



Appeal Decision

Site visit made on 19 March 2025

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 March 2025

Appeal Ref: APP/D1590/C/23/3319459

84 – 90 The Ridgeway, Westcliff-On-Sea, Essex, SS0 8NU

- 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 Mrs Mary Aval on behalf of Dr Aval Clinic Ltd against an enforcement notice issued by Southend-on-Sea Borough Council.
 - The enforcement notice was issued on 3 March 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of first floor rear extensions to the property.
 - The requirements of the notice are:
 - (a) remove the unauthorised first floor rear extensions; and
 - (b) remove the unauthorised patio; and
 - (c) remove from site all materials resulting from compliance with (a) and (b) above.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) 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.
-

Decision

1. It is directed that the enforcement notice be:
 - Varied by the deleting the existing requirements under section 5 (What you are required to do), and its replacement with:
 - “(a) remove the unauthorised first floor rear extensions; and
 - (b) remove from site all materials resulting from compliance with (a) above.”
 - Varied by deleting the words “3 calendar months” within section 5 (What you are required to do) and its replacement with “6 months”.
2. Subject to these variations, the appeal is dismissed, and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal on ground (a), the deemed planning application

Main Issues

3. The main issues in the appeal are the effects of the development on:
 - The character and appearance of the existing building and area; and
 - The living conditions of the existing occupiers of 92 The Ridgeway, with particular regard to outlook, privacy, light and overshadowing.

Reasons

Character and appearance

4. The site relates to the first floor of a two-storey mid-terraced Art Deco Style property with a commercial use on the ground floor with two self-contained flats on the first floor. The site is located in a predominantly residential area with a range of architectural styles, and extensions. Nevertheless, the use of traditional materials including brick, render, slate and tiles, together with the design and layouts of the properties, and green public spaces, and tree and hedge planting along the roads, which provides an attractive and verdant character to the area.
5. The appeal property has been previously extended with a ground floor rear extension which extends almost full width of the property with a flat roof and finished in render to match the main building. The first-floor rear extensions, the subject of this appeal, have been constructed over part of the single-storey rear extension, and infills the space either side of the pre-existing two storey back addition.
6. The Southend-on-Sea Supplementary Planning Document 1 Design and Townscape Guide, 2009 (Design SPD) states that the scale of the extension must be respectful of the scale of the present building - additions that are too large will be over dominant. Extensions that appear subservient to the parent building tend to fit more comfortably and integrate better with the existing building. It also states that whether or not there are any public views, the design of rear extensions is still important, and every effort should be made to integrate them with the character of the parent building, particularly in terms of scale, materials and the relationship with existing fenestration and roof form.
7. The existing first floor rear extensions, creates one overall large rear addition, and in combination with the existing ground floor rear extension extends the building considerably, and fails to be subservient to the existing building. The excessive size and scale of the unauthorised development, at first floor level is accentuated by its close proximity and visibility from neighbouring properties, and the public footpath to the rear of the site.
8. Therefore, despite the current development being located to the rear of the property, the effect of the scheme is overly dominant and diminishes unacceptably the character, appearance, and integrity of this building with consequent harm to the character and appearance of the area.
9. I therefore conclude that the first-floor rear extensions harms the character and appearance of the host dwelling and area. Accordingly, the development conflicts with Policies KP2 and CP4 of the Southend on Sea Core Strategy, 2007 (CS), and Policy DM1 and DM3 of the Southend on Sea Borough Council Development Management Document, 2015 (DMD). Amongst other things, these require that all new development to respect the character and scale of the existing neighbourhood where appropriate and secure improvements to the urban environment through quality design, that alterations and additions make a positive contribution to the character of the building and surrounding area.

The living conditions of the occupiers of 92 The Ridgeway with regard to outlook and privacy, light and overshadowing

10. The adjoining property at 92 The Ridgeway comprises a shop at ground floor level and residential flat above. The adjoining flat has a window in the rear elevation at first floor level close to the appeal development. The Design SPD advises that extensions must respect the amenity of neighbouring buildings and ensure not to adversely affect light, outlook or privacy of the habitable rooms in adjacent properties.
11. With regard to outlook, the height and scale of the first-floor rear extension built close to the boundary with the neighbouring flat at No 92, results in a visually intrusive and unneighbourly form of development for occupiers of this neighbouring property. Indeed, the outlook from the first-floor window of No 92 is restricted by this extension resulting in an increased sense of enclosure for the occupiers of this neighbouring property.
12. This is exacerbated by the location of the windows in the side elevation facing towards No 92. I appreciate that these windows have an obscure film installed over the bottom section of the windows, and are only clear glazed and openable, above 1.7m high above the floor level. Nevertheless, the position and size of these windows, coupled with its proximity to the neighbouring property, results in perceived overlooking into the property at No 92. The perception of overlooking, along with the experience of the increased sense of enclosure, causes significant harm to the living conditions of those occupiers. Furthermore, I do not consider that replacing the privacy films with blank panels, as shown in the appellant's statement would overcome these harms.
13. With regard to light and overshadowing, my attention has been drawn to the planning history of the site where an appeal was dismissed for the first-floor rear extensions at the appeal site¹. In that case the Inspector stated that "Due to the orientation of the buildings and proximity of the extension to the boundary, it is possible that some loss of light and overshadowing may occur, particularly in the mornings. However, due to the modest size of the extensions and the presence of the existing building's side elevation and first floor projections, the extensions are not likely to have an unacceptable effect on light received by neighbouring properties."
14. Since the location, size and scale of the first-floor extensions remains the same as the previous appeal decision, I agree with the previous Inspectors findings and also consider that the development does not result in any demonstrable loss of light or overshadowing that would justify a refusal of planning permission.
15. I appreciate the area exhibits a range of buildings, a number of which have carried out various extensions and alterations. However, I do not have the full circumstances of all of those developments. Nevertheless, none appear directly comparable to the development before me, in terms of height, design, and size, and their proximity to neighbouring properties.
16. Therefore, whilst I find no harm in relation to overshadowing or light, the development fails to provide acceptable living conditions for the occupiers of No 92, with regard to outlook and privacy. Accordingly, the development is

