
Appeal Decisions

Site visit made on 15 December 2022

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 January 2023

Appeal A Ref: APP/J1535/C/21/3283253

22 Stony Path, Loughton IG10 1SJ

- 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 Paul Millbrook against an enforcement notice issued by Epping Forest District Council.
 - The enforcement notice was issued on 18 August 2021.
 - The breach of planning control as alleged in the notice is without planning permission: Erection of a pitched roof over the garage area.
 - The requirements of the notice are:
 1. Remove the unauthorised roof, from the approximate area hatched on the attached location plan from the land.
 2. Remove all resulting debris from the land
 - The period for compliance with the requirements is 3 months
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (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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Appeal B Ref: APP/J1535/W/21/3281711

22 Stony Path, Loughton IG10 1SJ

- 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 Paul Millbrook against the decision of Epping Forest District Council.
 - The application Ref PL/EPF/1155/21, dated 22 April 2021, was refused by notice dated 6 July 2021.
 - The development proposed is described as "Retrospective planning application to regularise works to the temporary replacement roof over the garage area, to new hipped roof as existing original hipped roof".
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Decisions

Appeal A:

1. It is directed that the enforcement notice is:
 - varied by deleting the words "3 months" within section 6 (time for compliance) and its replacement with "7 months".
 2. Subject to the variation, the appeal is dismissed, and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.
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Appeal B:

3. The appeal is dismissed.

Preliminary matters

4. The appellant states that the Notice is in error in referring to the structure as being double its actual footprint. However, the requirements of the notice clearly states that the extension is in the "approximate" area hatched on the attached location plan. Therefore, it is clear that the plan is for identification purposes only. The notice sets out clearly what the alleged breach of planning control is and what must be done to remedy that. The notice is therefore valid.
5. The notice refers to the Epping Forest District Local Plan Submission Version 2017 (LPSV). The LPSV has not yet been adopted by the Council as part of their development plan. However, the LPSV has been through the examination process and the Council advise that the emerging Local Plan has reached a very advanced stage. Therefore, I have attached significant weight to these emerging policies but not the full weight of an adopted Local Plan.

Appeal A on ground (a), the deemed planning application (DPA) and Appeal B

6. Ground (a) is that planning permission should be granted for the matters stated in the notice. Since the planning appeal is against refusal of permission for the identical development, the considerations in that appeal are the same, and I have treated both cases together.

Main Issue

7. The main issue is the effect of the development upon the living conditions for the occupiers of No 18 Stony Path, with particular regard to outlook.

Reasons

8. The proposal seeks planning permission for the retention of a pitched roof extension over the garage side. My attention has been drawn to a previous appeal decision ref: APP/J1535/D/19/3233984, which was dismissed for an alternative roof extension above existing garage. In that case, the Inspector considered that *"Although the proposed extension would include a half hip to its gable end, it would fill this space and present a substantial area of solid wall to the side boundary. The resultant development would therefore be oppressive and create an enclosing effect when viewed from within No 18 or its garden."* The Inspector also commented that the change in the environment would be more apparent given that No 18 only has a garden to the front and therefore relies on outlook across the garden.
9. The appeal property is positioned forward of No 18 Stony Path. The evidence submitted shows that prior to the current unauthorised development, the appeal property comprised of a single storey garage with a pitched roof adjacent to the boundary with No 18, such that occupiers of No 18 would have had a relatively open outlook from their existing front windows and their front garden.
10. In an attempt to overcome the previous Inspector's concerns, the design has changed in so far as the front dormer has been removed, and the two storey gable end wall has been replaced with a hipped roof facing toward No 18,

thereby, reducing the overall bulk of the extension. Nevertheless, despite these positive aspects of the development, the first floor extensions include a high pitched roof built close to the boundary with No 18 which results in a dominant and overbearing form of development when viewed from No 18. During my site visit I observed that the outlook from No 18 is severely restricted by this development resulting in an increased sense of enclosure to occupiers of this property, thereby harming their living conditions.

