

Appeal Decision

Site visit made on 25 April 2023

by P Eggleton BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 May 2023.

Appeal Ref: APP/Z1510/D/23/3317159

15 Clare Road, Braintree, Essex CM7 2PA

- 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 Mrs C Blake against the decision of Braintree District Council.
 - The application Ref 22/03130/HH, dated 15 November 2022, was refused by notice dated 3 February 2023.
 - The development proposed is a one and a half storey rear extension, two side dormers and windows to the front elevation of existing bungalow to form first-floor accommodation.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect on the character and appearance of the area; and the effect on the amenities of the residents of 17 Clare Road with regard to privacy.

Reasons

3. The proposal includes a large rear extension but as this follows the form of the dwelling and is set to the rear, it would have little impact on the wider character or appearance of the area. The proposal includes two large side dormers. These would be at odds with the original design and form of the dwelling. The set back from the front elevation would not be significant and this, together with their overall size and design, would result in them being prominent within the street scene. They would detract from the character and appearance of the dwelling.
 4. There are a number of similar additions to houses in the area. The neighbouring property has a similar single side dormer which would face one of the dormers proposed. That dormer is not a positive element within the street scene and the combination of the two together would increase the prominence of these flat roofed structures and detract further from the original design of the houses. There is also a similar arrangement to that proposed at 25 Clare Road which has two side dormers. These appear to be smaller but they are similarly not positive features within the street scene. I also noted a much smaller side dormer on a similar property at 24 Clare Road and larger side
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facing dormers on a different style of property at number 22. These developments would provide weight in favour of the proposal if the council had recently approved them. However, I have no evidence to demonstrate that they either needed permission or were accepted by the council. These limited additions have not changed the overall character of this area. As it is not apparent that the council has accepted such structures, I must consider this new proposal on its own merit.

5. The appellant suggests that the proposed dormers represent permitted development and provides a decision letter relating to an appeal in Upminster that demonstrates the approach taken by the inspector to potential fall-back positions. It sets out that a fall-back can be a material consideration where there is a greater than theoretical possibility of the development taking place; and can be a form of development that is permitted development. The weight to be given to such a fall-back is a matter for the decision maker in the circumstances of the case, including the scale of harm which would arise.
6. Although the appellant provides an overall volume figure for these dormers that falls within the limits set out, an application for a certificate of lawfulness for what appears to be dormers of identical size, was refused on the basis that they exceeded the volume and materials requirements. This was not the subject of an appeal and no alternative lawful development certificate is before me. It is not the purpose of this appeal to determine lawfulness and in any event, I have not been provided with exact dimensions. From the evidence available and without a lawful development certificate, I must conclude that any lawful additions, not requiring planning permission, would be smaller than those now proposed.
7. As the proposal includes these structures, they must be considered on their own merits. I have considered their design within the existing wider context. I conclude that this element of the proposal would detract from the character and appearance of the dwelling and that of the wider area. I accept however that there is likely to be a lawful development fall-back which is likely to have similarities in form and that there is a strong likelihood that such a structure would be built once lawfulness was established. Despite the uncertainty, this provides weight in favour of this proposal. However, I must assume that a lawful structure would be smaller and would therefore have a lesser impact. As a smaller structure would bring similar benefits with regard to accommodation provision, I do not consider that it offers support for this proposal which has been found by the council not to be lawful development.
8. Given my findings with regard to the side facing dormers, the proposal would either not gain support or would be in conflict with the design objectives of policies LPP 1, LPP 36(b&e), LPP 47(a) and LPP 52(a&b) of the Braintree District Local Plan 2013-2033 (2021)(LP). As these policies accord with the design aspirations of the *National Planning Policy Framework*, I afford them full weight.
9. The council have also raised concerns with regard to the amenity of neighbouring residents, particularly at 17 Clare Road. The proposal includes a side facing ground floor window in the rear extension. It would appear on site and on careful examination of the plans, that it is intended that the floor levels internally would be reduced. The overall height of the side windows would be

lower than that of the existing windows. However, even with this being the case, it appears likely that the top of the window would extend above the level of the high dividing fence. The potential for looking over the fence from the upper part of this window is likely to be limited to only the tallest or most determined of people. However, experiencing that window, so close to and above the fence from the neighbours decking area, is likely to at the very least, increase the perception of being overlooked, especially in the evenings if the lights are on within that room.

