



Appeal Decision

Site visit made on 25 July 2011

by **R M Barker BEng(Hons) CEng MICE FCIHT**

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

Decision date: 2 August 2011

Appeal Ref: APP/A2335/D/11/2154800

122 Broadway, Morecambe, LA4 5XZ

- 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 N Palamountain against the decision of Lancaster City Council.
 - The application Ref 10/01101/FUL, dated 27 October 2010, was refused by notice dated 4 April 2011.
 - The development proposed is described as *proposed two storey extension to rear with first floor extension to side over existing garage*.
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Decision

1. The appeal is dismissed.
2. I have taken account of the views of local residents and other interested parties in reaching this decision.

Main Issue

3. The effect of the proposed development on the living conditions of the occupiers of No.120 Broadway by reason of an overbearing nature.

Reasons

4. The element of this appeal that is of concern is the proposed extension to the north west side of the host dwelling above the existing garage and adjacent to No.120 Broadway. The proposal would result in a substantial reduction in the first floor gap between these two dwellings to approximately 5 metres. However the Council's Supplementary Planning Guidance Note 12 [SPG] '*Residential Design Code*' advises (paragraph 2.17) that there should normally be at least a 12 metres gap where a habitable room faces on to a side wall of this nature.
5. The proposal would impinge upon the enjoyment of the use of the ground floor kitchen diner, a habitable room in No.120 Broadway from which I was able to view the appeal site during my inspection; its window directly faces the north west side of the appeal dwelling.
6. In my judgment this element of the proposed development would have a materially adverse effect on the views of open sky that are currently available from this kitchen diner window and in this crucial respect my assessment differs from that of the Council officer and of the appellant. The proposal would significantly change the current outlook from No.120, notwithstanding current

views of the boundary fence and neighbouring wall. It would present a dominant new building element that would noticeably reduce daylight in the affected room of No.120 Broadway. In all these respects therefore the proposal would conflict with Lancaster District Local Plan Policy H19 which includes the provision that development should not have an adverse effect on the amenities of nearby residents.

7. The appellant has drawn attention to an extension that has been constructed at No.66 Broadway. However I am not aware of all the circumstances of that case and I must deal with this appeal on the basis of the details that present themselves at this appeal site.
8. In view of all the above therefore I conclude on the main issue that the proposed development would have an unacceptably harmful effect on the living conditions of the occupiers of No.120 Broadway by reason of an overbearing nature and consequently I dismiss the appeal.

R M Barker

INSPECTOR



Appeal Decision

Site visit made on 5 October 2012

by **D Kaiserman BA DipTP MRTPI**

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

Decision date: 10 October 2012

Appeal Ref: APP/A2335/D/12/2181838

122 Broadway, MORECAMBE, Lancashire, LA4 5XZ

- 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 N Palamountain against the decision of Lancaster City Council.
 - The application Ref 12/00258/FUL was refused by notice dated 28 May 2012.
 - The development proposed is erection of an extension to the side over existing garage.
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Decision

1. The appeal is dismissed.

Main issue

2. The main issue is the effect of the proposal on the living conditions of the occupiers of no 120 Broadway, in particular in relation to the general outlook from the facing ground floor kitchen / diner of that dwelling.

Reasons

3. 122 Broadway is a detached two-storey house in a mature residential area. There is a single-storey, flat-roofed garage on its north-western flank, close to the boundary with no 120 Broadway, on top of which it is proposed to construct a new bedroom extension. This would be flush with the existing side wall of the garage, and the distance between the two properties would be 5m on two levels. The ground floor facing side elevation of no 120 contains windows to a kitchen / diner, and the only issue raised by the appeal is the effect that the proposed extension would have on the reasonable use of that room.
4. The present scheme was prepared in response to an earlier proposal for a significantly larger development, permission for which was refused on appeal in August 2100 (ref: APP/A2335/D/11/2154800). That scheme involved an extension which ran the full depth of the garage and beyond, 4m to the rear; it also included a full-width two-storey rear extension. In dismissing the appeal, my colleague focused on the consequent reduction in the gap at first-floor level between the two dwellings, in particular in relation to the enjoyment of the use of the kitchen / diner. He concluded:

"In my judgment this element of the proposed development would have a materially adverse effect on the views of open sky that are currently available from this kitchen diner window and in this crucial respect my assessment differs from that of the Council officer and of the appellant. The proposal would significantly change the current outlook from No.120,

notwithstanding current views of the boundary fence and neighbouring wall. It would present a dominant new building element that would noticeably reduce daylight in the affected room of No.120 Broadway. In all these respects therefore the proposal would conflict with Lancaster District Local Plan Policy H19 which includes the provision that development should not have an adverse effect on the amenities of nearby residents”.

5. I adopt the previous Inspector’s conclusions in their entirety, since I consider that the impact of the scheme on the room in question would largely be unchanged despite the modifications. I accept that the present scheme represents a significant reduction in the scale of the proposed works, and that its effect would be less harmful than the earlier scheme. In particular, the small secondary window (which also faces the appeal site) would not now be dominated by a two-storey wall, and views to the north-east from the primary bay window would be more open. Nevertheless, this still leaves the outlook to the south and south-east, which I consider would remain unacceptably oppressive. There are no other sources of natural light to the room in question.
6. I note that the appellant does not accept the description of the kitchen / diner at no 120 as a “habitable room”. This is not an assessment shared by the earlier Inspector, or by me. In my opinion, there is no hard-and-fast definition of what a habitable room might be for planning purposes: in other words, much depends on the actual use of the spaces and the layout of the property in any particular case. It was clear to me on my visit that, while the room at issue here may not be the primary dining area, its more informal use for that purpose suggests that it is a room in which the occupants of no 120 might be expected to spend considerable amounts of time. An Inspector reached a different conclusion in relation to an appeal at 10 Barton Road, Lancaster; but the Council have pointed to differences between the two cases (which the appellant does not challenge), and this supports my view of the need for each case to be assessed carefully on its own merits.
7. In this case, therefore, I do not accept that the Council’s guidelines (found in paragraph 2.17 of their Residential Design Code) are immaterial to my consideration of the appeal. These state that, where windows to a habitable room would face a blank elevation, the separation distance should normally be 12m. I acknowledge that the focus of the guidance is on new, rather than existing, dwellings and, in any event, that advice of this kind is discretionary rather than mandatory. Nevertheless, I consider it to be a reasonable benchmark for helping to assess the impact of development such as the appeal scheme; and the considerable shortfall between the suggested and achievable separation distances in this case adds weight to my own more subjective judgement.
8. I have sympathy with the appellant’s wish to provide for the needs of his family, and accept that a genuine attempt has been made to address the shortcomings of his original proposal. However, these considerations do not outweigh the harm which I have described, and which has led me to dismiss the appeal. I should add that I have attached little weight to the fact that the relevant committee overturned the recommendation of its officers.

David Kaiserman

INSPECTOR