
Appeal Decisions

Site visit made on 30 November 2021

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH

an Inspector appointed by the Secretary of State

Decision date: 13th December 2021

Appeal A: Ref APP/J1915/C/21/3279415

Appeal B: Ref APP/J1915/C/21/3279416

3 Chapel Lane, Letty Green, Hertford, Hertfordshire SG14 2PA

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Mrs Rachel Kierstenson and Appeal B is made by Mr Michael Kierstenson against an enforcement notice issued by East Hertfordshire District Council.
 - The enforcement notice was issued on 23 June 2021.
 - The breach of planning control as alleged in the notice is the unauthorised erection of a single storey rear extension, a single storey side extension and a single storey front porch without the necessary planning permission being granted.
 - The requirements of the notice are to:
1 Remove the front porch. 2 Remove the single-story rear extension. 3 Remove the single-story side extension. 4 Remove from the site all the resultant materials following compliance with steps 1, 2 and 3.
 - The period for compliance with the requirements is 6 months.
 - The appeals are proceeding on the grounds set out in section 174(2) (a) (c) (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal on ground (a) has been made, the application for planning permission deemed to have been made under section 177(5) of the Act falls to be considered.
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Decisions

1. It is directed that the enforcement notice be corrected by:
 - deletion of "4BA" in section 2;
 - deletion of "a single storey side extension" in section 3 due to the appeal succeeding in part on ground (c); and
 - deletion of steps 1-4 in section 5 and their replacement, due to the appeal succeeding in part on ground (c), by " 1 Remove the front porch. 2 Remove the single storey rear extension. 3 Remove from the site all the resultant materials following compliance with steps 1 and 2".
2. Subject to these corrections, Appeals A and B are allowed and the enforcement notice is quashed.
3. 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 single storey rear extension and a single storey front porch on land at 3 Chapel Lane, Letty Green, Hertford, Hertfordshire SG14 2PA.

Ground (c)

4. For success under this ground, the appellants must satisfy me on the balance of probabilities that matters stated in the notice do not constitute a breach of planning control.
5. The appellants' case under this ground is that the side extension is not a breach of planning control as it benefits from general planning permission afforded by The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). They accept that no similar permission is afforded under the GPDO in respect to the front porch and rear extension¹.
6. Article 3(1) and Schedule 2, Part 1, Class A of the GPDO permits the enlargement, improvement or other alteration of a house subject to limits and conditions. The Council says that the side extension does not meet Class A limits as it is a 'wrap-around' extension joined to the new front porch and the new rear extension, and consequently the total enjoined enlargement would extend beyond a wall forming a side elevation of the original dwellinghouse and would have a width greater than half the width of the original dwellinghouse. Were this to be the case, it would be in conflict with A.1 (j)(iii) and (j)(a) of Class A.
7. I disagree with the Council. Based on all the submissions including plans and photographs², and my site visit, I find as a matter of fact and degree that the side extension is joined to the original dwellinghouse only and not to any existing enlargement of the original dwellinghouse. The side extension does not extend beyond the rear building line of the original dwellinghouse, and in fact it is joined at its rear elevation to the original flank wall of the kitchen outshot. It is therefore not joined to the rear extension that has been erected, or to any earlier rear extension. Similarly, the front elevation of the side extension does not extend forward of the original front elevation of the dwellinghouse and is not joined to the new front porch. Further, the side extension does not in itself have a width greater than half the width of the original dwellinghouse.
8. Accordingly, I am satisfied on the balance of probabilities that the side extension is not caught by the limit identified by the Council (or any of the limits or conditions of Class A) and I find that it benefits from general planning permission under Article 3(1) and Schedule 2, Part 1, Class A of the GPDO.
9. Therefore, the appeal under ground (c) succeeds to this extent.

Ground (a) and the deemed planning application

Main issues

10. The main issues in this ground of appeal are:
 - Whether or not the front porch and rear extension constitute inappropriate development in the Green Belt.
 - The effect of the front porch and rear extension on the character and appearance of the host dwelling, the semi-detached pairing and the streetscene.

