



Appeal Decision

Site visit made on 6 September 2022

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th October 2022

Appeal Ref: APP/W4325/W/22/3294615

57 Rigby Drive, Greasby CH49 1RD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr and Mrs Bonner against Wirral Metropolitan Borough Council.
 - The application Ref APP/21/01621, is dated 30 July 2021.
 - The development proposed is a hip to gable roof extension and construction of dormer to rear of roof.
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Decision

1. The appeal is allowed and planning permission is granted for a hip to gable roof extension and construction of dormer to rear of roof at 57 Rigby Drive, Greasby CH49 1RD in accordance with the terms of the application, Ref APP/21/01621, dated 30 July 2021, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - 385_01 – Site Location & Layout Plans
 - 385_02 – Floor Plans and Elevations as Existing
 - 385_03 Revision D – Floor Plans and Elevations as Proposed

Background and Main Issue

2. The Council had not determined the planning application prior to the appeal being lodged. However, a draft officer report (dated October 2021) and the Council's appeal statement indicated that it would have refused planning permission for two reasons relating to the scale of the proposed extension and rear dormer.
3. The main issue in this appeal is therefore the effect of the proposed development on the character and appearance of the area.

Reasons

4. 57 Rigby Drive is a two-storey, semi-detached dwelling. It is in a suburban residential area of properties which are broadly similar in size and scale (although there are also detached houses). There are numerous variations in

fine detailing between groups of dwellings in the surrounding area. I saw that many of the houses have had one- or two-storey extensions added over the years. From the street, dormers of various scales and forms were visible to the rear of several properties, and a small number of houses have had hip-to-gable conversions; the vast majority of properties retain their original hipped roof form. Overall, I found that the area has a pleasant character and a spacious, orderly appearance; the space created between adjacent pairs of hipped roofs contributes to this last quality.

5. The proposed development is the erection of a hip-to-gable roof extension, along with the construction of a rear dormer; this would allow the creation of an additional bedroom with ensuite bathroom in the existing loft space. The proposed dormer would extend across almost the full width of the enlarged rear roof pitch, and would occupy most of the space between the eaves and the ridge.
6. The Council's 2004 *House Extensions* Supplementary Planning Guidance ("the SPG") provides advice for dormer and roof extensions. It states that proposals to create gable end roofs on one side of pairs of semi-detached dwellings where both sides were originally hipped will not be allowed; at present both the appeal property and No 55 (its semi-detached "twin") retain their original hipped roofs.
7. For dormers, the SPG states that they should be set in by 0.5m from the gable and from a party boundary, and that they should be set back from the original rear wall of the property by the same distance. I have not been provided with precise measurements in respect of the appeal proposal, but the submitted drawings show very narrow spaces at either side of the dormer such that it would fill almost the full width of the roof; it would also be aligned with, rather than set back from, the original rear wall below. The evidence before me therefore indicates that the proposal does not comply with the advice in the SPG.
8. The proposed hip-to-gable conversion would have the effect of visually unbalancing the semi-detached pair including the appeal property when seen from the street. The width and height of the rear dormer would make it a bulky addition to the building which would be a dominant feature when seen from neighbouring rear gardens and, as a result of its proximity to the end wall of the house, in views from Rigby Drive between No 57 and No 59. The development would not therefore comply with the requirements of Policy HS11 of the 2000 Wirral Unitary Development Plan ("the UDP") which addresses house extensions and which requires (among other things) that their scale does not dominate the existing building, and that roof forms match or complement the existing building.
9. The appellants have raised the matter of a fallback position, including drawing my attention to caselaw establishing that it is a material planning consideration where there is a real (rather than theoretical) prospect of a fallback development taking place¹; I am familiar with, and entirely accept, that principle.