11. Therefore, the development fails to provide acceptable living conditions for occupiers of No 18, with regard to outlook. Accordingly, the development is contrary to policies DBE2 and DBE9 of the Epping Forest District Local Plans Alterations, 2006 (EPLPA). Amongst other things, these state that planning permission will not be granted for new buildings which have a detrimental effect upon existing neighbouring or surrounding properties, and that the Council will require that ... extension or new development does not result in an excessive loss of amenity for neighbouring properties.
12. It also fails to comply with Policy DM 9 of the LPSV which together states that the Council will expect proposals to not result in an over-bearing or overly enclosed form of development which materially impacts on the outlook of occupiers of neighbouring properties.
13. Furthermore, the development is contrary to paragraph 130 of the National Planning Policy Framework, 2021, which seeks to ensure all developments creates places with a high standard of amenity for existing and future user.
14. The Council have also referred to Policy DBE10 of the EPLPA and Policy DM 10 of the LPSV. However, these policies appear to relate to the appearance of the extension, and Housing Design and Quality which is not relevant to the case advanced by the Council. I therefore find no conflict against either of these policies

Conclusion on Ground (a) and the Deemed Planning Application and Appeal B

15. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning decisions to be made in accordance with the development plan unless material considerations indicate otherwise. I have found conflict with the development plan with regard to harm to the living conditions for the neighbouring occupiers of No 18.
16. The extension has been designed with complimentary materials and preserves the character and appearance of the host building and the Baldwins Hill Conservation Area. However, these do not outweigh the harm I have identified above. Nor do I consider that the size of the garden at no 18 or that soft landscaping would mitigate the harm. Therefore, there are no material considerations that would lead me to a decision other than in accordance with the development plan in this case.
17. For the reasons given and with regard to all other matters raised, I conclude that the appeal on ground (a) and the deemed planning application should fail, and Appeal B should be dismissed.

Appeal A on ground (f)

18. The appeal on this ground is "that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters (i.e., the matters alleged in the notice) or, as the case may be, to remedy any injury to amenity which has been caused by any such breach".
19. The enforcement notice requires the removal of the unauthorised roof. Therefore, the purpose of the notice is to remedy the breach of planning control rather than only remedy any injury to amenity.
20. The appellant states that the removal of the pitched roof in its entirety is excessive since this would render the garage with no roof. They further state that this goes beyond what is reasonably necessary because it would leave part of the building with no roof, and that a new roof could not be installed without Building Regulations consent and possible planning permission. They also state that it is not known whether the Council are suggesting that a flat roof or a pitched roof should be re-instated.
21. However, the scope of the Notice is limited by s173(4)(a) and (b). The recipient on the notice cannot be required to undertake works that would go beyond remedying the breach. No matter how the works are specified, the most that they can achieve is compliance with a planning permission or restoration of the land to its previous condition, even if the result is that compliance with the Notice would mean that the building is left insecure or open to the elements. On this occasion, there is currently no planning permission granted for a replacement roof and therefore the power is simply to restore the land to its previous condition.
22. Since the notice does no more than seek remedy of the breach, it is not excessive. It is not therefore possible to vary the notice in the ways suggested by the appellant whilst achieving the purpose of the notice. There are no lesser steps drawn to my attention or any obvious alternatives that would remedy the breach of planning control which is the purpose of the notice.
23. On this basis, the ground (f) appeal fails.

The appeal on Ground (g)

24. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed. The appellant asks that the time for compliance is extended from 3 to 12 months, to allow for time to obtain a scaffolding contract and commission builders to carry out the remedial works. They also state that building supplies are constrained by Brexit; that the winter months are approaching, and the need to submit and obtain Building Regulations and possibly planning permission.
25. I have found under the ground a) appeal that the unauthorised development fails to provide acceptable living conditions for occupiers of No 18, with regard to outlook. As such, the 12 months requested by the appellant to comply with the notice is disproportionately excessive to complete the requirements of the notice.
26. However, the time for completing the requirements should be what is reasonably considered necessary to complete the requirements. In my view, 7

months would strike a more reasonable and proportionate balance to carry out the remedial works. This would also provide additional time to obtain Building Regulations and Planning Permission for a replacement roof. I shall therefore extend the period from 3 to 7 months for compliance with the notice.

27. To this extent, the ground (g) appeal succeeds, and I will vary the notice accordingly.

Conclusions

28. **Appeal A:** For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

29. **Appeal B:** For the reasons given above, and having regard to all other matters raised, I conclude that Appeal B should be dismissed.

R Satheesan

INSPECTOR