

4/00589/15/RET - RETENTION OF GROUND FLOOR EXTENSION WITH PATIO AND RAISED FENCE.

49 ELLESMERE ROAD, BERKHAMSTED, HP4 2EU.

APPLICANT: Mrs O Brien.

[Case Officer - Philip Stanley]

Summary

The application is recommended for approval.

The single storey rear extension as built does not cause harm to the original property, cannot be seen from the street scene, and in the context of a multitude of differently designed rear extensions would not affect the character of this part of the Berkhamsted conservation area. Furthermore the extension, taken together with the raised patio area and the fencing does not cause significant harm to the residential amenities of neighbouring houses.

Other issues raised such as extent of land ownership, maintenance problems for 49a, and the fact that this is a retrospective proposal are not considered to carry any weight in the determination of this planning application.

As such the development complies with Policies CS12 and CS27 of the Dacorum Borough Core Strategy (September 2013).

Site Description

The application site is a two storey mid-terraced dwelling constructed from brick and a clay tiled roof. The property is sited along Ellesmere Road, Berkhamsted and is within a conservation area. The application dwelling is quite narrow and benefits from two bedrooms at first floor level, and has previously been extended at ground floor level only to accommodate a longer living room and a bathroom and kitchen.

Proposal

Retrospective planning permission is sought for a single storey rear extension.

The construction of this extension differed from that approved under 4/00576/14/FHA and therefore the amended scheme has been submitted for determination. The proposals remain essentially the same, i.e. a single storey rear extension to provide an extended kitchen set at a lower level than the main house. The key differences between that approved and that as built are as follows:

1. The extension has been increased in depth by approximately 0.5 metres (the extended space has a depth of 2.04 metres, compared to the 1.55 metres approved).
2. The extended area has been connected to the existing flat roof by a shallow pitched slate roof, compared to the stepped down flat roof approved.
3. Two roof lights have been inserted into the pitched roof. The approved scheme showed a rear elevation window on the existing rear above the stepped down flat roof.
4. The new rear elevation bi-fold doors have been reduced to three panes from the four panes approved.
5. A raised patio has been built to match the new extension floor level with a retaining wall at the rear end of the patio.

6. Staggered 2 metre high fencing has been constructed on the boundary with No.49a Ellesmere Road, with the first panel placed upon the raised patio area.

Referral to Committee

The application is referred to the Development Control Committee due to the contrary views of Berkhamsted Town Council.

Planning History

4/00576/14/FHA: Single Storey Rear Extension - Granted 28/05/14.

Policies

National Policy Guidance

National Planning Policy Framework (NPPF)

Adopted Core Strategy

NP1 - Supporting Development
CS1 - Distribution of Development
CS4 - The Towns and Large Villages
CS10 - Quality of Settlement Design
CS11 - Quality of Neighbourhood Design
CS12 - Quality of Site Design
CS13 - Quality of Public Realm
CS27 - Quality of the Historic Environment

Saved Policies of the Dacorum Borough Local Plan

Policy 120
Appendix 7

Supplementary Planning Guidance / Documents

Environmental Guidelines (May 2004)
Area Based Policies (May 2004) - Residential Character Area [BCA 3:Bank Mill]

Advice Notes and Appraisals

Conservation Area Character Appraisal for Berkhamsted

Summary of Representations

Berkhamsted Town Council

Object.

The proposal causes harm to the Conservation Area.

The roofing slates on the extension do not match the tiles on the main roof of the

house.

The roof design, which is not according to plan, is out of keeping with that of neighbouring properties and necessitates access for maintenance from the flat roof of 49A.

The patio is built too high and extends too far. Because the patio is raised too high, the fencing on the patio, whilst 2m on the side of number 49, is well over 2m on the side of number 49A, and is overbearing and intrusive when viewed from 49A.

The fencing posts and fencing along the garden length of 49 encroach on the property of 49A.

Contrary to Core Strategy Policies CS 11 and CS 27 and Saved Local Plan Policy 120.

Conservation and Design

Any comments received will be reported at the meeting.

Response to Neighbour Notification / Site Notice / Newspaper Advertisement

49a Ellesmere Road - Objects:

- the boundary fence of the extension had been placed beyond the boundary line and onto her property.
- objected to the height and length of the new patio, which had meant the new fence was now 2.4m high on her side, above the permitted 2m height. This is causing a visual intrusion and overshadows her garden and bathroom window.

Considerations

The main issues of relevance to the consideration of this application relate to the impact of the works upon the character and appearance of the dwelling and the Berkhamsted Conservation area in accordance with Policies CS12, CS13 and CS27 of Dacorum's Core Strategy. Other issues of relevance relate to the impact of the proposed additions and alterations on the character and appearance of the street scene and the impact on neighbouring properties.

Extent of land ownership

This application has raised considerable concern from the next-door neighbour (No.49a) as they consider that the raised patio and fencing has encroached on their land. Conversely the applicant has confirmed that in their view they were correct to sign Certificate A of the planning application form, i.e. that they own all the land to which this application relates. The Council's solicitor was asked to comment on this matter and his views are as follows:

Neither the Development Control Committee or Delegated Officers are required to determine issues of Land Ownership or resolve any Boundary dispute during the Planning Application process. Instead the Planning System relies upon the Applicant for Planning Permission completing one of two Certificates when the Planning Application is submitted. The First is "Certificate A" which states that the Applicant is

the owner of all of the land contained within the Red Outline Plan which is submitted with the Planning Application.

The Second is "Certificate B" which states that the Applicant is not the owner of the land (or part of the land) which is contained within the Red Outline Plan submitted with the Planning Application and confirms that he has served notice on the owners of the land not within his control with Notice of the Pending Planning Application.

