



Appeal Decision

Site visit made on 15 August 2023

by Peter White BA(Hons) MA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 January 2024

Appeal Ref: APP/K1935/C/22/3296469

68 Basils Road, Stevenage, Herts SG1 3PZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr A Dear against an enforcement notice issued by Stevenage Borough Council.
- The notice was issued on 9 March 2022.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a two storey rear extension on the land, in the approximate position marked with a cross on the attached plan.
- The requirements of the notice are:
 - (i) Remove the first floor of the two storey rear extension
 - (ii) The resulting single storey rear extension shall be of the same height, design and appearance as the single storey rear extension showing the Proposed Ground Floor on plan number "2 – Existing and Proposed Elevations" dated 20th August 2021 submitted with planning application 21/01256/FPH.
 - (iii) The first floor rear elevation and rear roof slope shall be re-instated to their original appearance prior to the erection of the two storey extension as shown on plan numbers "2 – Existing and Proposed Elevations" and "4 – Existing and Proposed Floor Plans" dated 20th August 2021 submitted with planning application 21/01256/FPH using materials of a similar appearance to those used in the construction of the original dwelling.
- The period for compliance with the requirements is: 24 weeks.
- The appeal is proceeding on the ground set out in section 174(2)(a) 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.

Summary of decision: Subject to a correction and variations the notice is upheld, the appeal is allowed in part, and the deemed planning application is allowed in part, in the terms set out in the Formal Decision below.

Preliminary Matters

1. In January 2023 the Stevenage Design Guidance Supplementary Planning Document (SPD) (2023) replaced the Stevenage Design Guide (2009). The appellant and the Council (the parties) have been provided an opportunity to comment on the new document, and I have taken those comments into account in my decision.
2. Although the reasons for issuing the notice refer to outlook and loss of privacy in relation to the living conditions of neighbouring occupiers, the Council's statement also refers to light levels in relation to 70A Basils Road. As the appellant has had the opportunity to comment on this matter, and has done so, neither party would be prejudiced were I to consider this matter. I have therefore done that as part of the main issue.

3. In December 2023 the National Planning Policy Framework (the Framework) was updated. No material changes were made to the matters raised by the parties, and it has therefore not been necessary to seek their views.

The Notice

4. It is incumbent on me to ensure the Notice meets the requirements of Section 173 of the Town & Country Planning Act 1990 (the Act), which relates to the content and effect of an enforcement notice.

The allegation:

5. The notice alleges the erection of a two-storey rear extension. However, at my site visit it was clear the development was a part two-storey, part single-storey extension carried out as a single development. Section 176(1)(a) of the Act empowers me to correct the notice, but only if no injustice would be caused to the appellant or the Council.
6. The revised description of the breach would more accurately reflect the development which was enforced against. The parties have both dealt with the appeal on the basis that it is a part two-storey, part single-storey extension. As a result, no injustice would arise and I shall correct the notice accordingly.

The requirements:

7. The relevant parts of Section 173(3) and (4) require an enforcement notice to specify the steps to be taken in order to remedy the breach, by restoring the land to its condition before the breach took place or, remedying any injury to amenity caused by the breach. In this case those requirements are described in Section 5 of the Notice.
8. The purpose of the notice is to remedy the injury to amenity caused by the breach of planning control, rather than remedy the breach in its entirety. In doing so, the Council requires the removal of the first floor, while facilitating the retention of the extension insofar as it relates to the ground floor only.
9. Requirement 5(i) requires removal of the first floor of the two-storey extension, and is the minimum step required to remedy the alleged injury to amenity.
10. Requirement 5(ii) then requires the resulting elements of the extension to be (made) of the same height, design and appearance as the "single storey rear extension" with reference to a drawing. It seeks to remove the first-floor element but retain the ground-floor element in accordance with the drawing. However, the drawing simply shows the development in its built form which comprises the breach. Thus, if complied with, the requirement would simply result in the first-floor element being removed and the ground-floor element being retained. That would effectively duplicate the first requirement. As a result, I can vary the notice to delete the requirement without injustice to the appellant or the Council.
11. In seeking to require the removal of only part of the development, the notice requires alterations likely to result in additional expense to the appellant. In these circumstances, the notice should also provide an option for its complete removal, and re-instatement of the dwelling to its condition before the development takes place. The inclusion of such an option in addition to the existing requirement would not cause injustice to the appellant or the Council,

as it would remedy the breach in its entirety, and facilitate choice for the appellant without interfering with the existing requirements.

THE APPEAL ON GROUND (A)

Background and Main Issue

12. Appeals on ground (a) are made on the basis that planning permission should be granted for the development alleged in the Notice. As corrected, the notice alleges the erection of a part two-storey, part single-storey extension at the rear of 68 Basils Road (No 68).
13. The main issue is the effect of the development on the living conditions of neighbouring occupiers, with particular regard to outlook and privacy of occupiers of 23 Victoria Close (No 23), outlook of occupiers of 70 Basils Road (No 70), and outlook and light levels for occupiers of 70a Basils Road (No 70A).

