



Appeal Decision

Site visit made on 16 August 2016

by Susan Wraith DipURP MRTPI

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

Decision date: 24 October 2016

Appeal Ref: APP/N1920/C/15/3140976

Land at 34 The Rise, Elstree, Borehamwood, WD6 3JU

- The appeal is made under s174 of the Town and Country Planning Act 1990 [hereafter "the Act"] as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Ramesh Kelshiker against an enforcement notice issued by Hertsmeire Borough Council.
 - The notice was issued on 19 November 2015.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of front and side boundary treatment as marked in the approximate location as shown with a blue line on the site location plan, not in accordance with condition 5 attached to planning permission referenced TP/11/0011.
 - The requirements of the notice are:
 - 1) Where adjacent to the Highway, lower to a height of 1 metre the side and front boundary treatment as marked in the approximate location as shown blue on the site location plan.
 - 2) Remove from the land all building materials and rubble arising from compliance with step one (1) above.
 - The period for compliance with the requirements is 6 calendar months.
 - The appeal is proceeding on the grounds set out in s174(2) (a), (c) and (f) of the Act. Since an appeal has been brought on ground (a) an application for planning permission is deemed to have been made under s177(5) of the Act.
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Decision

1. It is directed that the enforcement notice be corrected by:
 - (a) In paragraph 1, deletion of "Section 171A(1)(b)" and substitution of "Section 171A(1)(a)"; and
 - (b) In paragraph 3, deletion of "not in accordance with condition 5 attached to planning permission referenced TP/11/0011".

Subject to these corrections the appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under s177(5) of the Act for the development already carried out, namely the erection of front and side boundary treatment as marked in the approximate location as shown with a blue line on the site location plan attached to the enforcement notice on land at 34 The Rise, Elstree, Borehamwood, WD6 3JU referred to in the notice, subject to the following condition:

- (i) Any works carried out to complete the boundary treatment shall be in accordance with the details for its design and dimensions as shown on the drawings produced by A W Architecture titled "Elevations" and "Proposed Ground Floor Plan/Block Plan", headed "Amended Drawings for Appeal Case 08/08/2015", dated 08/08/2015 and numbered 1042B/APL/02 and 1042B/APL/01 respectively.

Matters concerning the enforcement notice

2. Before I proceed to determine the appeal I must first of all ensure that the notice is in good order. The notice has been drafted in terms of a breach of condition falling under s171A(1)(b) of the Act. A copy of the decision notice, which includes the subject condition, has not been supplied. However, I understand the condition in question required development to be carried out in accordance with plans approved pursuant to an application for extensions and a loft conversion.
3. Whilst "boundary treatment" was not included in the description of that application a note on the approved plan stated "boundary fence brick and timber to be repaired and replaced to match existing". There is therefore, in effect, permission for the works as described in this annotation on the approved plan.
4. In the event, the original boundary treatment was removed and replaced by a new boundary structure which, primarily, takes the form of a brick wall. The works exceed what could be considered "repair" as no part of the original structure remains. Neither does the replacement structure "match" the original structure which comprised brickwork to a lower level with timber panelling above. The new structure is materially different from the structure annotated on the approved plan. Its erection has amounted to a separate act of development and, thus, the breach should be described as one falling within s171A(1)(a) of the Act as a matter of fact and degree.
5. It is important that the notice is correctly framed as it is from the allegation that the deemed application takes its terms. I shall correct the notice to reflect my findings on this point under the available powers of s176(1)(a) of the Act. No injustice will arise to either of the main parties in me so doing.

