



Appeal Decisions

Site visit made on 21 July 2022

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 July 2022

Appeal A Ref: APP/A1530/C/20/3250782

Appeal B Ref: APP/A1530/C/20/3250783

19 D'arcy Road, Colchester CO2 8BA

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. The appeals are made by Mr A Rooks (Appeal A) and Ms A Lackova (Appeal B) against an enforcement notice issued by Colchester Borough Council.
- The notice was issued on 16 March 2020.
- The breach of planning control as alleged in the notice is without the benefit of planning permission the construction of a two storey summer house at the end of the garden.
- The requirements of the notice are to: (i) Demolish the two storey summer house. (ii) Remove all debris resulting from compliance with step (i) from the Land.
- The period for compliance with the requirements is: 3 months from the date the notice takes effect.
- The appeals are proceeding on the ground set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended.

Summary of Decisions: The appeals are dismissed and the enforcement notice is upheld.

Appeal C Ref: APP/A1530/W/20/3250781

19 D'arcy Road, Colchester CO2 8BA

- 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 A Rooks against the decision of Colchester Borough Council.
- The application Ref 192943, dated 25 November 2019, was refused by notice dated 20 January 2020.
- The development proposed is the construction and alteration of a summerhouse.

Summary of Decision: The appeal is allowed and planning permission is granted in the terms set out in the Formal Decision below.

Procedural Matter

1. The existing summerhouse is unauthorised and forms the subject of the enforcement notice in Appeals A and B. The application the subject of Appeal C sought planning permission for 'alteration and retention of summer house'. Section 55 of the Town and Country Planning Act 1990 (the Act) sets out the meaning of development, which does not include the retention of any building operations. The documents submitted as part of the application make it clear that planning permission is being sought for part of the building erected in addition to proposed alterations to the building. I have therefore amended the description of the development proposed in the Appeal C banner heading above to ensure it accurately describes the development which requires planning permission set out in the application.

Appeals A and B: ground (f)

2. The breach of planning control is the construction of a summerhouse, and the enforcement notice requires its demolition. The enforcement notice therefore seeks to remedy the breach of planning control, rather than any injury to amenity. The appeals lodged under ground (f) propose the lesser step of altering the building. While that may remedy injury to amenity, it would not resolve the breach of planning control because the summerhouse would remain.
3. Accordingly, the appeals on ground (f) must fail.

Appeal C

4. The main issues are the effect of the development on: (i) the character and appearance of the area; (ii) the living conditions of neighbouring residents with particular regard to outlook; and (iii) trees.

Character and Appearance

5. The appeal site is a detached house with a rear garden, in a residential area characterised by a mix of modestly sized houses and gardens. There is an overgrown area of land with no obvious use directly to the rear of the appeal site, and large outbuildings at the end of the rear gardens serving 19B and 21 D'arcy Road immediately either side of the appeal site.
6. The summerhouse has been erected at the end of the rear garden. Its current roof form has been described as a false mansard by the appellant, but it appears as a 2 storey flat roofed building. It is proposed to carry out various alterations to the summerhouse which will have the effect of significantly reducing the bulk of its roof. The proposal would have a pitched roof slope on the south elevation facing into the rear garden. Reduced floorspace at first floor level would remain, as would approximately half of the existing flat roof to the rear, but with 2 rooflights installed.
7. The proposed development would be larger than the outbuildings located at the end of the gardens of 19B and 21 D'arcy Road; however, its overall height and scale would be similar. It would have an unconventional roof form, but this would not be clearly noticeable from the east due to the positioning of the outbuilding at 19B D'arcy Road. It would be clearly seen from the west due to the longer gardens serving neighbouring properties in that direction. In the context of its residential surroundings where a range of designs of large domestic outbuildings with tall, pitched roofs can be seen in rear gardens, the proposed development would not be an uncharacteristic feature.
8. The design and architecture of the proposal would not therefore be of a low standard or discordant in the context of the locality. In isolation the proposal would not comprise high quality design. However, when seen as part of its surroundings, it would have a neutral effect on, and would not cause any material harm to, the character and appearance of the area.
9. As such, the proposal would not conflict with the broad aims of Policy UR2 of the Council's Core Strategy (2008) (CS) or Policy DP1 of the Council's Development Policies (2010) (DP). Amongst other things, these seek to avoid development which would fail to respect the character of the site and its surroundings.