The Local Planning Authority are not required or entitled to challenge the information contained in Certificate A or B prior to determination of the Planning Application. However, if after determination of the Planning Application it is brought to the Council's information that the information provided in either Certificate A or Certificate B is incorrect, then the Council have the power to "Quash" the Planning Permission granted.

The Councils power to Quash a Planning Permission could be triggered following the result of Court Proceedings which have determined Boundary Disputes or Land Ownership disputes which impact on the accuracy of either the Certificate A or B submitted in support of the Planning Application. If, for example, a Court decided, after the grant of Planning Permission, that the boundary outlined in Certificate A was incorrect or exceeded the land owned by the Applicant for Planning Permission the Council could be invited to Quash the original Planning Permission.

A Court determining Boundary or Ownership disputes cannot, in those proceedings, Order a Planning Permission to be Quashed. It could Order that any buildings or structures that have been erected on Land not in the ownership of the Applicant be demolished or removed and such an Order would normally be in the form of an injunction.

In order to have a Planning Permission quashed an aggrieved Party would need to provide information to the Local Planning Authority showing that either Certificate A or B was defective (This could be copy of the Order of the Court). The Local Planning Authority would then need to consider whether it was Expedient, proportionate and in the public interest to Quash the Planning Permission. If the Council consider the Planning Permission should be Quashed then it can make an application to the High Court. If the Council considered that the Planning Permission should NOT be quashed, then that decision can be challenged by an aggrieved party by way of Judicial Review.

In summary, a Local Planning Authority is not required to adjudicate on land ownership or boundary disputes prior to determining an Application for Planning Permission. There is a system in place to ensure that following the grant of Planning Permission if incorrect declarations were made in either Certificate A or B then the Local Planning Authority has the discretion to Quash any Planning Permission granted as a result of the incorrect declaration.

As such it is considered that this dispute regarding land ownership should not be considered any further in the determination of this planning application.

Effects on appearance of building

The single storey rear extension as built is considered not to have an adverse effect on the appearance of the main dwelling as it is sited to the rear, is of a limited size, would

be on a lower ground level and would therefore appear subservient to the original house. It is also considered that the differences between that approved and that built are not significant that it would warrant a different conclusion this time.

It is noted that Berkhamsted Town Council object to the choice of roof materials used as they do not match those used on the existing main roof. However, the slate effect tiles used on the extension are of more traditional appearance than those on the main roof. The extension is considered to be a high quality addition that does not detract from the appearance of the original property.

Impact on Street Scene / Conservation Area

The single storey extension as built is sited to the rear of the dwelling and would not be visible from the street scene. As the extension would be set down and is of a limited depth the proposal is considered not to cause any harm to the street scene.

It is noted that Berkhamsted Town Council considers that the extension is harmful to the Conservation Area, though it makes this comment solely in terms of the roof of the extension as they object to the materials used and that it is not in keeping with surrounding properties. However, as noted above it is considered that the roof material used has a traditional appearance and the extension overall has been built to a high quality. It must further be noted that there a multitude of extensions across the backs of properties along Ellesmere Road and that these have used a variety of roof designs. It is not therefore considered that the present roof design is so detrimental to the character and appearance of the Conservation Area to warrant refusal.

Impact on Neighbours

The neighbour to the north-west at No. 48 has a kitchen window that looks out onto the rear garden. The proposed single storey rear extension has been constructed up to the common boundary; however it is set down and only extends up to 2m. The limited extension is considered not to have an adverse effect on the light levels currently enjoyed by the residents of No. 48.

The adjoining neighbour to the south-east (No.49a) benefits from a single storey rear extension that extends further in depth than the proposed extension. The extension as built is not be visible from their ground floor outlook and has no effect on the light levels currently received. Concerns have been raised about the impact of the boundary fencing alongside the raised patio area. However, the extra height to the fencing only continues for the distance of half a standard panel (approximately 1 metre) and the top of the fence panel is set at the same height of the bottom of the closest rear window. It is considered that a fence panel of this height and very moderate depth is not overbearing or visually intrusive on the neighbour. This fencing panel further serves the purposes of preventing any harmful overlooking into No.49a's rear garden from the raised patio.

Other Material Planning Considerations

Sustainability

The proposal would be built to modern building regulation standards therefore improving the overall sustainable performance and general improvement of the

property. The proposal is considered acceptable with reference to Core Strategy policy CS29.

Parking

Parking remains unaffected as no further bedrooms are proposed.

Other Considerations

Berkhamsted Town Council have raised concerns that the applicant has not followed the approved plans. However, this is exactly the purpose of the current application, i.e. to determine the acceptability in planning terms of the extension as built.

Berkhamsted Town Council have also raised concerns that the extension as built has caused maintenance problems for No.49a Ellesmere Road. However, any damage caused to a neighbouring property as a result of this extension would be a civil matter that the neighbour would need to pursue outside of the planning process.

Conclusions

The amended extension is considered sympathetic to the appearance of the original house, is not be visible from the street scene and does not harm the character of this part of the Berkhamsted Conservation Area. Further the extension, together with the raised patio and fencing, does not cause any significant harm to neighbouring properties. As such it is considered that this application should be supported.

RECOMMENDATION – That planning permission be **GRANTED** for the reasons referred to above.

No conditions.

ARTICLE 31 STATEMENT

Planning permission has been granted for this proposal. Discussion with the applicant to seek an acceptable solution was not necessary in this instance. The Council has therefore acted pro-actively in line with the requirements of the Framework (paragraphs 186 and 187) and in accordance with the Town and Country Planning (Development Management Procedure) (England) (Amendment No. 2) Order 2012.