



Appeal Decision

Site visit made on 4 July 2023

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 August 2023

Appeal Ref: APP/J1535/W/22/3309683

1 Grange Crescent, Chigwell IG7 5JB

- 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 R Lachani against the decision of Epping Forest District Council.
- The application Ref EPF/2954/21, dated 1 November 2021, was refused by notice dated 29 September 2022.
- The application sought planning permission for double side, double rear extension with alteration to roof without complying with a condition attached to planning permission Ref EPF/2061/20, dated 10 November 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: 01 OS 01, 01 PA 02, 01 HH 01, 01 HH 02 and 01 HH 03.
- The reason given for the condition is: To ensure the proposal is built in accordance with the approved drawings.

Decision

1. The appeal is allowed and planning permission is granted for a double side, double rear extension with alteration to roof at 1 Grange Crescent, Chigwell IG7 5JB in accordance with the application Ref EPF/2954/21 made on 1 November 2021 without complying with condition No. 2 set out in planning permission Ref EPF/2061/20 granted on 10 November 2020 by Epping Forest District Council but otherwise subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of the original decision, that being 10 November 2020.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 01 OS 01, 01 PA 02, 01 HH 03, and 01 MA 03 Rev 5.
 - 3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the host dwelling and those specified on the approved plans.
 - 4) The window openings in the flank elevation at first floor level and above shall be entirely fitted with obscured glass with a minimum level 3 obscurity and have fixed frames to a height of 1.7 metres above the floor of the room in which the window is installed and shall be permanently retained in that condition.

Preliminary Matters

2. The Epping Forest District Local Plan 2011 to 2033 was adopted by the Council on 6 March 2023. This has replaced the Epping Forest District Local Plan (1998) and the Epping Forest District Local Plan Alterations (2006). The Council confirmed that the relevant policy for the appeal is DM9 and I have therefore determined the appeal having regard to this policy. The appellant was given the opportunity to comment on the new policy.
3. The application subject to this appeal is for a minor material amendment¹. It seeks approval of a revised, but not substantially different, design to an extension approved in November 2020². This type of application is possible as a condition was imposed on the original permission specifying the approved plans. The appeal seeks removal of the condition and replacement with a condition specifying the plans that reflect the amended design.
4. The development that has taken place has breached condition 2 which requires that the development will be completed and retained strictly in accordance with the approved drawing numbers: 01 OS 01, 01 PA 02, 01 HH 01, 01 HH 02 and 01 HH 03.
5. I am in receipt of amended plans from the plans referred to in the Council's Decision Notice. The amended plans show the dormer window extending across the rear elevation towards the valley of the roof slope, and show the balcony to be inset with a solid continuation of the roof as opposed to the balustrade considered by the Council.
6. As these are minor amendments, and the Council's concerns on the original set of plans are clear in their evidence, I do not consider that their interests or those of any interested parties would be prejudiced if I take these amended plans into account. I shall therefore determine the appeal on the basis of the plans referred to on the decision notice but substituting plan 01 MA 03 Rev 4 with plan 01 MA 03 Rev 5.

Main Issues

7. The main issues are the effect that varying the condition would have on 1) the living conditions of occupants of surrounding residential properties with regard to privacy, and 2) the character and appearance of the host property and the surrounding area.

Reasons

Living conditions

8. The amended plans subject to the appeal show a balcony set into the hipped roof of a previously approved extension where a roof light had been previously proposed. On my site visit I observed that a balcony with protruding balustrade had been installed at the property. This is not however the development before me. The development before me shows how the roof slope would continue upwards before leaving an open section and then continuing.