10. I am also concerned that this window would have an inadequate outlook for a habitable room, being so close to the boundary fence. A revised plan has been submitted by the appellant with the appeal statement. This shows the window being obscure glazed and the room also open to the rear, combined with the kitchen area. The council have not had the opportunity to comment on these plans.
11. There are clearly design shortcomings but I am mindful that the design is in response to the particular circumstances of the appellant and also that similar arrangements could result from potential fall-back options. Given these circumstances and the flexibility that there is, given that the interior of the house has been fully removed, it appears likely that these shortcomings could be addressed. This would need to be done in consultation with the council and neighbours but given my main findings, this is not a matter on which my decision would turn.
12. The council have not raised concerns with regard to the height of this rear extension suggesting that it has previously been accepted. I have not found anything in the planning history which confirms this. Although the outlook of the neighbouring residents at number 17 is already constrained by their own garden building, the height and depth of this structure would be clearly apparent above it. Similarly, although the property at number 13 extends further back, the additional depth of this proposal beyond the rear of that house, given the height of the proposed roof and despite the separation distances, would still be extremely imposing when in the sitting area in the garden immediately to the rear of that house. I find no reason for such a high roof or the impact that it would have, particularly if floor levels are to be reduced. As this is not a matter raised by the council, I would not wish to reach a final view on this without the appellant having an opportunity to address my concerns. However, in any event, given my main conclusion this is not a matter on which my decision would turn.
13. The appellant has made reference to the development at 21 Clare Road. I do not have the plans that relate to the decision notice. I am also unable to conclude from the information I have, that that rear extension is directly comparable, particularly with regard to the location of adjacent buildings and the relationships with adjoining windows and gardens. The dormer roof additions are clearly different and have a lesser impact on the street scene.
14. Reference has also been made to the fall-back potential for the rear element of the development. The proposed rear extension would not fall within permitted development tolerances. Two alternative developments have been suggested. The first is a lower 6 to 8 metres deep single storey rear extension. Such a proposal would need to go through the prior notification procedure and would

be reliant on neighbours not raising an objection. Although no objection has been received to this application, I cannot assume the same would be the case for an alternative procedure. It cannot be assumed therefore that such a fallback exists. In any event, such an extension would be of a much more limited height which would have a lesser impact than the current proposal.

15. The second fallback option put forward is a two storey, three metres deep extension. As this would be of a similar form but of only half the depth, I do not consider that this supports the current proposal as it would be substantially less harmful.
16. Given the family circumstances and the reason for this particular development, the appellant has referred to paragraphs 60 and 130f of the *Framework* which seeks housing that meets specific housing requirements and that developments create safe, inclusive and accessible places which promote health and well-being. This is also a requirement of LP policy LPP 47(f) which seeks development that will meet the changing future needs of occupiers. I am mindful also of the requirements of Section 149 (1) and (3) of The Equality Act 2010 and the need to remove or minimise disadvantages and to take steps to meet the needs of persons who have a relevant protected characteristic. Whilst there is a clear need to seek a suitable development to meet the family of the appellant's needs, this could be achieved by a similar but lower rear extension and by a roof conversion more akin to that approved at number 17, without the harm to the character or appearance of the area or the amenities of neighbouring residents.
17. Whilst I have had regard to all the matters put forward and particularly the personal circumstances of the appellant and her family, I am not satisfied that these are sufficient to outweigh my concerns particularly with regard to the proposed dormer structures, given that there are other less intrusive options available. I therefore dismiss the appeal.

Peter Eggleton

INSPECTOR