Reasons

14. No 68 is a two-storey terraced house on a residential estate. Due to the curvature of the road, No 70 runs diagonally adjacent to No 68's rear garden. No 70A accommodates the triangular parcel of land between No 70 and the side elevation of No 68. Beyond No 68's rear garden, No 23 is an L-shaped single storey dwelling on a small plot with its rear patio doors facing the extension.
15. Neither the Council nor the appellant have alleged harm arising from the single storey element of the development, and the Council acknowledge that a purely single storey extension could have been erected as 'permitted development'. I agree with that view, noting its limited effects on neighbouring properties.
16. The element of the development the Council considers to be harmful is its two-storey element, which extends around 3.5m in depth beyond the rear of No 68 and serves a bedroom with a window facing the rear garden and No 23 beyond.
17. Stevenage Borough Local Plan 2022-2031 (2019) (SBLP) Policy GD1 supports development which does not have an adverse impact on the amenity of neighbouring occupants and complies with its separation distances. Between dwellings those separation distances are 25m back-to-back, and 15m back-to-side. The text supporting them refers to overlooking of neighbouring houses and gardens, and outlook from neighbouring dwellings. The same distances are sought in the 2023 SPD.

Effects on No 23:

18. The two-storey element of the development brings the rear external wall and a bedroom window closer to No 23, resulting in a distance the parties state is just over 15m from No 23's main rear façade and patio windows. The Council also advises that No 23's rear projection is closer, but acknowledges there is no intervisibility with that part of the building.
19. The first-floor extension, and the window serving it, is significantly closer than the separation distances established in the SBLP and SPD. Most of No 23's glazed patio doors were visible from the first-floor bedroom window at the time of my visit, and much of No 23's garden was also visible.

20. Although there would have been a degree of overlooking before the development took place, the reduction in the separation distance between the properties is significant in the context of the existing shortfall in meeting the standard separation distance. The absence of an objection from the current occupier of No 23 is not necessarily a reflection of the absence of harm, and I consider the extent of overlooking to be significant and harmful.
21. I also note the Council refers to a 2021 appeal decision at Gorleston Close, Stevenage (reference: APP/K1935/D/20/3263519). Although I have only limited details of the circumstances of that appeal, that Inspector appeared to have reached similar conclusions in relation to a reduction in separation distances and privacy. This decision therefore supports my own conclusions.
22. I agree with the Council that to obscure glaze the sole bedroom window would not provide adequate living conditions for occupants, and that the insertion of side windows would result in loss of privacy to occupiers of other dwellings and/or result in inadequate outlook for the occupants of No 68. The harm I identify in respect of privacy could therefore not be suitably limited or prevented through the use of planning conditions.
23. In relation to outlook from No 23, although the first-floor element of the development is somewhat more prominent from the house and garden than it was prior to the development, it is not so prominent that it is harmful to living conditions.

Effects on No 70:

24. The rear of No 70 looks diagonally across its irregularly-shaped garden towards No 68's. The appellant's photographs suggest there has previously been significant vegetation along the boundary, limiting intervisibility between the properties and their gardens. By extending outwards at first floor level No 68 extends only marginally beyond the frontage of No 70, but is a more significant presence, due in part to the removal of some of the vegetation. The development therefore increases the mass of No 68 as seen from No 70's garden, but not to an unacceptable degree.
25. The appellant advises that the development reduces the extent of overlooking from the original bedroom window. But I have not seen that evidenced, and the photographs provided to me suggest the vegetation in place prior to the extension effectively limited intervisibility. Nevertheless, the Council have not alleged a harmful degree of overlooking of No 70, and I have seen no reason to disagree.
26. I have not seen specific guidance on the application of the back-to-side separation distance to irregular layouts. A strict interpretation with a projection directly to the rear of No 70 avoids the side of No 68 altogether, and I am not convinced the back to side separation distance applies to this development.
27. I have therefore not found material harm to the living conditions of occupiers of No 70, in terms of outlook.

Effects on No 70A:

28. No 70A is triangular in shape. At the rear it is separated from No 68 by private paths either side of the boundary fence. The Council advises that the narrow

space between the dwellings is around 2.5m wide, substantially less than the minimum back-to-side distance of 15m.

