
Appeal Decision

Site visit made on 15 August 2023

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 05 September 2023

Appeal Ref: APP/X1925/C/22/3297153

Land at 10 Stormont Road, Hitchin SG5 1SJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Rajan Sharma against an enforcement notice issued by North Hertfordshire District Council.
 - The enforcement notice was issued on 17 March 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission – extension/s to a residential dwelling.
 - The requirements of the notice are:
 - (i) Permanently remove the extension(s) at the property, and return the property to its former condition as shown on the existing elevations plan PB-17/10STOR/02 submitted with refused planning application 20/00623/FPH and attached to this Notice.
 - (ii) Make good the appearance of the property following the removal of the extension(s) to match the previous appearance of the property prior to the extensions being built.
 - (iii) Permanently remove from the site all waste materials resulting from the demolition of the extension(s).
 - The period for compliance with the requirements is:
 - (i) Within 12 months of the day this notice takes effect.
 - (ii) Within 12 months of the day this notice takes effect.
 - (iii) Within 12 months of the day this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) 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 as amended.
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Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of extensions to a residential dwelling on Land at 10 Stormont Road, Hitchin SG5 1SJ referred to in the notice, subject to the following conditions:
 - 1) The extensions hereby permitted shall be removed and the property returned to its former condition and all materials resulting from the demolition shall be removed within 3 months of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 1 month of the date of this decision a scheme for building works to reduce the depth of the single storey rear extension (dining

area) adjacent to the common boundary of the site with No 12 Stormont Road by 2 metres and replace its pitched roof with a flat roof, shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.

- ii) If within 3 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
- iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Procedural Matter

- 2. Since the enforcement notice was issued and the appeal submitted the Council has adopted the North Herts Local Plan, 2011-2031. I have been able to view policies comprised in the new development plan which are relevant to matters at appeal and the appellant has made reference to those policies in his statement of case and so has not been prejudiced.

Appeal on ground (a), deemed planning application

Background and Main Issue

- 3. Planning permission was granted in July 2017 at the appeal premises for a single storey rear extension, following demolition of existing single storey rear extension, and for part two storey side and rear extension over existing garage including conversion of existing garage into additional living accommodation and single storey front porch extension¹.
- 4. In January 2020 it was brought to the Council's attention that the development had not been carried out in accordance with the plans approved in the 2017 permission. A retrospective application for planning permission for the development as constructed was subsequently refused by the Council in May 2020 for reasons relating to the excessive height, depth and position along the common boundary of the ground floor rear single storey extension and the harmful impact of that part of the unauthorised development on the living conditions of the occupiers of No 12 Stormont Drive. The enforcement notice the subject of this appeal was subsequently issued in March 2022.
- 5. The differences between the approved plans and the unauthorised development comprise:

¹ Local Planning Authority Ref: 17/01394/1HH.

- increase in depth of single storey rear extension adjacent to boundary with No 12 from 3m to 5m;
- flat roof to single storey extension altered to a pitched roof;
- alteration of main roof to the dwelling from hip to a gable;
- conversion of loft and construction of flat roofed rear dormer window; and
- extension of sloping porch roof to front of dwelling up to boundary with No 12.

It is the Council's view that due to the substantial departure from the 2017 permission, that scheme was not implemented and has expired. However, having regard to s56(2) and (3) of the Town and Country Planning Act, 1990, as amended (the Act) development shall have been taken to be begun for the purposes of ss91 and 92 of the Act on the earliest date on which any material operation comprised in the development begins to be carried out. 'Material operations' are defined in s56(4) and include digging of a trench, any work of demolition of a building and any work of construction in the course of erection of a building. It has been found in the courts that it is possible to commence a development for the purpose of s56 and thereby meet a deadline forming a condition on a planning permission, and later deviate from the permitted works in a manner that later became an enforcement issue without retrospectively altering the fact that the commencement of the development had occurred for s56 purposes. From the evidence before me a material operation comprised in the development took place within the statutory period prescribed in the permission (i.e. 3 years from the date of the 2017 permission) and thus the 2017 permission remains extant.

6. Nevertheless, the Council's reasons for issuing the enforcement notice, which correspond to those set out in the officer report and reasons for refusing the retrospective application, relate solely to a specific part of the unauthorised development, namely the scale of the single storey rear extension, and the harm this has caused to the living conditions of the occupiers of the adjoining property, No 12 Stormont Road. There are no concerns raised in relation to the remainder of the development, including unauthorised hip to gable roof alteration, the rear dormer, nor the extended front porch roof.
7. Having regard to all of the above, the main issue in this appeal is the effect of the development on the living conditions of the occupiers of the adjoining property, with particular regard to sunlight and outlook.

Reasons

8. The appeal property is a semi-detached dwelling with a front drive and generous rear garden. It is situated in a residential neighbourhood within the town of Hitchin. The adjoining property retains its original footprint. However, its roof has been altered from a hip to gable, the loft converted and a large flat roof dormer constructed on the rear roof slope.
9. The development the subject of the 2017 permission included a single storey rear extension abutting the site's common boundary with No 12. This part of the approved scheme would have extended to a depth of 3m beyond the rear wall of the original dwelling and to a height of 2.85m with a flat roof. The

unauthorised single storey element is 5m deep and has been constructed with a pitched roof and a maximum height of 3.6m.