Other preliminary matters

6. The deemed planning application is for the operational development that has been carried out, the terms of which derive directly from the allegation (as corrected) i.e. the matters stated in the notice as constituting the breach.
7. It is clear from the evidence, and from what I saw at my site visit, that the development is unfinished. In particular the works to the front boundary and a small section of its return to the side boundary (adjacent to Bishops Avenue) are yet to be undertaken. The appellant has put forward a proposal for further works to this part of the boundary. What the appellant is seeking, in effect, is to retain the development undertaken so far and to complete it in accordance with this submitted detail.
8. S177(3) of the Act states that the planning permission that may be granted under subsection (1) is any planning permission that might be granted on an

application under Part III. Such an application could be one to erect, to completion, a structure on which work has already commenced. Where under s177(5) the deemed application is for unfinished development the possibility of covering these remaining works by a planning condition(s) can be considered. In this case, because there is a clear proposal before me, I consider such an approach would be appropriate in the event of me finding in favour of the granting of permission.

9. The proposals put forward for the completion of the works include works to the boundary with number 32. However, my consideration of the appellant's proposals are limited only to the works proposed for the front boundary and for the side boundary to Bishops Avenue, that being the extent of the development covered by the enforcement notice as identified by a blue line on the enforcement notice plan.

The appeal on ground (c)

10. An appeal on ground (c) is that the development alleged does not constitute a breach of planning control. Reference has been made to advice on the Planning Portal which indicates that planning permission is not required to take down a fence or wall or to alter, maintain or improve an existing fence or wall so long as there is no increase to its height. However, for reasons I have already explained, I consider the works in this case to amount to a separate act of development. The works exceed alteration, maintenance or improvement as a matter of fact and degree. There are no permitted development rights to erect a new wall of this height adjacent to a highway. Thus the development amounts to a breach of planning control. The appeal on ground (c) fails.

The appeal on ground (a) and the deemed application

Planning policies and statutory requirement

11. I have been referred to policies D20, D21 and H8 of the Hertsmere Local Plan and policies SP1 and CS22 of the Hertsmere Core Strategy. Taken together these policies seek to achieve developments of high quality design which contribute positively to the character and appearance of the surroundings and provide for (amongst other things) a safe environment.
12. Planning law requires that planning decisions are made in accordance with the development plan unless material considerations indicate otherwise¹.
13. National planning policy for requiring good design is set out in section 7 of the National Planning Policy Framework [hereafter "the Framework"]. The Framework states (amongst other things) that good design is a key aspect of sustainable development and that design should contribute positively to making places better for people. The Framework is a material consideration for this appeal.
14. Whilst the Local Plan policies referred to pre-date publication of the Framework, they are in general conformity with it and therefore carry substantial weight together with the cited policies of the Core Strategy.

¹ S38(1) and (6) of the Planning and Compulsory Purchase Act 2004 and s70(2) of the Town and Country Planning Act 1990.

15. Policy SADM31 of the emerging Site Allocations and Development Management Policies Plan 2015² also seeks high quality design that recognises and contributes to the particular character of the area; and Hertsmere Supplementary Planning Document Planning and Design Guide, Part D: Guidelines for Development [hereafter “SPD”] encourages (amongst other things) that the design of boundary treatments should compliment the existing pattern of boundary treatments in the area. Policy SADM31 and the SPD are further material considerations for the appeal.

Main issue

16. Having regard to the above planning policies, statutory requirements and the submissions made by both parties, I consider the main issue in the appeal on ground (a) and the deemed application to be the effect of the development upon the character and appearance of the area.

Effect upon the character and appearance of the area

17. The area has a residential suburban character with a variety of (mainly) detached properties set in broad alignment on tree lined streets. Whilst retaining some homogeneity of style and design, a number of properties (including the appeal property) have been altered and/or extended taking on a more modern character and appearance, the wider area also having more recent developments.
18. Many of the properties which are positioned on corner plots (including those other properties at the junction of Bishops Avenue and Wentworth Avenue with the Rise) have tall street facing boundary treatments which provide privacy to their rear gardens. Many of these boundary features are in the form of timber fences, or timber panels above brickwork, of a variety of styles and in various states of repair. Some properties have brick walls to their side boundaries including the properties in Sheraton Close.
19. The prevailing character of the front garden frontages is one of openness with greenery interspersed with drives and hardstandings. The boundary structures to the fronts are generally lower than those to the sides and include low brick walls, open railings and picket fences.
20. The Council considers the boundary treatments as existed at the property previously are acceptable and approved their repair and replacement in a manner to match the existing. The “before” scheme, therefore, is an appropriate yardstick against which to assess the “as built” development.
21. Previously, the boundary with Bishops Avenue was defined by brickwork between concrete posts with horizontal timber panelling above. The new brick wall which replaces it is to a similar height. The concrete posts which subdivide it, together with its double gated opening and copings mean it is not a featureless structure. Its neat appearance in brickwork which matches that of the host property to a similar height as many other side boundary treatments in the area, in my view, recognises and compliments the local character and provides for an acceptable means of enclosure which contributes positively to the area. I also take into account the durable qualities of brickwork when