29. Being triangular in shape, and sharing a party wall with No 70, No 70A is heavily reliant on its front and rear windows. Outlook from No 70A's ground and first floor windows largely face No 68's gable end side wall, which the two-storey extension extends by a distance the Council advises is around 3.5m.
30. I have not seen any comments from owners or occupiers of No 70A, but the Council has provided plans which show its internal layout. The appellant also notes that the ground floor living room is a dual aspect room. The main window to the room is the front north-east facing window, but there will also be some light from the adjoining north-west facing kitchen, which has a window and rooflights. In addition, the rear window is already significantly obscured by its proximity to, and aspect towards, No 68's side wall.
31. In terms of outlook, given its location, and as the rear window already faces the side wall of No 68, I am not convinced there would be sky views from the living room if the upper storey of the extension were removed. In relation to light, the rear window of the living room is south facing, and although marginally set back from No 68's side elevation, the additional two storey brick wall is likely to have further limited daylight and sunlight into it to a degree.
32. Other windows at ground and first floors are WC and shower rooms and a small triangular space leading from, or part of, a landing; none of which are normally considered habitable rooms. A south facing window serving a second floor 'terrace room' living room would not be unduly affected by the development due to its elevation.
33. The majority of windows facing No 68's side wall therefore do not serve habitable rooms, or are secondary in nature. No 70A is not a typical dwelling, and even though the rear window may have contributed to light levels in the ground floor living area, I am not persuaded that room is dependent on it. North-facing or single aspect living rooms are not uncommon, but the ground floor living area also has the prospect of light from the front windows and door, the kitchen and the rear windows. There is also another living space in the form of the 2nd floor 'terrace room'.
34. Overall, the development therefore conflicts with the SBLP and SPD 15m minimum separation distance, and is likely to have reduced light levels to rear ground and first floor windows of No 70A. Nevertheless, considering the unusual nature and layout of No 70A, the effect on outlook and light levels for its occupiers is limited.

Conclusion:

35. Although I have not found harm to the living conditions of No 70 or 70A Basils Road, the two-storey element of the development is harmful to the living conditions of occupiers of 23 Victoria Close, with regard to outlook and privacy. The first-floor elements of the development therefore conflict with the relevant aspects of SBLP Policies GD1 and SP8, which relate to good design and apply separation distances between dwellings.
36. At the same time, the ground floor elements have no harmful effect in terms of outlook and privacy, even if they do not fully meet the separation distances. In relation to the ground floor, there is therefore limited conflict with SBLP Policies

GD1 and SP8, which should be weighed against the benefits of the development.

Other Matters

37. The development provides additional ground and first floor space for the occupiers, and the appellant advises its retention would enable the family to continue living in the property. They consider it enhances and makes efficient use of the property, which will benefit existing and future occupiers, and that its increase in value may also benefit the Council in increased Council Tax payments. The Framework provides general support for the social and economic aspects of sustainable development, efficient use of land, and in a positive approach to decision making. However, that support is not unqualified, and must be balanced with the need for good design and consideration of local design policies and standards.
38. Together these attract limited weight in favour of the development which outweighs the harm and conflict with development plan policies I identify in respect of the ground-floor element of the development, but not that arising from the first-floor.

Conclusion

39. I therefore conclude that the two-storey element of the development conflicts with the development plan and the approach in the Framework, and no other material considerations require a decision to be made other than in accordance with the development plan.
40. In relation to the ground-floor element, the limited conflict with development plan policy is outweighed by the benefits of the development.
41. For the reasons given above I conclude the appeal should succeed in part only, and I will grant planning permission for the ground-floor rear extension, but otherwise I will uphold the notice with a correction and variations and refuse to grant planning permission in respect of the other parts. The requirements of the notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of s180 of the Act.

Decision

42. It is directed that the enforcement notice is corrected and varied by:
- In Section 3 of the notice, the deletion of the words "the erection of a two storey rear extension" and the substitution of the words "the erection of a part two-storey, part single-storey rear extension" in Section 3 of the notice.
 - deleting requirements (i)-(iii) in Section 5 of the notice, and their replacement with:
"Either
(i) Remove the first floor of the two-storey rear extension; and
(ii) Re-instate the first-floor rear elevation and rear roof slope to their original appearance prior to the erection of the two-storey extension as shown on plan numbers "2 – Existing and Proposed Elevations" and "4 – Existing and Proposed Floor Plans" dated 20th August 2021 submitted with planning application 21/01256/FPH using materials of a similar appearance to those used in the construction of the original dwelling;

or

(iii) Remove the part two-storey, part single-storey rear extension and reinstate the dwelling to its condition before the development took place.”

43. Subject to the correction and variations, the appeal is allowed insofar as it relates to the ground-floor rear extension and unconditional planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for ground-floor rear extension at 68 Basils Road, Stevenage, Herts SG1 3PZ.
44. The appeal is dismissed and the enforcement notice is upheld as corrected and varied insofar as it relates to the two-storey rear extension and planning permission is refused in respect of a two-storey rear extension at 68 Basils Road, Stevenage, Herts SG1 3PZ on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Peter White

INSPECTOR