



Appeal Decision

Site visit made on 21 April 2023

by J Somers BSocSci (Planning) MA (HEC) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 19 May 2023.

Appeal Ref: APP/J1915/D/22/3313788

34 Portland Road, Bishops Stortford CM23 3SJ

- 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 Judith Clarkson against the decision of East Herts Council.
- The application Ref 3/22/1604/HH, dated 19 July 2022, was refused by notice dated 11 October 2022.
- The development proposed is described as the demolition of existing rear extensions at ground and first floors, construction of new replacement rear extensions at ground and first floors, along with general reprofiling of the rear garden.

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposed development upon:
 - The character and appearance of the host building and the surrounding locality, with special attention and regard to the Bishops Stortford Conservation Area (CA);
 - The neighbouring tree in the rear garden of 36 Portland Road; and
 - The living conditions of No.36 Portland Road with particular regard to access to light, sense of enclosure and outlook.

Reasons

Character and Appearance, including the CA

3. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCA), in respect of development affecting CAs, states that special attention shall be paid to the desirability of preserving or enhancing the character and/or appearance of the area.
4. In undertaking extensions and alterations to existing buildings, the East Herts District Plan (DP) saved Policy HOU11 is specific to alterations and extensions and seeks that development be appropriate in terms of size, massing, scale, and appear as a subservient addition. For flat rooved extensions, the policy states that these types of roof forms are undesirable at first floor level other than when the character of the dwelling allows a flat rooved design or it represents a sustainable or innovative design approach. Additionally, DP Saved Policy HA4 seeks that development within CA's preserve and enhance the special interest of the CA, taking into account established building lines, layouts, patterns, scale, proportion, and that alterations and extensions are complementary and sympathetic, amongst others.

5. The CA's significance is highlighted in the Bishops Stortford Conservation Area Appraisal, where relevant components of the significance in relation to the appeal site relate to the development of formally laid out speculative housing development after the arrival of the railway in the mid-nineteenth century that began to develop with its characteristic terraces and narrow streets. Whilst there is a variance in dwelling types in the greater CA, Portland Road has a more regimented layout and includes groups of three storey dwellings, predominantly of yellow stock brick with stone cills and slate rooves with large chimney stacks.
6. To the rear each of the dwellings many of the dwellings in the terrace retain historic components such as the first floor rear wing which has a width of half the dwelling and a small hipped roof. Whilst many of the ground floor extensions have removed historic architectural detail, the historic first floor extensions to the rear which are subservient to the remainder of the dwelling are still evident. Within the gardens the experience of the CA is more tranquil, with smaller extensions, and well vegetated rear gardens that have a different experience from the front of the dwelling. The use of traditional materials such as timber, brick and slate along with the similar quality in designs reinforce an architectural uniformity and authenticity which creates a formal picturesque townscape along with a distinctive character.
7. The appeal site displays a number of positive qualities of significance to the CA, being a high quality terraced dwelling which forms part of a group of 6 dwellings which appears to date from the mid-late nineteenth century and which is noted in the CA as non-listed buildings that makes an important architectural or historic contribution to the significance of the CA. The terrace is of brick construction with a slate pitched roof and given the height of the buildings, have a status and dominance within the locality. To the rear the appeal building also appears to have had a small infill extension at ground floor level, but retains the characteristic rear wing to ground and first floor levels with small hipped roof.
8. With regards to the ground floor extension, this would be full width and extend across the rear of the dwelling and be a similar depth to the neighbouring properties and would require the removal of soil which is part of the regrading of the greater garden area. Whilst I agree with both parties that in principle, the ground floor extension does appear appropriate, there are concerns regarding the resulting impact towards the greater reprofiling of land and the impact that this may cause towards the tree within the rear garden of the neighbouring property which is discussed in more detail in the next matter below. I am aware of Paragraph 54 of the National Planning Policy Framework (The Framework) which states that 'Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions.' However, given that there is no tree survey submitted as part of this appeal, there is no reasonable evidence to base a judgement upon as to whether the reprofiling of the land which is directly associated and required as part of the rear extension would be appropriate in principle.
9. With regards to the first floor rear addition, the proposal would contain a flat roof and constructed in matching stock brick, and proposed windows whilst maintaining similar dimensions at first floor level, would be of aluminium construction with a flat roof that sits just under the cills of the second floor