¹ 'Note on the Enforcement Action by East Herts District Council against the domestic extensions at 3 Chapel Lane, Letty Green, Herts'; 'Comments on the Statement of East Herts District Council'

² For instance, A02 and A06 (July 21, 2021) and 'Photos to foundations to rear side of property'

Reasons

Green Belt

11. The Council's development plan (Policy GBR1 of the East Herts District Plan (2018) (EHDP)) says that planning applications within the Green Belt will be considered in line with the provisions of the National Planning Policy Framework (the Framework).
12. Paragraph 149(c) of the Framework says that the extension or alteration of a building is not inappropriate development in the Green Belt provided that it does not result in disproportionate additions over and above the size of the original building.
13. Whilst the Framework is clear that what has been added to a building (or proposed to be added) should be compared against the size of the original building, it does not define what is meant by 'disproportionate'. Further, the Council has not referred to any assistance provided by its development plan or supplementary planning documentation that might help in assessing 'proportionality'. Ultimately, within this context, it is a matter of planning judgement for the decision maker.
14. The appeal development subject to the deemed application is a front porch and rear extension. However, I must assess whether all additions – including the side extension permitted under the GPDO and loft extension works– result overall in disproportionate additions to the original semi-detached bungalow.
15. The Council highlights that a previous application which was dismissed on appeal³ (the dismissed appeal) had stated that the original building as built had a floor area of 65.44 square metres. The appellants' statement, again highlighted by the Council, says that the living space at the property is now 130.54 square metres. Whilst a notable increase, I also note that the additions (based on these figures) remain a minority share of the current dwelling overall and crucially, from a careful consideration of all I have seen including Drawings A01 and A03, it is my judgement that the additions as a whole do not appear disproportionate over and above the size of the original building. I therefore find that they are not.
16. It should also be noted that this finding is not in conflict with the Inspector's decision in the dismissed appeal since the proposed development in that case was for a partial double storey side and rear extension and front porch, leading to the Inspector concluding that there would be a significant increase in bulk and mass and spread of built form. The scheme was also calculated by the Council to increase floor space by a much larger degree than in the case of the single storey extensions before me.
17. For these reasons, the single storey front porch and single storey rear extension do not represent inappropriate development in the Green Belt. As such, there is no conflict with Policy GBR1 of the EHDP or the Framework.

Character and appearance

18. The front extension, which provides an entrance door to the front of the appeal property, has a similar appearance to the front porch of the attached dwelling

³ 3/19/0218/HH (application refused 21 March 2021); APP/J1915/D/19/3229945 (appeal dismissed 30 July 2021)

at 1 Chapel Lane (No 1) creating a degree of balance between the dwellings and improving the character and appearance of them both from the front and upon the streetscene.

19. The rear extension encompasses an area previously occupied by a rear conservatory extension while also filling a gap that had existed between that structure and the boundary with No 1. Since the neighbouring property has also been developed to the rear in a similar form, the new rear extension at the appeal property creates a degree of pleasing balance which is harmonious to both properties within the semi-detached pair.
20. For these reasons, the appeal development does not harm the character and appearance of the host dwelling, the semi-detached pairing or the streetscene. As such, it is not in conflict with policies HOU11 and DES4 of the EHDP which together seek to ensure a high standard of design and layout in respect of extensions and alterations to dwellings. It is also in accordance with the design principles of the Framework.

Conclusion on ground (a) and the deemed planning application

21. Therefore, the appeal development is in accordance with the development plan as a whole and there are no other considerations which outweigh this finding. Accordingly, ground (a) succeeds and I will grant planning permission for the deemed planning application.

Conclusions

22. Since the appeals succeed on ground (c) as regards the lawfulness of the single storey side extension, the description of the unauthorised development in the enforcement notice is incorrect. I will therefore correct the enforcement notice in this respect in order to clarify the terms of the deemed application under section 177(5) of the 1990 Act as amended. I will also correct the notice requirements accordingly, as well as a typographical error in the property address. Subject to these corrections, which I am satisfied will cause no injustice to any party, the notice is quashed.
23. As ground (a) succeeds, I will grant planning permission in accordance with the application deemed to have been made under section 177(5) of the 1990 Act as amended, which will now relate to the corrected allegation.
24. In these circumstances, the appeals made under grounds (f) and (g) do not need to be considered.

Andrew Walker

INSPECTOR