¹ See Flexible options for planning permissions: Guidance, March 2014 (Ministry of Housing, Communities & Local Government)

² Planning permission ref: EPF/2061/20

9. The balcony would be at the second-floor level. I observed on my site visit that there were balconies and roof terraces to some surrounding properties, including at the first-floor level of 1A and 1B Grange Crescent adjacent to the appeal property, 1 Oak Lodge Avenue which is to the rear of the appeal property, and across three levels at the block of flats on the corner of Manor Road and Oak Lodge Avenue. It is therefore evident that there is mutual overlooking to varying degrees in the surrounding properties.
10. The proposed balcony would be set-in to the roof of the property and thus occupiers would be prevented from walking to the edge of the roof as is possible with the current installation. The sides of the roof would act as privacy screens and would restrict views from the balcony to a narrower angle. There would also be a solid sloping front, in the continuation of the roof slope, as opposed to the open nature of the balustrade that has been installed on site.
11. The balcony would be around 50 metres from the properties to the rear of the appeal property. Even though the balcony would be at a higher level than some of the surrounding balconies, given this degree of separation, the impact on privacy in terms of overlooking would not be unacceptable. Whilst an element of overlooking would be permissible, given the restriction enforced by the inseting of the balcony, and the separation from surrounding properties, I do not consider this would be unacceptable.
12. The proposed inset balcony would therefore not cause unacceptable harm to the living conditions of the occupants of surrounding residential properties with regard to privacy. It would comply with Policy DM9 of the Epping Forest District Local Plan (2023) which requires, amongst other things, that developments avoid overlooking and loss of privacy which would be detrimental to the living condition of neighbouring occupiers.
13. It would also comply with the National Planning Policy Framework (2021) (the Framework) which outlines, amongst other things, that planning decisions should ensure that developments create places with a high standard of amenity for existing and future users.

Character and appearance

14. The Council's reason for refusal, as it relates to the matter of character and appearance refers to the 'inset' dormer window. I have taken this to refer to the dormer window that has been installed on the rear elevation of the property. The Council consider it is an incongruous addition however their reason for refusal does not give reasons why they hold this view.
15. The dormer is set in slightly from the boundary with the adjoining property. It spans the remainder of the roof, right across to the hipped section of the projecting extension where it terminates into the valley of the roof.
16. Although it is slightly greater in bulk than the permitted dormer, I do not consider it to be of such a greater extent that it results in an unacceptable impact. It incorporates tile hanging to match the existing roof and is largely screened by the projecting two storey extension with hipped roof. Furthermore, being located at the rear of the property, it is not readily visible from the street scene, with only glimpsed views, at a distance, permissible from the gaps between properties on Oak Lodge Avenue. I also observed that large rear dormers are features of many of the surrounding properties.

17. Therefore, due to its overall design, size and siting, the dormer window does not cause unreasonable harm to the character and appearance of the host property or the surrounding area. It complies with Policy DM9 of the Epping Forest District Local Plan (2023) which requires, amongst other things, that alterations to residential buildings respect and/or complement the form, setting, period and details of the original building using matching or complementary materials.
18. It would also comply with the Framework which outlines, amongst other things, that planning decisions should ensure that developments are well designed and sympathetic to local character, including the surrounding built environment.

Other Matters

19. Representations have referred to the erection of an outbuilding and the installation of air conditioning units at the appeal property. Neither of these form part of the development before me.
20. Representations have also referred to alterations to the fenestration and sky light. The Council did not raise any objection to these and due to their design, size, and siting, I also do not consider they cause unreasonable harm in relation to the living conditions of occupants of surrounding properties or the character and appearance of the property or the surrounding area.
21. Several representations refer to the development being undertaken not in accordance with the approved plans, and that no justification is given why the development has not been built in accordance with the approved plans. I acknowledge that where development has been undertaken that is not in accordance with previously approved plans, this can be of frustration to interested parties. However, this does not provide a reason to dismiss the appeal where I have found the development to be acceptable on its own individual planning merits.
22. The planning process does not preclude retrospective applications. Developers carrying out work without, or in breach of, the appropriate consent do so at their own risk. I have confined my decision to the plans before me, including having regard to the extant consent and other material planning considerations.

Conditions

23. In addition to the standard time limit condition (amended to relate to the original consent), I have imposed a condition reflecting the variation to the list of approved plans. I have retained the non-disputed conditions in relation to matching materials and use of obscure glazing, in the interests of the character and appearance of the area and the living conditions of surrounding occupants respectively.

Conclusion

24. For the reasons outlined above, and taking into account all other matters raised, I conclude that the appeal should be allowed.

A M Nilsson

INSPECTOR