

Appeal Decision

Site visit made on 11 March 2024

by Mr C J Tivey BSc (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 April 2024

Appeal Ref: APP/Z3635/D/23/3333634

48 Elgin Avenue, Ashford TW15 1QF

- 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 Mr Andrew Evans against the decision of Spelthorne Borough Council.
 - The application Ref 23/00325/HOU, dated 24 April 2023, was refused by notice dated 31 August 2023.
 - The development proposed is for a summerhouse/shed in the side garden.
-

Decision

1. The appeal is dismissed.

Preliminary Matter

2. A revised version of the National Planning Policy Framework (the 'Framework') was published in December 2023, but there are no material changes relevant to the substance of the appeal.
3. The building, the subject of the appeal, was substantially complete at the time of my site visit and I have determined the appeal on this basis.

Main Issues

4. The main issues are the effect of the appeal proposal upon: the character and appearance of the area; the appellant, in relation to their private and family life and home; and the appellant's personal circumstances and need for home gym equipment.

Reasons

5. The appeal site is located within a residential estate whereby dwellings have been altered and extended over time; and outbuildings are a common feature within rear gardens, many of which are in backland locations.
6. 48 Elgin Avenue is in a prominent location situated to the northwest of the junction of Cecil Road with Hogarth Avenue, with the subject building essentially constructed adjacent to the roadside of the latter street, forward of the principal elevations of both the host dwelling and that of 59 Hogarth Avenue.
7. The outbuilding itself is highly visible in the street scene with its eaves rising above the adjacent garden boundary fence. It has a pitched roof which

accentuates its visual impact. I note that the Council's Design of Residential Extensions and New Residential Development Supplementary Planning Document (SPD) seeks to maintain strong and regular patterns in the layout, spacing and design of existing properties, and whilst it appears that the subject building is substantially constructed, its materials look out of character with the predominantly brick, tile and rendered houses surrounding it.

8. I acknowledge that the appellant believes that the appeal scheme was permitted development and whilst I note reference to a fallback position, this has not been substantiated. The substation on the western boundary of the site does impinge upon the layout of the private amenity space which serves no 48 and the side garden does constitute a fair proportion of that, unlike the majority of other properties within the locality. I therefore have sympathy with what the appellant was seeking to achieve.
9. I note that the Council did not refuse planning permission on the grounds of impact upon the living conditions of surrounding residents and it is apparent that prior to the removal of the trees within the curtilage of the substation that the outbuilding would have been screened when viewing it from the west. Nonetheless, this is only one vantage point and it can be clearly seen from the northeast, east and south, and appears rather isolated and exposed within the general street scene.
10. I have had regard to the other examples cited where outbuildings are visible from the public highway, however ultimately each case must be assessed on its own merits. A flat roof would certainly have reduced the overall visual impact of the outbuilding, however such a scheme would need to be determined by way of a fresh planning application and ultimately it is not for me to determine the appropriateness of such a solution or otherwise, as to do so would fetter the Council's future decision making.
11. Paragraph 8 of the Framework sets out the three overarching objectives of sustainable development, which are interdependent and need to be pursued in mutually supportive ways and include: A social objective which, amongst other things, seeks to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations, and by fostering well-designed, beautiful and safe places; and an environmental objective which includes protecting and enhancing the built environment, including making effective use of land.
12. Paragraph 96 of the Framework stipulates that planning decisions should aim to achieve healthy, inclusive and safe places and beautiful buildings which, amongst other things, are safe and accessible, so that crime and disorder, and the fear of crime do not undermine the quality of life; and enable and support healthy lifestyles. The above demonstrates that promoting healthy and safe communities needs to be balanced along with the principles of good design in the public interest.
13. I have previously acknowledged the reference to the removal of the trees within the electricity substation compound, however I have not been provided with any evidence that they were protected by a Tree Preservation Order and therefore required some form of consent for their removal. Nonetheless I empathise, in that it has rendered the side garden as more visually exposed

from above ground floor windows from houses to the west. That said, I am not convinced that the proposed outbuilding is the only means of improving the current situation and it has not been demonstrated that other methods of enhanced screening have been explored.

14. Taking into account the presence of the boundary fencing and the orientation of those dwellings along Hogarth Avenue, I consider that in many cases any views from these properties into the appeal site are oblique. I say this notwithstanding that I have no reason to doubt that the perception of overlooking from 8–10 houses was not there before the trees were removed.
15. I accept that removing the summerhouse would remove the privacy currently afforded by it, but it is inevitable in residential estate situations where there is generally a degree of mutual overlooking between properties, and in certain circumstances such as that which the appeal site that finds itself located, on a more unusually shaped corner plot, that some dwellings are more visually exposed than others, not only in terms of the level of overlooking that they experience, but also conversely, the level of exposure that a site has within the public realm.
16. With respect I note the comments regarding the use of CCTV on people's houses, however this has not been evidenced and whilst it is very unfortunate that the side garden has experienced littering, and quite clearly any broken glass could create a hazard for the appellant and his child, I am not convinced that the outbuilding would prevent this from occurring again in the future. Further, I fully acknowledge the need for the summerhouse to provide gym equipment for the appellant, in the interests of maintaining and improving both his physical and mental health, but such facilities could be provided within a building of a different siting and/or design. Notwithstanding this, the child's best interests and their right to privacy and safety are of utmost importance and must be weighed within the planning balance.
17. I have found that the summerhouse is harmful to the character and appearance of the area to which I attach substantial weight.
18. In favour of the appeal, I have found that the building does provide incidental gym facilities for the appellant, as well as providing some privacy to the external amenity space of the host dwelling. I attach significant weight to the family's situation; however, occupation of dwellings is ultimately transitory and the appellant's circumstances could change in the future whereas the building would remain on the site and continue to harm the character and appearance of the area in posterity.
19. Dismissing the appeal will interfere with the appellant and his family's rights to peaceful enjoyment of their possessions, and to a private and family life and home, pursuant to Article 1 of the First Protocol and Article 8 as set out under the Human Rights Act 1998. However, those are qualified rights and the interference with them in this instance would accord with the law and in pursuance of a well-established and legitimate aim to protect the public realm from development, which is deemed to be unacceptable, having regard to the Development Plan.
20. Consequently, as neither the appellant or his family will be made homeless, it is proportionate and necessary to refuse to grant planning permission with there

being no violation of their human rights. The protection of the public interest cannot be achieved by means that are less interfering with their rights.

21. In coming to my decision I have also had regard to the Public Sector Equality Duty (PSED) set out under S149 of the Equality Act 2010; the risk caused by the summerhouse on the character and appearance of the area outweigh its benefits in terms of eliminating discrimination against persons with the protected characteristics of age and/or disability, advancing equality of opportunity for those persons and fostering good relations between them and others. I conclude that it is proportionate and necessary to dismiss the appeal.
22. I therefore find that by reason of its design, scale and location that the summerhouse constitutes a visually obtrusive and unsympathetic form of development to the surrounding pattern of built form within the locality and conflicts with Policy EN1 of the Spelthorne Core Strategy and Policies Development Plan Document (2009) which requires a high standard in the design and layout of new development and, amongst other things, seeks proposals to demonstrate that they will create buildings that are attractive with their own distinct identity whilst respecting and making a positive contribution to the street scene and the character of the area in which they are situated, paying due regard to scale, height, proportions, building lines, layout, materials and other characteristics of adjoining buildings and land.

Conclusion

23. Having regard to the above and all other matters raised by the appellant, I conclude that the appeal be dismissed.

C J Tivey

INSPECTOR