



Appeal Decisions

Site visit made on 7 April 2025

by Mr James Blackwell LLB (Hons) PGDip, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 23 April 2025

Appeal A Ref: APP/D1590/D/24/3347459

203 Westborough Road, Westcliff-on-Sea, Essex SS0 9JE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Mr Mazdak Zada against the decision of Southend-on-Sea Borough Council.
- The application Ref is 24/00689/FULH.
- The development proposed is single storey rear extension (reduced scheme).

Summary Decision: The appeal is allowed and planning permission is granted.

Appeal B Ref: APP/D1590/C/24/3347163

203 Westborough Road, Westcliff-on-Sea, Essex SS0 9JE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Mazdak Zada against an enforcement notice issued by Southend-on-Sea Borough Council.
- The notice was issued on 6 June 2024.
- The breach of planning control as alleged in the notice is the erection of a rear extension.
- The requirements of the notice are to: (a) remove from the site the rear extension in its entirety; and (b) remove from site all materials resulting from compliance with (a) above.
- The period for compliance with the requirements is three calendar months after the notice takes effect.
- 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.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decisions.

Preliminary Matters

1. An unauthorised extension has been constructed to the rear of the appeal property which the Council has sought to enforce against. Appeal A relates to the refusal of planning permission for a smaller rear extension than that which has been constructed. Appeal B relates to the enforcement notice which has been issued against the as-built extension. Given both appeals concern the same property, I have dealt with them together in the same decision notice.

APPEAL A (REFUSAL OF PLANNING PERMISSION)

Main Issue

2. The sole main issue in respect of Appeal A is the effect of the proposed development on the living conditions of neighbouring occupiers, particularly in terms of outlook.

Reasons

3. The appeal property is a residential bungalow situated on the northern side of Westborough Road. No. 205 borders the property to the west, and includes a ground floor residential flat. There is a bathroom window along the recessed flank elevation to this flat which directly faces the appeal property. There is also a bedroom window along its recessed rear elevation which faces its garden.
4. The proposed single-storey extension, which is a reduced version of the as-built one, would be sited just over a metre from the shared boundary between the two properties. It would be approximately 5.4 metres in length, and would protrude beyond the rearmost elevation of the flat. The extension would therefore enclose the recess in which the bedroom and bathroom windows are sited, and given the proximity of these windows, would impinge on levels of natural light experienced in these rooms. This would amplify the sense of enclosure experienced from within these spaces, which would be felt most keenly within the rear bedroom.
5. This means the proposal would cause some harm to the living conditions of the occupiers of no. 205. It would therefore conflict with Policies DM1 and DM3 of the Council's Development Management Document (2015) (DPD) and Policy CP4 of the Council's Core Strategy (2007) (CS) which together seek to ensure development protects neighbouring amenity, including with regard to outlook, daylight and sunlight. The proposal would also conflict with the amenity objectives of the Council's Design and Townscape Guide (2009), the National Design Guide (2021) and the National Planning Policy Framework (2024) (Framework).
6. Whilst I have also assessed the proposal against Policy KP2 of the CS, I do not consider it to be directly relevant to the issue of neighbouring amenity.

Other Matters

7. Irrespective of the outcome of this appeal, the appellant says they could construct a rear extension extending up to 4 metres from the rear elevation of the appeal property, pursuant to the permitted development rights afforded by Article 3(1) and Class A of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). The Council does not appear to dispute this. It is highly likely that the appellant would pursue this option if permission were refused, which means it represents a legitimate fallback.
8. If the fallback extension were constructed, it would still enclose the recess to no. 205. Noting that it would only be approximately 1.4 metres shorter than the proposed extension, its impact on the outlook from this property would be very similar. The harm to living conditions would therefore subsist, irrespective of whether the proposed extension or the fallback extension were constructed.

Planning Balance

9. The fallback position is therefore a material consideration which attracts significant weight in my decision. In this instance, it would outweigh the conflict with the development plan, as the identified harm would likely arise if the fallback were implemented instead of the proposal before me. Consequently, the appeal should be allowed.

Conditions

10. The Council has suggested a condition which would preclude the roof of the extension being used as a balcony, roof garden or other similar outdoor amenity area, which the appellant is agreeable to. I agree such a condition is necessary to ensure the development does not risk harm to neighbours in terms of overlooking.
11. Given the appellant has sought permission for various iterations of the rear extension, I have also included a plans condition to ensure certainty over the consented development.

Conclusion (Appeal A)

12. The proposal would harm the living conditions of the occupiers of no. 205, and would therefore conflict with the development plan. However, other material considerations outweigh the policy conflicts in this instance, which means the appeal should be allowed.

APPEAL B (ENFORCEMENT NOTICE)

13. I should highlight that the enforcement notice relates to the as-built extension, which is larger than the extension proposed under Appeal A. The outcome of Appeal A therefore has little bearing on my assessment of the as-built scheme under Appeal B, particularly with regards to the ground (a) appeal.

