



Appeal Decision

Site visit made on 7 February 2023

by G Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 March 2023

Appeal Ref: APP/Z5060/C/22/3290699

Land and premises at 5 West Road, Chadwell Heath, Essex RM6 6YA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Mrs Donna Davis against an enforcement notice issued by London Borough of Barking and Dagenham Council.
- The notice was issued on 14 December 2021.
- The breach of planning control as alleged in the notice is without of *[sic]* planning permission, erection of an unauthorised rear extension.
- The requirements of the notice are to:
 - Remove the unauthorised extension in its entirety.
 - Remove all subsequent waste material from the property.
- The period for compliance with the requirements is: 3 months.
- The appeal is proceeding on the ground set out in section 174(2)(a) 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.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld in the terms set out in the Formal Decision.

Formal Decision

1. The appeal is dismissed, 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.

Preliminary Matters

2. The breach of planning control to which this notice relates is clearly set out in both the notice and the banner heading, above. The appeal form also clearly states that the appeal is made on ground (a). Whilst the appellant's 'Statement of Appeal' (SofA) also refers to a ground (b) appeal¹ this appears to relate to the use of the appeal property as a church. The appellant's initial appeal form makes no reference to an appeal under ground (b).
3. The Council has however responded to the SofA's reference to an appeal under ground (b) in their Statement of Case (SofC) but have done so in respect of the unauthorised extension, not the use of the property as a church. Both parties have confirmed that no notice has been served regarding the use of the property as a church. I consider the matter of the appeal regarding the rear extension under ground (b) as a 'hidden' ground of appeal.

¹ Section 174(2)(b) Town and Country Planning Act 1990 (as amended) – that those matters [breach of control alleged] have not occurred

4. The recent planning history of the property, as set out at section 3 of the Council's SofC, is not disputed. An application for 'retrospective permission for the construction of a conservatory to the rear of the property'² (the 2021 application) was refused in October 2021, a decision which was subsequently appealed³. At the time of the Inspector's visit to the site in February 2022 the conservatory was described as being 'substantially erected'. The appeal was dismissed on the basis of its effect on the living conditions of the neighbouring residents at 3 West Road, with particular reference to outlook and light.
5. It was clear from my visit to the site that a conservatory, of the nature and appearance shown on plans previously submitted in respect of the 2021 application, had been constructed, completed and was being occupied as part of the residential use of the appeal property. As a matter of fact therefore, the breach of planning control as alleged in the notice has occurred and the appeal under a 'hidden' ground (b) fails.

The appeal on ground (a)

Main Issues

6. Planning permission was refused for the 2021 scheme and was subsequently dismissed on appeal in 2022. From the evidence before me I am satisfied that what I saw during my visit to the site and what the notice seeks to attack is not materially different to the 2021 application scheme as described and considered by the previous Inspector.
7. Having regard to the above, the main issues are the effects of the rear extension upon:
 - The living conditions of occupiers of the neighbouring property at 3 West Road, with particular regard to daylight / sunlight and outlook; and
 - The appearance of the appeal property.

Reasons

Living conditions

8. The appeal in relation to the 2021 application scheme was dismissed on the grounds that it had an unneighbourly and harmful effect on the living conditions of occupiers of the neighbouring property at 3 West Road, with particular regard to outlook and light. In reaching that conclusion, the Inspector considered the orientation of Nos. 3 and 5 and the relationship of the conservatory extension with the neighbouring property. Together with its proximity to No. 3 and the extension's depth and height, these factors led the Inspector to conclude that the conservatory would result in a harmful loss of light to the rear garden and window of the kitchen diner of No. 3 and 'an unduly proximate and enclosing relationship' from the rear of that property.
9. During my visit to the site, I saw that the conservatory extension is positioned due south of the rear of No. 3. Both properties already have broadly similarly sized flat roofed, single storey build-outs with only a very small gap between them. The conservatory extends in the region of a further 4 metres from this

² LPA Ref No: 21/01804/HSE

³ APP/Z5060/D/21/3287600

point, directly adjacent to the boundary fence between the two properties. The upper portion of the extension, consisting mainly of glazed high-level windows and eaves / fascia, is clearly visible above the fence line for the entirety of the conservatory's length.