² The Site Allocations and Development Management Policies Plan 2015 is at an advanced stage following examination. Its policies therefore are capable of carrying significant weight.

compared to timber fencing panels which are more likely to deteriorate in appearance over time.

22. To the front of the property, previously, there was a low brick wall with metal gates or railings. The scheme as put forward by the appellant proposes a wall which is slightly higher although of less width. The main difference between the "before" and "after" schemes is that, in the latter, the brickwork piers, metal railings and gates will be higher, being approximately to the height of the side boundary.
23. However, the scheme will not create a visual block. The open nature of the gates and railings, with slender vertical spindles, together with the reduced width of brickwork across the frontage, will provide for clear views into the garden and across the frontage towards the property and will ensure that the property maintains an active and positive relationship with the street. The scheme also provides for an improved degree of natural surveillance as previously views across the frontage from Bishops Avenue were obstructed by a tall, dense hedgerow.
24. The Council argues that the scheme is unduly severe and will have a segregating effect. However, because of the open and decorative nature of the bow topped gates and railings and their domestic scale, I do not consider the scheme will look out of place or result in the visual separation of the dwelling from the street. Whilst the greenery of the hedgerow is lost, in my view the combination of brickwork, gates, railings, piers and copings results in a coherent scheme which strikes a reasonable balance between the interests of contributing positively to the character and appearance of the area and providing for the improved security needs of the appellant.

Conditions

25. If I am to grant permission it would be appropriate to impose a condition to limit further works for the development to those shown on the appellant's scheme. This would provide certainty for how the remaining works are to be undertaken and would ensure the development is carried out in a satisfactory manner in accordance with the cited policies of the development plan.
26. The Council has requested a condition to remove permitted development rights for the erection of fences, gates, walls or other means of enclosure. However, I cannot see that such a condition would be necessary to make the development acceptable or that it would be justified by the nature and impact of the development to be permitted. It would, thus, fail to meet the tests for conditions as set out in the Planning Practice Guidance³ [hereafter "the PPG"] and paragraph 206 of the Framework.
27. A further condition suggested by the Council is that details of all walls, fences, gates or other means of enclosure to be erected in or around the development should be submitted to the Local Planning Authority for approval. However, as I find the appellant's submitted details, in themselves, to be acceptable it is not necessary to require the submission of a further scheme.

³ The Planning Practice Guidance is a web based resource introduced by the Department for Communities and Local Government. It provides advice to planning practitioners on a number of topics including on the Use of Planning Conditions. Under this section paragraph 004 advises on the tests for conditions.

28. Whilst the Council suggests a three month period be imposed for completion of the works, paragraph 005 of the PPG advises that conditions requiring development to be carried out in entirety will fail to meet the test of necessity. Therefore, I consider it sufficient that the condition specifies the further works without imposing a timescale for their completion.

Conclusions on ground (a) and the deemed application

29. Having taken into account all matters raised I find the development, on balance, to be acceptable. It has a satisfactory effect upon the character and appearance of the area and accords with the cited policies of the development plan. The appeal on ground (a) succeeds and the deemed application will be conditionally granted.

Conclusion

30. For the reasons given above I conclude that the appeal should succeed on ground (a) and I will grant planning permission for the application deemed to have been made under s177(5) of the Act. Consequently ground (f) of the appeal does not need to be considered.

Susan Wraith

Inspector