¹ *R v Secretary of State for the Environment and Havering BC* (1998) EnvLR189

10. Schedule 2, Part 1, Class B of the General Permitted Development Order² ("the GPDO") allows certain alterations and additions to the roof of a dwellinghouse including the conversion of a hipped roof to a gable, and the erection of a rear dormer, although the permitted development is subject to a number of limitations, restrictions and conditions. In 2021 the Council granted a Certificate of Lawful Development ("CLD") for a hip-to-gable conversion and rear dormer at the appeal property as Class B permitted development³.
11. Although I have not been provided with the full details of the CLD scheme, it is clear from the evidence before me that the form and dimensions of the appeal proposal are the same as those for which the CLD was granted. The only difference is that, while the CLD scheme proposed that the exterior of the rear dormer would be clad with hanging tiles (in line with the Class B condition that "the materials used in any exterior work must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse"), the appeal scheme proposes the use of zinc cladding.
12. The existence of the CLD demonstrates that there is a lawful fallback position. The appellants' actions in securing both the 2021 CLD and then pursuing planning permission (including through this appeal) for an amended scheme are, to my mind, indicative of serious desire and intent to extend their home. I consider that there is a very real prospect of the fallback position being implemented in the event of my dismissing this appeal. It follows from this that I accept that the fallback position as a material planning consideration, and I must consider the weight it should be given.
13. The Council also accepts that there is an established fallback position. It argues that, as the proposed use of different materials would breach condition B.2.(a) of the GPDO, "planning permission would be required for both the built form and zinc cladding, but the built form is contrary to planning policy", so the fallback should carry "little or no weight in the planning balance".
14. I acknowledge that, from what I could see on my site visit, zinc is not a common cladding or roofing material in the locality. However, it was being used for a rear dormer which was under construction at a dwelling on Hall Drive following a relatively recent grant of planning permission⁴ to which the appellants drew my attention. I was able to see that dormer from the street through the space between 32 Howell Drive and 48 Rigby Drive. I do not know the full details of the Hall Drive scheme, and as the rear dormer there appears to occupy a relatively smaller part of the rear roof slope than the proposed dormer in this appeal I do not agree with the appellants' description of it being "virtually identical". Nevertheless the choice of materials is the same; in the medium-range view which I had I was able to see that zinc cladding is an attractive and high-quality material, giving the Hall Drive dormer a neat appearance which, while modern, does not jar or otherwise sit uneasily with the mid-20th century housing in the area.
15. It is perhaps notable that at no point in the Council's draft officer report or appeal statement does it raise any substantive concern about the use of zinc other than that it would not be a matching material; there is nothing to indicate what further harm, if any, it considers the alternative material would

² The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

³ LPA Ref: LDP/21/00444

⁴ LPA Ref: 19/00514

cause. In my view, as with the Hall Drive dormer, the use of zinc cladding in the appeal scheme would not in itself be inappropriate or otherwise harmful to the area. Its use would comply with the requirement of Policy HS11 of the UDP that materials for house extensions should match *or complement* (my emphasis) the original building.

16. As I have already described, I accept the Council's assessment that the hip-to-dormer conversion and the bulk and dominance of the rear dormer would together cause some harm to the character and appearance of the host building and the wider area. However, this would be entirely a consequence of their intended scale and form, and for the reasons I have just set out I do not consider that any additional harm would be caused by the use of zinc cladding for the rear dormer rather than matching tiles. For the same reasons, although there would be some conflict with the provisions of Chapter 12 of the National Planning Policy Framework which seek to achieve well-designed places, the appeal proposal would not result in any greater conflict in this respect than the CLD scheme.
17. The fallback position is therefore not only a material consideration, it is one to which I attribute very considerable weight in the planning balance. I therefore conclude that, although the proposal would conflict with the requirements of Policy HS11 of the UDP and thus with the development plan as a whole, in this case material considerations indicate that the decision should be made other than in accordance with the development plan.

Conditions

18. In addition to the standard time limit condition, I have specified the approved plans so as to provide certainty, as suggested by the Council. No further conditions were suggested, and as the materials to be used for the extension are specified in the original planning application I agree that none are necessary.

Conclusion

19. For the reasons given above I conclude that the appeal should be allowed.

M Cryan

Inspector