Living Conditions

10. As set out above, the proposal would be visible from neighbouring gardens. In views from 19B D'arcy Road it would be seen directly alongside a large outbuilding with a pitched roof at the end of the garden serving that property. I note comments from the residents of that property with regard to the effect of the building in its current form on their view. I have also seen photographs of the existing building taken from the rear gardens of 19B and 21 D'arcy Road.
11. The proposal would ensure a pitched roof would be seen from 19B D'arcy Road instead of the existing 'false mansard'. As a garden structure typical for the area, the pitched roof would not dominate views from 19B D'arcy Road. It would have a greater effect on the outlook of residents of 21 D'arcy Road, but that property benefits from a long garden sufficient to avoid any material harm being caused to residents' living conditions.
12. On account of its positioning at the end of the garden, adjacent to neighbouring outbuildings of similar sizes, the proposal would not be overbearing when seen in views from neighbouring properties. It would not therefore cause any harm to the outlook enjoyed by any neighbouring residents, in accordance with Policy UR2 of the CS and Policy DP1 of the DP. These require, amongst other things, development to avoid unacceptable impacts on amenity.

Trees

13. The land to the rear of the appeal site is occupied by trees and other vegetation. I saw one tree directly to the rear of the appeal site, but I have not been provided with any information relating to the health of that tree, or any other trees which may be affected by the proposal.
14. There are a number of trees in rear gardens locally and the tree to the rear of the appeal site makes a small contribution to the pleasant verdant setting. However, it is of limited size, and I cannot be sure of its longevity within an overgrown site with no obvious use. The information before me suggests it is not subject to a Tree Preservation Order or any other form of protection.
15. Some years have passed since the existing building was erected and I have not been referred to any signs of harm which may have been caused to any trees by the unauthorised building. I note the Council's claims that the appellant has failed to demonstrate that the proposal would not harm any trees, but no evidence has been provided to convince me the existing building is likely to have caused harm to any trees, or that the proposed alterations would do so.
16. It would therefore be excessive in these circumstances to require the appellant to undertake detailed surveys of neighbouring trees to investigate any potential affect the existing building and the proposed alterations may have on them. As the proposal would not involve any alterations to the base or rear portion of the roof of the existing building, it would not cause any harm to any trees in addition to any harm which may have already been caused.
17. In addition to the above, I note the appellant's claims that an outbuilding built in the same position in accordance with the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) could have the same effect on any nearby trees. I therefore consider it unlikely that a timber building of the size proposed in this location would cause any unacceptable harm to any trees which may need mitigating. The proposal

would not conflict with Policy ENV1 of the CS or Policy DP1 of the DP, which seek to conserve the natural environment, amongst other things.

Conditions

18. As the development has already commenced, it is not necessary to attach a condition requiring the commencement of development within a specified timeframe. A condition identifying the approved plans is necessary in the interests of clarity and enforcement.
19. The submitted plans show a differentiation between weatherboarded walls and a shingled roof. The application form confirms black shingles would be used for the roof and natural weatherboarding would be used for the walls, which would match the existing materials of the building. It would therefore be reasonable and necessary to attach a condition requiring the proposal to be finished with those materials to ensure it does not harm the character or appearance of the area.
20. The appellant has invited me to attach a condition prohibiting the installation of any additional windows above ground floor level. However, the installation of any additional windows to the building would constitute development requiring planning permission, and it is not necessary to attach any such condition.

Conclusion on Appeal C

21. The appeal succeeds and planning permission is granted.

Overall Conclusions

22. For the reasons given above, I conclude that Appeals A and B should not succeed. I shall uphold the enforcement notice.
23. There are no material considerations that indicate Appeal C should be determined other than in accordance with the development plan. For the reasons given above, I conclude that Appeal C should be allowed.
24. As I have found the development in Appeal C would be acceptable and have granted planning permission in the terms set out above, the notice shall cease to have effect so far as inconsistent with that permission under the provisions of section 180 of the Act.

Formal Decisions

Appeals A and B

25. The appeals are dismissed and the enforcement notice is upheld.

Appeal C

26. The appeal is allowed and planning permission is granted for the construction and alteration of a summerhouse at 19 D'arcy Road, Colchester CO2 8BA in accordance with the terms of the application, Ref 192943, dated 25 November 2019, subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Promap location plan at 1:1250, untitled block plan at 1:500, existing and proposed plans dated 08/2019 with drawing number RDR-01.

- 2) The external surfaces of the development hereby permitted shall be constructed in the materials specified in the application form and shown on the approved plans.

L Douglas

INSPECTOR