Ground (a)

14. The main issues in connection with the ground (a) appeal, being the deemed planning application for the development alleged in the notice, are:
 - the effect of the development on the living conditions of neighbouring occupiers, particularly in terms of outlook; and
 - the effect of the development on the character and appearance of the host property and the surrounding area.

Living Conditions

15. The as-built extension extends out from the rear elevation of the original dwelling by approximately 8 metres, and encompasses most of the property's full width. On account of its significant length, the extension's western elevation protrudes far beyond the rear elevation of no. 205. This introduces an unacceptable and oppressive sense of enclosure within the garden to no. 205, as well as within the habitable room to its rear.
16. This means the as-built extension harms the living conditions of its occupiers, and therefore conflicts with Policies DM1 and DM3 of the Council's DPD and Policy CP4 of the Council's CS, the content of which are noted above. The development also conflicts with the amenity objectives of the Council's Design and Townscape Guide (2009), the National Design Guide (2021) and the Framework.

Character and Appearance

17. The extension is significant in size, almost doubling the footprint of the original bungalow. In turn, it fails to appear subservient to the original dwelling, and instead appears as a bulky and excessive addition to the property. The constrained nature

of the plot means only a small area of garden remains to the rear, which amplifies this sense of bulk. Whilst only glimpsed views of the extension are possible from most public vantage points, this impact nonetheless harms the character and appearance of the host property.

18. Given its significant length, the development also extends far beyond the rear elevations of the neighbouring properties. This creates an awkward and jarring relationship between the properties, which is felt keenly in their gardens due to the tight grain of development in the area.
19. On account of these factors, the as-built extension harms the character and appearance of the host dwelling and the surrounding area. It conflicts with Policies DM1 and DM3 of the DPD and Policies CP4 and KP2 of the CS, which together seek to ensure development achieves a high-quality design which complements the surrounding area in terms of size, layout and scale. It also conflicts with the design objectives of the Council's Design and Townscape Guide (2009), the National Design Guide (2021) and the Framework.

Other Matters

20. Unlike Appeal A, the available fallbacks would not justify retention of the extension in its current form. This is because it extends out much further from the rear elevation of the dwelling than either the Appeal A extension or any extension which may comprise permitted development. In turn, its impact on neighbouring amenity and character and appearance is more severe.

Ground (a) - Conclusion

21. The as-built extension conflicts with the development plan as a whole, and there are no other considerations, including the provisions of the Framework, that outweigh this finding. The appeal on ground (a) therefore fails.

Ground (f)

22. Pursuant to ground (f), the appellant says that the steps required to be taken in the notice exceed what is necessary to remedy the alleged breach. As per s173(4) of the 1990 Act, the purpose of the notice is to remedy the breach of planning control, being the erection of the as-built extension. The requirements set out in the notice must achieve this purpose. In this instance, the two steps require the extension to be demolished and removed. These are proportionate steps, which go no further than remedying the breach.
23. Nonetheless, the appellant has suggested a smaller extension could be retained, to avoid complete demolition. This could conceivably include the extension permitted under Appeal A or an extension constructed under permitted development rights. However, assuming the permission granted pursuant to Appeal A is implemented, then pursuant to s180 of the 1990 Act, the requirements of the notice will cease to have effect insofar as they are inconsistent with that permission. A variation to the requirements is therefore unnecessary.
24. The appeal on ground (f) therefore fails.

Ground (g)

25. Pursuant to ground (g), the appellant says that the time given to comply with the notice is too short. The notice currently requires the steps to be carried out within three months of the notice taking effect. Whilst the works required by the notice are relatively straightforward, it could take time to source contractors for such works. I therefore consider it reasonable to extend the period for compliance to six months.
26. The appeal on ground (g) therefore succeeds.

Conclusion (Appeal B)

27. For the reasons given, I conclude that the appeal on ground (g) succeeds. However, the appeal on grounds (a) and (f) otherwise fails, and I shall uphold the enforcement notice with a variation, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

Formal Decisions

Appeal A

28. Appeal A is allowed and planning permission is granted for a single storey rear extension (reduced scheme) at 203 Westborough Road, Westcliff-on-Sea, Essex SS0 9JE in accordance with the terms of the application, Ref 24/00689/FULH, subject to the following conditions:
- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 2024/04/203WR (Proposed Front, Proposed Rear, Proposed LH Side, Proposed RH Side, Proposed Ground Floor Plan); and 2024/04/203WR (Proposed Roof Plan).
 - 3) The roof of the extension hereby approved shall not be used as a balcony, roof garden or similar amenity area unless express planning permission has previously been obtained.

Appeal B

29. It is directed that the enforcement notice is varied by:
- (a) The deletion of paragraph 6 of the notice and its substitution with the following new paragraph 6:

6. TIME FOR COMPLIANCE

Six (6) calendar months after this Notice takes effect.

30. Subject to the variation, Appeal B is dismissed, 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.

Mr James Blackwell

INSPECTOR