



Appeal Decision

Site visit made on 18 August 2020

by Thomas Shields MA DipURP MRTPI

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

Decision date: 27 August 2020

Appeal Ref: APP/C1950/C/19/3241022

6B Hill Rise, Cuffley, Potters Bar, EN6 4EE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (hereafter "the Act").
 - The appeal is made by Mr Vasos Vasiliou against an enforcement notice issued by the Welwyn Hatfield Borough Council.
 - The enforcement notice was issued on 25 October 2019.
 - The breach of planning control as alleged in the notice is without planning permission the construction of a detached garage.
 - The requirements of the notice are:
Either
A) Completely demolish the unauthorised garage (shown hatched blue on the attached plan) and remove any resultant materials as a result of the demolition of the garage from the land.
OR
B) Modify the garage (shown hatched blue on the attached plan) to comply with the terms of the planning permission reference: 6/2019/0866/HOUSE dated 19 June 2019 and the plans attached to that planning permission.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Act.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

Background

2. The appeal building was originally constructed with a different roof form having a maximum ridge height of approximately 5.3 metres. Since then the appellant has altered the roof form, lowered its maximum height to approximately 4.1m, and submitted planning applications for its retention. A planning application (6/2016/1934/HOUSE) to retain the building at a maximum height of 3.9m was refused planning permission and later dismissed at appeal¹. More recently the Council granted planning permission (6/2019/0866/HOUSE) to retain the garage with a crown roof height of 3.6m.

Main Issue

3. The main issue is the effect of the proposed development on the living conditions of the occupiers of Nos. 7 and 8 Orchard Close, with particular regard to outlook and the effect on daylight and sunlight conditions.

¹ APP/C1950/W/17/3187182

Reasons

Living conditions - outlook

4. The appeal building is located close to the boundary with the rear gardens of Nos. 7 and 8 Orchard Close which are set down at a significantly lower ground level. During my visit to these properties I saw that the overall scale of the appeal building has an intrusive, overbearing and dominant presence, resulting in a significantly detrimental impact on the outlook from the rear windows and gardens of Nos. 7 and 8.
5. Making reference² to the Council's own reports in respect of earlier planning applications the appellant argues that the Council has continually accepted that the building is not visually dominant, and that the design, siting and general bulk of the building are acceptable. However, the Council's assessment and comments in this regard referred to the effect on the character and appearance of the locality, rather than the living conditions of neighbouring occupiers.
6. It is also argued that the reduction in roof height, sloping away from the neighbouring properties to the rear, would make little or no difference to their amenity. I disagree. The height of the roof is fundamentally integral to the perception of the building's overall scale and bulk, and thus reduction in its height would be key to mitigating the harm to the outlook of occupiers of neighbouring properties to an acceptable level.
7. The appellant has planted conifer trees along the boundary with Nos. 7 and 8. However, they would only screen the height of the existing roof if they grew and were maintained at a corresponding height. Notwithstanding that they would be difficult to permanently maintain without becoming an amenity problem in themselves, I consider that such boundary treatment simply highlights the failure in design of the prominent and obvious over-height of the building, its effect on outlook that I have described, and the need for its reduction.
8. For these reasons I conclude that the development has an adverse impact on the outlook from the rear windows and gardens of Nos. 7 and 8 Orchard Close, resulting in significant harm to their living conditions. As such, the development conflicts with saved Policy D1 of the Welwyn Hatfield District Plan (2005) which seeks to ensure that new development is of a high quality of design. It also conflicts with the National Planning Policy Framework (2019) which sets out that the creation of high quality buildings and places is fundamental to what the planning and development process should achieve and that good design is a key aspect of sustainable development.

Living conditions – daylight and sunlight

9. The appellant's submitted daylight and sunlight report analyses the effect of the appeal building, including against the comparison of having no building at all. It concludes that there would be little or no significant loss in amenity values of daylight and sunlight to the rear windows of neighbouring properties.
10. However, the report uses modelling that is based on estimated heights and photographs of the site rather than a topographical survey, and hence recognises that some inaccuracy should be expected. It also does not make

² Appellant Statement paras.6.2.0- 6.2.2

any analysis of the effect of the appeal building on light and sunlight to the garden areas.

11. Based on the report's analysis, and notwithstanding any inaccuracies, I accept that in comparing the existing building with a height of 3.6m (permitted under application ref 6/2019/0866/HOUSE) any reduction in amenity due to loss of light and sunlight is not likely to be so significant as to justify by itself dismissal of the appeal. However, this finding does not mitigate the significant and unacceptable level of harm to the outlook of occupiers of Nos. 7 and 8 Orchard Close previously described.

Other matters

12. I have considered whether planning conditions, including in respect of boundary treatment, would adequately mitigate the identified harm to the living conditions of the neighbouring occupiers, but conclude there are none that would do so.

Conclusion

13. For all these reasons the appeal on ground (a) and the deemed application for planning permission fails.

Thomas Shields

INSPECTOR