10. No 12 has its ground floor dining room windows, including a glazed door, within a metre of its common boundary with the appeal site. In addition, the ground floor of No 12 is at a slightly lower level than that of the ground floor of the unauthorised extension. I observed on my site visit, which was undertaken in the early afternoon on a sunny day, that the unauthorised single storey extension, which is situated to the south of No 12's rear elevation, casts a shadow over a large part of the dining room window/glazed door, and also over the patio area immediately adjacent to it. That shadow will increase during the mid-late afternoon as the sun drops down in the sky. In addition, although the dining room to No 12 retains unrestricted views of its rear garden, the depth and height of the unauthorised single storey extension has resulted in an imposing and dominant flank wall which has an enclosing effect on the aspect from the dining area and patio.

Conclusion

11. For the reasons given above I conclude that the unauthorised development has a harmful effect on the living conditions of the occupiers of the adjoining property, with regard to sunlight and outlook. There is conflict with the development plan, including Policies D2 and D3 of the adopted North Herts Local Plan 2011-2031 (LP) which seek, amongst other criteria, to protect living conditions and ensure that extensions do not dominate adjoining properties. I also find conflict with paragraph 130 (f) of the National Planning Policy Framework (the Framework) which requires a high standard of amenity for existing and future users.
12. Section 177(1) (a) of the Act allows permission to be given under appeal on ground (a) to any part of the matters alleged in the notice. To that end, the appellant has advanced, largely under ground (f), four alternative options to that the subject of the notice. I have had regard to the Council's concerns that my consideration of those options would result in some injustice to neighbouring residents. However, neighbouring occupiers have been notified of the appeal and thus had an opportunity to comment on the appeal submissions, including Options 1-4. There would therefore be no injustice to them in that regard.

Option 1

13. Option 1 proposes the retention of all of the extensions as built but would see the pitched roof of the single storey rear extension adjacent to the boundary with No 12 altered to form a flat roof. It seems to me that the single storey extension comprising the dining room, with the pitched roof removed, would form part of the matters stated in the notice. It is therefore open to me to grant planning permission for Option 1 under ground (a).
14. Nevertheless, the alternative would not result in any reduction in the depth of the single storey extension. Although the height of this part of the extension would be reduced, that reduction in height alone would not overcome the harm that I have identified to the living conditions of the occupiers of the adjoining property. The depth of the extension, even with a flat roof, would still result in a loss of sunlight to the neighbour's dining room and private amenity/patio area and it would remain a dominant and enclosing extension.

15. I conclude, therefore, that Option 1 would not overcome the harm I have identified in respect of the effect of the development on the living conditions of neighbouring occupiers.

Option 2

16. Option 2 proposes the retention of all the extensions as built but would reduce the depth of the single storey rear extension (dining room) by 2m along the common boundary with No 12 and replace the pitched roof above this section with a flat roof. Although these alterations would require the construction of two new small sections of walling to facilitate the reduction in the floor area, the resultant development (Option 2) would clearly still form part of the matters stated in the notice, and therefore open to me to grant planning permission for it under ground (a).
17. The resultant extensions would have the same footprint as the extensions approved by the Council in 2017. In addition, the single storey element adjacent to the common boundary would have a flat roof and thus its form, height and proportions would also be the same as the single storey extension approved in this location in the 2017 permission. I am satisfied that the reduction in height and depth of that part of the extensions, as illustrated in Option 2, would overcome the harm I had identified to the living conditions of neighbouring occupiers. The reduced depth and flat roof would significantly reduce the extent of the flank wall such that it would not have a harmful enclosing effect, and any overshadowing would not be significant.
18. I conclude that subject to the unauthorised development being altered in the manner set out and illustrated as Option 2, there would be no harm to the living conditions of the occupiers of No 12. There would be no conflict with the development plan as a whole, including Policies D2 and D3 of the LP nor the Framework, the aims of which are set out above.
19. Considering my conclusion on Option 2, it is not necessary for me to consider Options 3 or 4 which provide for more onerous modifications to the unauthorised development than those provided for in Option 2.

Conditions

20. The deemed planning application is made in respect of the development as alleged and built. Whilst the appellant has submitted revised plans to illustrate Option 2, as set out above, the Act does not provide a mechanism for incorporating any revised plans into any deemed planning permission granted. It is not possible to impose a 'plans' conditions on the planning permission, or to impose a condition which purports to modify the details of the development.
21. I shall therefore grant planning permission for the development alleged subject to a condition that requires that a scheme of building works, to comprise those details which are shown in Option 2, to be submitted to the Local Planning Authority for their approval and then implemented. The purpose of the condition is to require the appellant to comply with a strict timetable for dealing with the building works required to reduce the scale of the single storey rear extension, which needs to be addressed in order to make the development acceptable. The condition is drafted in this form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded

condition precedent to secure the subsequent approval and implementation of the outstanding detailed matter because the development has already taken place. The condition therefore provides for the loss of the effective benefit of the grant of planning permission where the detailed matters in question are not submitted for approval during the time set by the condition, approved (either by the local planning authority or by the Secretary of State on appeal, and then implemented in accordance with an approved timetable. Should the requirements of the condition not be met in line with the strict timetable, the unauthorised buildings would have to be removed. The local planning authority would be able to enforce against the breach of condition either through a further enforcement notice or the issue of a breach of condition notice under s187A of the Act, against which there is no right of appeal.

Overall Conclusion

22. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for extensions to the residential dwelling as described in the notice subject to conditions. The appeal on ground (f) does not fall to be considered.

Elizabeth Pleasant

INSPECTOR