

Appeal Decision

Site visit made on 17 April 2023

by Andrew Dale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 May 2023

Appeal Ref: APP/J1535/D/22/3309484
23 Millwell Crescent, Chigwell IG7 5HX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Amar Patel against the decision of Epping Forest District Council.
 - The application ref. EPF/1149/22, dated 17 May 2022, was refused by notice dated 28 September 2022.
 - The application sought planning permission for "Proposed single storey side & rear extension with associated internal alterations" without complying with a condition attached to planning permission ref. EPF/1110/20, dated 5 August 2020.
 - The condition in dispute is No. 2 which states that: "The development hereby permitted will be completed and retained strictly in accordance with the approved drawings numbers: RSD2428-100-A. RSD2428-001".
 - The reason given for the condition is: "To ensure the proposal is built in accordance with the approved drawings".
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The Epping Forest District Local Plan 2011-2033 (LP) was adopted on 6 March 2023. It was at a very advanced stage in its route to adoption when the Council's decision to refuse planning permission was made and the appeal was lodged. Policy DM 9 (part H) of the LP Submission Version December 2017 is now redundant and I note that virtually the same section on privacy and amenity that was in Policy DM 9 (part H) now falls within LP Policy DM9 (part I) which is, at this moment, the principal development plan policy relevant to this appeal. The Local Plan (1998) and the Local Plan Alterations (2006) will be revoked once the period for a legal challenge into the adopted LP has expired.

Background and main issue

3. Planning permission has been granted for an extension and alterations to the appeal property which, as I saw at my site visit, have been carried out. That original planning permission will continue to exist whatever the outcome of this appeal. This appeal seeks permission to carry out the development without
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complying with condition 2. This condition requires the development to follow the approved plans.

4. The appellant has increased the width, height and depth of the approved rear raised patio and altered the approved position of the steps from it that lead down to the garden. The intention is for the submitted plans to be followed instead of those previously approved. Various changes to the fenestration in the ground floor rear extension are also shown on those new plans but the Council appears to accept, as I do, that these would be inconsequential. The Council's concern is not with the design of the scheme as a whole or its impact on the character and appearance of the locality.
5. There is no dispute that the rear patio has been built somewhat higher than that which was shown in the approved scheme. Estimates of the increase in height vary. I noted that the patio surface is now about 1.24 m above the level of the lawn at the rear and about 35 cm higher than the side alley where there are steps leading up to the patio that are not recorded on any plans. The existing ground floor plan of the property showing the situation at the site before any works in the approved scheme were carried out records that the former patio stood 0.71 m above the level of the lawn below.
6. The sole main issue is the effect of the raised patio upon the amenity and living conditions of the neighbours at the adjacent houses on Millwell Crescent (nos 21 and 25) with regard to the potential for overlooking and loss of privacy.

Reasons

7. No. 23 is a 2-storey detached house. It stands on a part of Millwell Crescent which slopes down from north to south. Nos 21 and 25 are the adjacent houses. The former is on the upper side of no. 23 and the latter is on the lower side. The layout of these detached houses can be fairly described as close-knit.
8. I have based my assessment on the assumption that the users of the raised patio would adopt reasonable patterns of behaviour. Even so, at my site visit, I was able to see that the users of the raised patio as built, standing, or even sitting, close to its northern and southern edges, would readily have commanding views from an elevated level down into the rear gardens and patios of 21 and 25 Millwell Crescent. This results in an invasive sense of overlooking, distinct from the mutual and modest intervisibility that might have persisted between the properties before the development took place.
9. Some of that overlooking would be across short distances and could be for sustained periods given that the sizeable raised patio would be large enough for sitting out and entertaining guests and may become preferable to the rather lower outdoor space occupied by the rear lawn. On warm days and evenings, such use would be likely to coincide with when neighbours are also attempting to enjoy their rear gardens, thereby exacerbating the overlooking I have found.
10. The raised patio reaches well up each of the side boundary fences. Whilst users are unlikely to trip and fall into the adjacent gardens over the fences, such hazards cannot be ruled out entirely. More importantly, the views over the boundary fence to no. 25 also take in the rear ground floor window and rear conservatory of that property. In the other direction, there is a clear line of sight back towards the rear patio door of no. 21. The shed in the garden of no.

25 next to the boundary and the higher level of no. 21 offer little by way of defence against such overlooking and the invasion of privacy that is associated with it. The situation at no. 25 may change if the extension approved there were to be constructed but I have to consider the site context as I find it.

11. More generally, overlooking from a raised patio is of a different character to that from a window to a room. Sizeable and elevated viewing platforms like this, in a situation where they are not common features, and the presence of people outside, regardless of where they might be actually looking, combine to create a much more intrusive feel and the disturbing psychological perception of being overlooked. The actual and perceived loss of privacy for the occupiers of the 2 adjacent dwellings would be unacceptable and harmful to their amenities.
12. I have given some thought to whether a condition could be imposed requiring a scheme of privacy screening to be submitted to the Council for approval, followed by its subsequent implementation. I have reservations about such an approach.
13. This is not a situation where the overlooking can be properly addressed through screen planting or the use of planters. Such planting can take a long time to establish and may fail. Planters can be easily moved around. The hedges and vegetation the appellant points to in nearby gardens at appendices 2 and 3 of his statement will have taken a considerable amount of time to get to the mature state they are in. To require fully effective panel screening of the type shown in appendix 1 or adjustments to the position of the raised patio and main staircase (appendices 4 and 5) would result in a material change to what is proposed which interested parties may wish to comment upon. There is also the concern, alluded to in the officer's report, that such panel screens, if they are to be effective in preventing overlooking, may have an overbearing visual impact as viewed from the adjacent properties or other possible consequences. Any such revised or other alternative proposals would need to be the subject of a fresh planning application which would be determined by the Council in the first instance.
14. The representations that were lodged at the application stage by the occupiers of nos 21 and 25 add some weight to the decision I have reached in this case. I can well understand how the development that has taken place is of great concern to them. I recognise that the patio now provides for level access from the rear extension to avoid a trip hazard for the appellant's young children and that the approved scheme for a sunken lounge and a far lower patio towards no. 25 was aborted due to the unexpected costs of construction. However, these factors are not sufficient to outweigh the harm I have described.
15. I find on the main issue that the raised patio, by reason of its height and extent, is harmful to the amenity and living conditions of the neighbours at the adjacent houses on Millwell Crescent (nos 21 and 25) with regard to overlooking and loss of privacy. This places the scheme in conflict with the aims of LP Policy DM9 (part I) which expects proposals to avoid overlooking and loss of privacy detrimental to the living conditions of neighbouring occupiers.
16. For the avoidance of doubt, I also find conflict with the policies from the Local Plan (1998) and the Local Plan Alterations (2006) that are listed in the decision notice. There would not be respect for the National Planning Policy Framework

because the scheme does not create a place which promotes health and well-being, with a high standard of amenity for existing and future users.

Conclusion

17. My finding on the main issue is decisive to the outcome of this appeal. There is conflict with the development plan. The harm cannot be properly mitigated by the imposition of planning conditions and it is not outweighed by other material considerations. For the reasons given above and taking into account all other matters raised, I conclude that this appeal should not succeed.

Andrew Dale

INSPECTOR