¹ Appeal Ref: APP/D1590/W/21/3283338 dismissed on 30 August 2022.

contrary to Policies KP2 and CP4 of the CS, and Policy DM1 and DM3 of the DMD, which taken together, requires new development to enhance the amenity value of the environment; secure good relationships with existing development, and protect the amenity of immediate neighbours, and surrounding area.

Alternative scheme

17. Section 177(1) of the Act allows me to grant planning permission in respect of the matters stated in the Notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the Notice relates.
18. The appellant has submitted further proposed drawings² which they consider would overcome the harm in relation to character and appearance. These alternative drawings propose to raise the height of the first-floor rear extensions to match the height of the existing central outrigger to form one continuous roof. I consider that this alternative scheme, which involves revisions to the roof of the extension is part of the matters alleged and so I can therefore consider it.
19. However, I am not convinced that these changes would be sufficient to overcome the harms identified above, since it is scale and size of the existing first-floor rear extensions which is excessive and results in harm. The proposed changes to the roof, will further increase the overall height and size of the extensions. Therefore, the revised proposal would exacerbate the harm with regard to both the character and appearance of the host building and area, and to the living conditions of the neighbouring occupiers at No 92 in relation to loss of outlook. In this respect the revised proposal would also not accord with the aforementioned policies.
20. The appellant has also suggested that if the above 'alternative' scheme is not acceptable that the notice is varied to remove just the left side first-floor extension adjacent to No 92 only. However, no proposed drawings of this scheme have been submitted and therefore I am unable to be certain what the final design of the building would look like, including its fenestrations. Indeed, it is open to the appellant to submit a planning application to the Council for this revised scheme if they so wish.

Conclusion on Ground (a) and the Deemed Planning Application

21. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning decisions to be made in accordance with the development plan unless material considerations indicate otherwise. The development harms the character and appearance of the area and the living conditions of the neighbouring occupiers with regard to outlook and privacy in conflict with the development plan taken as a whole. Furthermore, the 'alternative schemes' also fails to overcome these harms. Therefore, there are no material considerations that would lead me to a decision other than in accordance with the development plan in this case.
22. For the reasons given and with regard to all other matters raised, I conclude that the appeal on ground (a) should fail, and the deemed planning application should be refused.

² The drawings submitted under planning application ref: 20/01581/FUL.

The appeal on Ground (f)

23. The appeal on this ground is "that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters (i.e., the matters alleged in the notice) or, as the case may be, to remedy any injury to amenity which has been caused by any such breach".
24. The enforcement notice requires the removal of the unauthorised development, and therefore, the purpose of the notice is to remedy the breach of planning control rather than only remedy any injury to amenity.
25. The appellant states that the requirements are excessive as the allegation only refers to the construction of first floor rear extensions to the property, yet the requirements of the notice, under section 5(b) require the removal of the unauthorised patio. It is unclear from the Notice which patio this is referring to (ground or first floor). Furthermore, the reasons for issuing the Notice similarly fail to include any reference to the patio. The appellant considers that the first-floor rear extensions could be removed without need to remove any patio.
26. Requirement 5(b) seeking the removal of the unauthorised patio is excessive to remedy the breach of planning control. The breach of planning control could be addressed through compliance with the removal of the first-floor extensions only and all materials associated with this. This would achieve the purpose of the notice which is to remedy the breach. Therefore, part 5(b) of the notice clearly goes beyond what is necessary to remedy the breach of planning control.
27. The appeal on ground (f) succeeds to that extent only, and I will vary the notice to remove this excessive requirement.

The appeal on Ground (g)

28. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed. The appellant asks that the time for compliance is extended from 3 months to 9 months in order to provide sufficient time to carry out the works required. In my view 6 months would strike a more reasonable and proportionate balance in this instance. I shall therefore extend the period from 3 to 6 months for compliance with the notice.
29. The appeal succeeds on ground (g), and I shall vary the notice accordingly.

Conclusion

30. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

R Satheesan

INSPECTOR