10. There is, as noted in the previous appeal decision, sporadic vegetation adjacent to the extension within the neighbouring property's garden. I accept, particularly during the summer as evidenced in submitted photographs, that this vegetation may appear dense and somewhat enclosing. This will, to a varying degree and depending upon the season, soften and partially screen the visual presence of the extension.
11. However, that presence would nevertheless continue to be felt in outlook from the rear of No. 3 through and amongst this vegetation. Whilst the obscurely glazed high-level windows may prevent overlooking, light-spill through them serves to remind neighbouring occupants of the extension's depth, height and presence close to the rear windows of No.3 and the boundary between the two neighbouring properties. This, in turn, contributes to an 'unduly proximate and enclosing' presence, as identified in the previous appeal, and is a conclusion with which I agree in terms of its effect upon, and from, the rear of No. 3. Although not visible from ground floor level, the additional light spill from the sizeable lantern roof would be visible from upper floors and serves as a further reminder of the extension's size and presence.
12. Although the reasons for issuing the notice do not expressly refer to the effect of the extension upon daylight and sunlight, such matters are nevertheless elements to consider when assessing whether or not a development might have an overbearing effect. Alluded to in the previous appeal but submitted to accompany the appeal before me, a 'Daylight and Sunlight Report (Neighbouring Properties)'⁴ (DSR) has been submitted. This concludes that, whilst having a 'low impact' on light received by the windows and garden of the neighbouring property, the development would 'sufficiently safeguard' those daylight and sunlight amenities. The Council has not challenged these conclusions.
13. Policy BP8 of the 'Borough Wide Development Policies' Development Plan Document (2011) (DPD) sets out that, amongst other things, extensions are expected to not lead to significant overshadowing (loss of daylight and sunlight). The DSR concludes that there is some loss of sunlight to the rear window and garden of No. 3 as a consequence of the conservatory, but it also demonstrates the contribution the existing fence already makes in this respect.
14. Whilst I have noted the concerns of the occupier of No. 3 in this respect and agree that some additional overshadowing arises from the extension, it falls short of the 'significant' overshadowing which DPD Policy BP8 seeks to resist. However, whilst not determinative in its own right, that it has been demonstrated to result in some, albeit 'less than significant', overshadowing adds weight to my conclusions in respect of an overall harmfully overbearing effect upon the living conditions of occupiers of No. 3 by reason of its size, design, scale and proximity to that property. As a consequence, I conclude that the extension has a harmfully overbearing and enclosing effect upon occupiers of that property. As such, the rear extension is contrary to DPD Policies BP8 and BP11.

⁴ 'Daylight and Sunlight Report (Neighbouring Properties)' 24 November 2021 – Right of Light Consulting

Appearance

15. Although the 2021 application scheme was dismissed at appeal, the Inspector found no harm in relation to its effect on the character or appearance of the existing property or the surrounding area. Paragraphs 12 to 16 of that decision clearly set out the reasoning for reaching that conclusion. Whilst the reasons for issuing the notice now refer to the effect of the extension on just the appearance of the house, the Council has not advanced any further justification on this ground beyond that set out in the notice.
16. Whilst other examples of rear extensions nearby have been brought to my attention by the appellant, I have only very limited information regarding them, comprising of only long-range photographs taken over intervening gardens and fences and an aerial view of the area. From that limited information none appear to be directly comparable with the appeal scheme in any event and I therefore give these examples very limited weight and which have not therefore been decisive in this matter.
17. Had this appeal succeeded, I agree that a condition could have secured the use of appropriate materials and finishing to ensure the satisfactory completion of the extension's flank elevation. However, the elevation in question is largely screened by the existing timber fence and hedge and the materials and appearance of the other external elevations are considered to be acceptable. The appellant's offer to increase the proportion of glazing on the rear elevation is also noted, but as I find that its appearance is not harmful, I give this matter limited weight. So too, is the condition and appearance of the garden which was, at the time of my visit to the site, laid to lawn with shrub borders and was in generally good order.
18. Having regard to the previous Inspector's conclusions in this respect and for the reasons I have set out, I am satisfied that the rear extension does not cause harm to the appearance of the appeal property. There is therefore no conflict with DPD Policies BP8 or BP11 insofar as their provisions relate to design and the effect of a development upon appearance. However, the absence of harm in this respect would not outweigh the harm that I have identified above.

Other Matters

19. The notice states a compliance period of 3 months for the appellant to carry out the required works. No appeal has been made on grounds (f) or (g). A period of 3 months lies towards the shorter end of the spectrum for the timeliness of compliance with the requirements of the notice, which requires the removal of the extension in its entirety, albeit not unreasonably so.
20. Nevertheless, I have given consideration to the appellant's rights under Article 8 of the European Convention on Human Rights⁵ as the notice's requirements amount to interference with those rights. However, I have not been presented with any reason to believe that appropriate arrangements could not be made within the specified timescale for those works to be carried out.

⁵ As set out within the Human Rights Act 1998

Conclusion

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

G Robbie

INSPECTOR