from compliance with the aforementioned requirements from the land affected.
 - The period for compliance with the requirements is: Three (3) months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f), (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. 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 the erection of a detached outbuilding at 5 Connaught Road, Rayleigh, Essex SS6 8UT as shown on the plan attached to the notice.

Procedural Matters

2. Since the appeal was lodged, the Government published its revised National Planning Policy Framework (July 2021). The parties have had the opportunity to comment on the implications of the changes during the appeal process.

Ground (a)

Main Issues

3. The main issues of the appeal are the effect of the appeal scheme on:

- the living conditions of the occupants of No 6A Lancaster Road, having particular regard to outlook; and
- the character and appearance of the area.

Reasons

Living conditions

4. The appeal building comprises a detached outbuilding which has been erected in the rear garden of 5 Connaught Road. The building is within 2 metres of the shared boundaries of the site. At its highest point, the building is approximately 3.05m in height and around 2.3m at its lowest. The building is clad in a mix of wooden and metal cladding, with metal cladding to the rear elevation.
5. Policy DM1 of the Development Management Plan (DMP)(16 December 2014) seeks development which contributes to residential amenity, amongst other things. The National Planning Policy Framework (2021)('the Framework') seeks a high standard of amenity for existing and future users.
6. I was able to view the building from the property to the rear of the building, 6A Lancaster Road, a detached bungalow with a modest rear garden. The metal cladding extends above the rear boundary fence and is evident from No 6A Lancaster Road. Although part of the building extends up to around 3.05m in height, this part of the building is located away from the boundary with No 6A, with views interrupted by mature vegetation.
7. The metal cladding contrasts with the wooden fencing used in the boundary treatments. Given the height of the building and its proximity to the boundary fence, it appears a dominant feature, which creates a sense of enclosure when viewed from the rear garden of No 6A Lancaster Road, contrary to Policy DM1 of the DMP.
8. The Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(GPDO) permits the provision within the provision of buildings etc incidental to the enjoyment of a dwellinghouse subject to certain conditions. Condition E.1(e) sets out that development is not permitted by Class E if the height of the building would exceed (ii) 2.5 metres in the case of a building, enclosure or container within 2 metres of the boundary of the curtilage of the dwellinghouse and (f) the height of the eaves of the building would exceed 2.5 metres.
9. It is not disputed that the building, as constructed, breaches the limitations set out within the GPDO. Nevertheless, I must have regard to the fallback position, what is likely to happen if the enforcement notice is upheld.
10. If I uphold the notice, the appellant could retain the building and make alterations so that its finished height measures 2.5m. Because the highest point of the building is set away from No 6A Lancaster Road, there would, in my view, be no discernible effect on the living conditions of the occupants of No 6A Lancaster Road. Whilst the notice requires the installation of timber

cladding, the notice does not require it to be retained or prevent it from being modified. So long as any subsequent modification does not involve development requiring planning permission, the appellant would be able to alter the building.

11. There is no condition or limitation within Class E regarding the use of materials, and so the appellant could remove the building and construct a building up to 2.5 metres in height in a similar location of similar materials. Planning permission 19/00528/FUL also remains extant and so the appellant could also construct a building up to 3m in height within the site, so long as it is not attached to an outbuilding constructed under permitted development rights. The effect on outlook for occupants of No 6A would, in my view, be similar. I see no reason why the appellant would not choose to exercise his permitted development rights in this way.
12. Whilst I have found that the appeal scheme conflicts with policy DM1 of the DMP and the Framework, the appellant could either retain the building at a height of 2.5m or replace it with a building of similar height, under permitted development rights. As established in case law¹, the weight which should be given to a particular consideration is a matter for the decision maker's discretion. I consider the fallback position is a significant factor weighing in favour of the development.

Character and appearance

13. The appeal building is located in the rear garden of No 5 Connaught Road. Although the building is visible from neighbouring properties, there are no significant public views of the building. Furthermore, with the exception of No 6A and 4A Lancaster Road, dwellings in the area generally have generous rear gardens, limiting views of the building from outside the site.
14. Consequently, there is no harm to the character and appearance of the area and no conflict with policies CP1 of the Core Strategy (CS)(December 2011), which seeks good, high quality design that has regard to local flavour, policy DM1 of the DMP, which seeks development which promotes the character of the locality in this regard.

Other matters

15. The Council has made reference to Supplementary Planning Document 2: Housing Design in its enforcement notice and appeal statement. The SPD addresses matters such as minimum garden areas, landscaping, infill development, extensions to existing housing, separation of dwellings and so on. The document does not address outbuildings and is therefore not relevant to the appeal before me.
16. Though the works were undertaken without the benefit of planning permission, the enforcement procedure is intended to be remedial rather than punitive. I have no reason to believe that the appellant's actions would encourage others to develop land without planning permission or set a precedent for future unlawful development.
17. The building is likely to cause some overshadowing in the morning, when the structure intervenes between the path of the sun's light and the garden.

¹ *Tesco Stores Ltd v Secretary of State for the Environment & Ors* [1995] UKHL 22 (11 May 1995)

However, given its location to the east of No 6A Lancaster Road, any effect is likely to be limited in time and extent. Furthermore, as set out above, in the event the enforcement notice is upheld, the retained building would have a very similar effect.

18. Whilst I note concerns have been raised regarding the potential for noise and disturbance and the effect of lighting, there would be no difference between the appeal scheme and the situation in the event the enforcement notice is upheld in this regard. Furthermore, the appeal building faces towards the main dwelling of No 5 Connaught Road, and so noise and lighting is likely to be directed away from No 6A Lancaster Road.

Conclusion

19. While I have found that there would be conflict with Policy DM1 of the DMP and the Framework, I find that the identified fallback positions are a material consideration which outweigh the conflict with the development plan and justifies granting planning permission for the appeal scheme.
20. Thus, for the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the development as described in the notice. The appeals on grounds (f) and (g) do not therefore fall to be considered.

M Savage

INSPECTOR