windows. The proposed first floor rear extension would remove much of the remaining components of historic fabric to this level and does increase the depth of the extension past the neighbouring first floor extension and as a result would be the entire width of the dwelling. The more visually bulky design with parapet roof increases the massing to the rear of the dwelling, particularly on first floor level and has an awkward and domineering appearance when seen against the remaining dwellings that make up this terrace. The result is an extension which does not appear architecturally authentic to the existing dwelling and affects the integrity of the design of the terraces in this location. I appreciate that DP Saved Policy HOU11 allows exceptional circumstances where a flat roofed extension could be approved if sustainable, however this needs to be balanced against the character of the dwelling, saved Policy HA4 as well as the duty under s72 of the PLBCA, which is afforded great weight. Whilst there is some sustainability benefit to the placement of a sedum roof, this would not overcome the harm caused after the application of DP Saved Policies HOU11 and HA4 and the duty under s72 of the PLBCA.

10. In assessing the design of the first floor rear extension, the box-like appearance which has minimal separation from the second floor eaves and stretches the entire width of the façade has a cramped appearance that does not present an architecturally authentic or sympathetic extension that reflects the grain and historic character of this terrace. I note commentary in the appellant's Statement of Case (SoC) which highlights a rear extension to No.36 at first floor level which also stretches across the entire façade and results in the loss of the historic first floor rear extension. This extension does appear to have been undertaken a number of years ago, and whilst it does have a part hipped roof (unlike that proposed by the appeal site), does reflect the harm caused as a result of loss of historic fabric and character. This limited example would not be sufficient to demonstrate the appropriateness of the appeal site for a similar type of extension which given the roof form, design and positioning, would present a poorer appearance than this neighbouring property.
11. I also note comments that in the appellant's opinion that there is no harm caused to the CA predominantly because the development is not within the public realm, and where the assessment of harm is only based upon views and what is visible. The duty provided under s72 of the PLBCA does not make any differentiation between whether the development is within the public or private realm, and an assessment of harm is not limited to tangible aspects such as views and should also incorporate intangible aspects. As such it is not appropriate to discount the contribution to the significance of the rear of the buildings to the CA, which as described contribute to the significance of the CA, the status, and architectural authenticity and integrity of the terrace. Taking this into account, the proposed first floor rear extension would not reflect the architectural integrity and authenticity of the terrace and would not be a subservient addition, and as a result, causes harm to the existing building, the greater locality or the CA. Consequently, the scheme would be contrary to DP Saved Policy HOU11 as described previously and would cause less than substantial harm to the CA.
12. Taking the above into account, the proposed first floor rear extension was found to cause less than substantial harm to the significance of the CA within the meaning of the term in paragraph 202 of the National Planning Policy Framework (the Framework). Paragraph 200 of the Framework states that any

harm to, or loss of, the significance of a designated heritage asset requires clear and convincing justification. Paragraph 202 of the Framework requires that, where a proposal would lead to less than substantial harm, the harm should be weighed against the public benefits of the proposal.

13. The appellant has not outlined any public benefits of the scheme. However, to me, the benefits of the scheme would deliver larger residential accommodation for the existing dwelling, as well as result in short term employment opportunities in the construction of the extension, as well as the sustainability improvements as a result of the sedum roof, all of which are important planning policy objectives. However, these benefits may also be present in a more appropriately designed scheme. That said, these benefits would not justify the harm I have identified.
14. I therefore find that the public benefits would not outweigh the harm caused to the significance of the CA. The scheme therefore conflicts with the Framework, which directs, at paragraph 199, 'that great weight should be given to the asset's conservation ... irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to their significance'.
15. In conclusion on this matter, I consider the proposed development would cause less than substantial harm to the significance of the CA. It has not been shown that public benefits would outweigh this harm and so the proposal would conflict with the development plan.
16. Consequently, the proposed extension would result in the loss of positive characteristics and would be clearly disproportionate and the additional visual bulk and massing would not be a satisfactory design response for the dwelling or the locality. Consequently, the proposal would be harmful to the character and appearance of the existing building, and the local distinctiveness of the locality and be contrary to DP Saved Policies HOU11 and HA4, as described previously.

