The Planning Inspectorate

Appeal Decision

Site visit made on 4 January 2016

by S J Papworth DipArch(Glos) RIBA

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 13 January 2016

Appeal Ref: APP/V2255/D/15/3135197
32 Holmside Avenue, Halfway, Kent ME12 3EX

- 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 & Mrs Dewey against the decision of Swale Borough Council.
- The application Ref 15/503321/FULL, dated 20 April 2015, was refused by notice dated 8 September 2015.
- The development proposed is rear kitchen extension.

Decision

1. I dismiss the appeal.

Application for Costs

2. An application for costs was made by Mr & Mrs Dewey against Swale Borough Council. This application is the subject of a separate Decision.

Main Issue

3. This is the effect of the development on the living conditions of neighbouring residential occupiers with particular regard to outlook and visual impact.

Reasons

4. Swale Borough Local Plan Policy E1 expects development to, among other things, cause no demonstrable harm to residential amenity. Policy E19 seeks high quality design and Policy E24 also requires alterations and extensions to be of a high quality of design, be in scale in relation to its surroundings and protect residential amenity.

5. Supplementary Planning Guidance entitled *"Designing an Extension: A Guide for Householders"* sets out the requirements for the projection of single storey rear extensions on terraced properties 'close to your neighbour's common boundary' to be no more than 3m projection. In the case of the appeal property the extension would be on or very close to the boundary and over 3m. The guidance does however refer to the benefits of talking to neighbours before submitting an application and it does appear to be the case here that the neighbours do not object.

6. The National Planning Policy Framework states at paragraph 56 that the Government attaches great importance to the design of the built environment; good design is a key aspect of sustainable development, is indivisible from

good planning, and should contribute positively to making places better for people.

7. The appeal property is at the end of a terrace of similar properties, separated from the next terrace to the south by a narrow pedestrian access-way. The arrangement of the houses is that they have a common rear building line at first floor level and approximately half-width projections at ground floor only, and these are handed as pairs with a neighbour, leaving a full width gap between, with, in the case of the appeal property and number 30, a wall between. This gap allows light to reach the side window of each projection and for the outlook to be over the wall of open space past the end of the neighbouring projection.

8. The appeal proposal would add height to the built form nearest the rear yard area of number 30 and opposite the side window to that property. This risks introducing an oppressive outlook from the window, reducing the feeling of light and air in the yard area, and would result in the type of harm that the policies and Supplementary Planning Guidance seek to avoid. A 3m extension as put forward in the Guidance would, in this case, not have such a harmful effect, leaving space at the far end.

9. The appellant compares the 3m requirement with what could be permitted development in any event and queries whether any application would be made for such an extension. However, there are reasons why applications are made for express permission, perhaps where permitted development rights have been removed or already used. Whilst neither of these possibilities applies here, an application for express permission has been made and that stands to be determined in accordance with policy, and with adopted guidance as a material consideration. The existence of a relaxed regime for larger rear extensions would have been an option, but that has not been taken up in this case either.

10. It does appear to be the case that the present occupier of number 30 does not object, and that may well be the deciding factor in a prior approval application, but in this application for express permission the Development Plan has primacy, and the lack of objection from a present neighbour is not a determinative matter where the aims of both local and national policy and guidance are good design that makes places better for people.

11. Finally, it does appear to be the case that some other houses in the terraces along Holmside Avenue have similar extensions to that now proposed, although the circumstances and policy background to those are not known. Where placed to the north of the neighbour, the material considerations may well be different, and where both half-widths have been filled there would be no harm either. Nevertheless, this appeal falls to be considered on its merits and in line with current policy and guidance which is clear. There are no other material considerations of sufficient weight to indicate a decision other than to dismiss the appeal.

S J Papworth

INSPECTOR

The Planning Inspectorate

Costs Decision

Site visit made on 4 January 2016

by S J Papworth DipArch(Glos) RIBA

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 13 January 2016

Costs application in relation to Appeal Ref: APP/V2255/D/15/3135197
32 Holmside Avenue, Halfway, kent ME12 3EX

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr & Mrs Dewey for a full award of costs against Swale Borough Council.
- The appeal was against the refusal of planning permission for rear kitchen extension.

Decision

1. I refuse the application for an award of costs.

Reasons

2. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

3. The appeal stems from the Council's refusal of an application for express planning permission. The application was made on a Swale Borough Council form entitled *"Householder Application for Planning Permission for works or extension to a dwelling. Town and Country Planning Act 1990"* and described the development as being *"proposed rear kitchen extension"*.

4. There would have been other routes open to the appellant to provide for the accommodation sought. One of these would have been the permitted development regime under the Town & Country Planning (General Permitted Development) Order 1995 (as amended) as it was at the time of the application, but superseded by the Town & Country Planning (General Permitted Development) (England) Order 2015, by the time of the Council's Decision. Part A provides for a particular size of extension to be permitted and the options here would have been to build a shorter extension on the view that it complied, or seek agreement on compliance, perhaps by way of a Certificate of Lawful Development.

5. Part A also provides for larger extensions, in which case a 'prior approval' regime is in place until 2019 whereby the local planning authority must notify each adjoining owner or occupier about the proposed development by serving on them a notice, and where any owner or occupier of any adjoining premises objects to the proposed development, the prior approval of the local planning authority is required as to the impact of the proposed development on the amenity of any adjoining premises.

6. It is not however for the Council to decide the route, or to change the process, but to react to the process chosen by the applicant. There may well be reasons why a particular applicant seeks express consent, as has been sought here, rather that proceed through the permitted development regime.

7. The evidence from the Council is that the correct process was followed for a householder application for planning permission, a process that must, unlike the permitted development or prior approval regime, take account of the Development Plan and any Supplementary Planning Document or Guidance. This is because section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that if regard is to be had to the Development Plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.

8. The Council appear to have given the applicant opportunity to change the proposal or route chosen, advising as to whether the proposal was permitted development in any event, and mentioned refund of a fee. However, it is for an applicant to choose a route to be able to develop land as sought, and in this case the route chosen was that of seeking express planning permission and it is this process that has resulted in the appeal. There is no evidence that the Council's actions were unreasonable in the circumstances of the application and hence the need for an appeal.

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

S J Papworth

INSPECTOR