



Appeal Decision

Site visit made on 16 April 2024

by J Davis BSc (Hons) MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26.04.2024

Appeal Ref: APP/B1930/D/24/3337754

13 Kirkwick Avenue, Harpenden, Hertfordshire, AL5 2QU

- 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 J & Mrs A Stacey against the decision of St Albans City & District Council.
 - The application Ref 5/23/0960, dated 3 May 2023, was refused by notice dated 7 November 2023.
 - The development proposed is described as 'Proposed erection of new Two-Storey Front Extension and First Floor side extension with rooflights (resubmission following refusal of planning application Ref No 5/2022/0773)'.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposal on the living conditions of the occupiers of 15 Kirkwick Avenue.

Reasons

3. The appeal property is a large, detached dwelling arranged over three floors with a single storey element to the side. Both Nos 13 and 15 Kirkwick Avenue are located within irregular shaped plots, with part of the garden of No 15 extending to the rear of the appeal property.
4. At my site visit, I observed the proposed development from the appeal property and from the rear garden of 15 Kirkwood Avenue. The garden of No 15 sits at a lower level than the built form of Nos 13 and 15. The closest part of the garden to the appeal proposal comprises a swimming pool, with paved areas around it.
5. My attention has been drawn to a previous proposal¹ for an extension to the side of No 13. This application was refused and was subsequently dismissed at appeal² for reasons relating to its harmful effect on the living conditions of the occupiers of No 15 as a result of overlooking and its overbearing effect. The current proposal has been amended in an attempt to overcome the previous concerns.

¹ LPA ref. 5/2022/0773

² Appeal ref. APP/B1930/D/22/3305551

6. The extension has been redesigned so that there are no habitable room windows on the rear elevation at first floor level. Whilst roof lights are proposed on the rear elevation, these would not offer direct views over the garden of No 15 and I concur with the Council's assessment that the proposal would not result in any unacceptable overlooking of No 15.
7. Other design changes have led to the proposed eaves and ridge height of the extension being lowered by about 0.3m and 0.5m respectively. The previously proposed 2.5 storey projecting rear gable has also been removed and the main roof design modified to incorporate a hipped roof rather than a gable design. Overall, the two-storey element of the extension would be set in from the boundary by about 4.3m.
8. The boundary with 15 Kirkwick Avenue is formed with a mature hedge which provides some screening to the site. Having observed the proposal from the rear garden of No 15, despite the improvements to the proposal compared to the earlier scheme, I find that when viewed from the garden of No 15 the proposed two storey extension would significantly reduce the 'air space' between the two dwellings. I acknowledge that the roof of the extension would slope away from the boundary with No 15 and its hipped end, but the rear wall of the extension would loom above the garden of No 15 due to a combination of its overall width, height, proximity to the boundary and its positioning on higher ground. The proposed two storey extension would have an unacceptable overbearing effect on the garden of No 15 and would be likely to detract from the occupier's enjoyment of their rear garden.
9. I acknowledge that other areas of the garden of 15 Kirkwick Avenue would be less affected by the proposal and that the swimming pool may be more intensively used during certain times of the year although I have no substantive evidence that this is the case. A significant part of the garden of No 15 would be overly dominated by the proposed extension and these considerations do not sufficiently outweigh my concerns expressed above.
10. I have noted the orientation of the proposed extension and accept that the proposal would be unlikely to have an unacceptable effect on the amount of sunlight received in the garden of 15 Kirkwick Avenue. However, this is a different issue to that of an overbearing effect.
11. I note the absence of third-party representations, however I am also mindful of the living conditions of future occupiers.
12. I therefore conclude that the proposed development would have a harmful effect on the living conditions of the occupiers of 15 Kirkwick Avenue. The proposal is contrary to Policy 72 of the St Albans District Local Plan Review 1994 which states, amongst other matters, that the amenity of adjoining property shall not be unacceptably harmed. It is also contrary to paragraph 135(f) of the National Planning Policy Framework insofar as it seeks a high standard of amenity for existing and future users.

Other Matters

13. The appellant has provided examples of approved developments which are close to gardens of neighbouring residential dwellings. I have not been provided with full details of these schemes, such as the officer reports which may explain the reasoning behind the decisions and whether there were any

comparable circumstances to the appeal scheme such as a difference in levels for example. Moreover, I observe that in relation to the examples provided, the developments were close to the rear boundary of the neighbouring gardens, rather than the area of the garden closest to the dwelling which in most cases is the most sensitive part of the garden. Therefore, I am not convinced that these examples are of direct relevance to the appeal proposal which I have determined on its own merits.

14. The appeal site is within Harpenden Conservation Area (CA). Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) states that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of the area. The Council did not raise concern regarding the effect of the proposal on the character and appearance of the area, including on the CA. From the information before me I have no reason to disagree with the Council's finding on this issue.

Conclusion

15. From the reasons outline above, and taking account of all other matters raised, I conclude that the appeal should be dismissed.

J Davis

INSPECTOR