Tree to rear garden of No.36 Portland Road

17. The neighbouring property at No.36 has a relatively large tree (labelled T2 on the Plans) that lies close to the boundary with the crown overhanging the appeal site and according to measurements provided by the appellant would be approximately 5.2 metres from the ground floor extension. According to the proposed garden layout, the reprofiling of the garden would include a terraced area, steps, a retaining wall and the removal of a large amount of soil, some of which would be within the crown of the tree and more than likely within the root structure of this tree.
18. The tree is relatively large in size and is an attractive specimen that makes a positive contribution to the visual amenity of the area. The appellant details in their SoC that there is no detriment caused to the trees as a result of the proposed works, however does not support their statement by any evidence such as an Arboricultural Survey/ impact assessment. Such a survey would be carried out by a professional qualified in arboriculture which gives advice as to the implications of the development, such as the laying of the retaining wall, steps and removal of soil, the options available, and whether this is indeed possible in principle without causing adverse detriment to the tree. This requirement is also noted in the accompanying text to DP Saved Policy DES3

where paragraph 17.7.13 seeks the appellant to obtain appropriate guidance in accordance with British Standard 5837 (BS) on arboricultural constraints.

19. Having reviewed the appeal documents, there is no persuasive evidence such as an Arboricultural Survey made in accordance with BS5837, which would give confidence as to whether the principle of the proposal is indeed possible and whether there are any options available for the reprofiling of land and the single storey rear extension which is also connected and required for the reprofiling of the land so that they do not result in harm towards the neighbouring trees. Whilst I appreciate that the appellant seeks that this could be resolved by condition, I am not of the same opinion given that the principle of such has yet to be established.
20. Based on the evidence before me, it has not been sufficiently demonstrated that the principle of the proposed development would not cause adverse detriment to the neighbouring tree. Consequently, and in conclusion of this matter, the proposed scheme would be contrary to DP Saved Policy DES3 (which seeks to protect and enhance the existing landscape features which are of amenity and/or biodiversity value).

Living conditions

21. Whilst there is already a first floor rear extension close to the boundary of the appeal site, the proposal would see the wall at first floor level increase in height, as well as in depth than the current situation between the appeal site and the rear of No.36. Each of the terraces to the rear have the characteristic first floor rear wing which projects past the rear first floor window which serves a bedroom and as such the current situation is not ideal, and is restrictive towards outlook and loss of light.
22. In regards to shadow cast, given the orientation of the appeal site and neighbouring dwelling at No.36, the shadow cast by the proposed extension would be towards the north and east, hence the proposed extension should not cause any direct overshadowing of the neighbouring dwelling at No.36.
23. With regards to outlook and daylight, there has not been any assessment of daylight distribution or Vertical Sky Component in accordance with acknowledged guidance,¹ however from my own observations whilst on site, the current situation, whilst experienced by all occupiers of the terrace, is not ideal. To me, the increased height and depth of the blank wall between the properties would cause a further reduction in daylight and sense of enclosure and poor outlook to a window which already has a poor outlook and access to light. In this situation, this small increase in size would be a material loss that would exacerbate the already poor living conditions experienced, causing significant detriment to the existing occupant's living conditions at No.36 Portland Place as a result of loss of daylight, sense of enclosure, and outlook.
24. In conclusion of this matter, the proposed extension would cause material detriment to the living conditions of NO.36, and would therefore be contrary to DP Saved Policy DES4 which seeks to ensure development does not materially impact the living conditions of surrounding occupants.

Conclusion

¹ For Example: Building Research Establishment (BRE) publication '*Site layout planning for daylight and sunlight*

25. For the reasons given above, I conclude that the appeal be dismissed.

J Somers
INSPECTOR