
Appeal Decision

Site visit made on 27 September 2016

by Chris Preston BA (Hons) BPI MRTPI

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

Decision date: 21 November 2016

Appeal Ref: APP/W5780/C/16/3146773

138 Beehive Lane, Ilford, Essex IG4 5EE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Vimal Pokar (VNM Developments LLP) against an enforcement notice issued by the Council of the London Borough of Redbridge.
 - The Council's reference is E0196/15.
 - The notice was issued on 09 March 2016.
 - The breach of planning control as alleged in the notice is: the erection of a first floor rear extension, outbuilding and roller shutter gate to the rear of the property, loft conversion with rear dormer.
 - The requirements of the notice are: (i) Remove the first floor rear extension and ground floor extension; (ii) Amend the materials of the rear dormer extension to tile the side cheek of the dormer; (iii) Render the rear extension to match the existing property and; (iv) Reduce the height of the outbuilding to a maximum of 2.5m in height or; (v) Remove the outbuilding and; (vi) Remove the roller shutter gate to the rear of the property and; (vii) Remove from the land all resulting building materials, rubble and debris arising from compliance with the above.
 - The period for compliance with the requirements is within 6 months from the date the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c), and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The enforcement notice is corrected by:

- i) The insertion of the words "and ground floor" immediately following the words "first floor" in paragraph a) of section 3;
- ii) The deletion of the words "roller shutter gate to the rear of the property, loft conversion with rear dormer" from paragraph a) of section 3;
- iii) The deletion of the comma and the insertion of the word "and" following the words "rear extension" in paragraph a) of section 3;
- iv) The deletion of the requirements at sections 5(ii) and 5(vi).

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 section 177(5) of the 1990 Act as amended, for the development already carried out, namely the erection of a first floor and ground floor rear extension and outbuilding on land at 138 Beehive Lane, Ilford, Essex IG4 5EE, as referred to in the notice.

Costs

2. An application for costs was made by Mr Vimal Pokar (VNM Developments LLP) against the Council of the London Borough of Redbridge. This application is the subject of a separate Decision.

Procedural Matters

3. The notice describes the breach as:

Without planning permission the erection of a first floor rear extension, outbuilding and roller shutter gate to the rear of the property, loft conversion with rear dormer.

4. There is no mention within that description of the ground floor element of the extension that has been erected to the rear of the dwelling. However, the requirements of the notice at section 5(i) are to remove the first floor rear extension and ground floor extension. The reasons for issuing the notice, at section 4, state that 'the single storey rear extension was implemented in conjunction with the first floor extension and therefore does not benefit from prior approval'.
5. The Council have failed to provide a statement and have not forwarded an officer report or committee report in relation to the case. However, taking account of the reasons for issuing the notice and the requirements at section 5(i), it is clear that the Council consider that the ground floor extension forms part of the alleged breach and I consider it likely that the omission was a result of a typographical oversight on their behalf. The appellant has made full reference to the ground floor extension within his statement and subsequent correspondence and has addressed matters relating to that element. As such, I am satisfied that he will not be prejudiced by my decision to correct the notice to make reference to the ground floor extension within the description of the alleged breach of planning control.
6. The appeal is proceeding on grounds (a), (c) and (f) of section 174(2) of the Town and Country Planning Act 1990 (the Act). The initial appeal documents stated that the ground (c) appeal was submitted in relation to the roller shutter gate and the rear dormer extension. However, within his statement of 10 May 2016, the appellant also made reference to a judicial challenge relating to the interpretation of the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO), with particular regard to residential extensions. Following the submission of the appellant's statement, the challenge was heard in the High Court in June 2016 and the judgement was subsequently issued; *The Queen (on the application of Hilton) v Secretary of State for the Home Department* [2016] EWHC (Admin) CO/309/2016 (*Hilton*).
7. I then sought the parties' views on the implications of the judgement. In response, the appellant set out his view that the ground and first floor extensions to the dwelling were permitted under the terms of the GPDO and, thus, that they did not represent a breach of planning control with reference to ground (c). Although those claims did not form part of the initial appeal on ground (c) the appellant had drawn attention to the relevance of the judicial challenge and the additional points raised in relation to ground (c) could only reasonably be made following the publication of the approved judgement.

8. Consequently, I have taken account of those matters in reaching my decision and am satisfied that no prejudice will result. The Council have been invited to comment on the implications of the judgement, and on the additional points raised by the appellant, but have not responded.

The Appeal on Ground (c)

9. An appeal on ground (c) is made on the basis that there has not been a breach of planning control. Having regard to *Hilton* the appellant maintains that the ground and first floor extensions are lawful and do not represent a breach of planning control. That judgement revolved around a detailed interpretation of Class A, Part 1, Schedule 2 of the GPDO. In particular, the case revolved around how the term 'the enlarged part of the dwellinghouse' should be interpreted.
10. Under the terms of Class A, the enlargement, improvement or other alteration of a dwellinghouse is 'permitted development', subject to a number of conditions. Of relevance in *Hilton* and the case before me, the conditions at paragraph A.1(g) state that:
- until 30th May 2019, for a dwellinghouse not on article 2(3) land nor on a site of special scientific interest, the enlarged part of the dwellinghouse would have a single storey and – (i) extend beyond the rear wall of the original dwellinghouse by more than 8 metres in the case of a detached dwellinghouse, or 6 metres in the case of any other dwellinghouse, or*
- (ii) exceed 4 metres in height*
11. In *Hilton*, a single storey rear extension was proposed that would project by 2.3 metres from the rear of the existing rear wall of a previously extended semi-detached dwelling. The existing extension included single and two storey elements. The proposed extension, when added to the existing extension, would have projected by 5.1 metres from the 'original' rear wall of the dwelling i.e. less than the 6 metres permitted under condition A.1(g). However, the Inspector concluded that the 'enlarged part of the dwellinghouse', for the purposes of paragraph A.1(g), should be taken as the 2.3 metre single storey extension that was proposed, in addition to the previous extensions to the dwelling. Given that the previous extensions included a second storey that was above 4 metres in height, the Inspector duly concluded that the 'enlarged part of the dwellinghouse' would exceed 4 metres in height, such that it would fail to comply with the terms of paragraph A.1(g)(ii). As such, he determined that it would not constitute permitted development.
12. Without describing the full transcript, the judgement in *Hilton* identified that the approach of the Inspector was incorrect having regard to the terms of the GPDO. At paragraph 46 of his judgement, Robin Purchas QC, sitting as Deputy Judge of the High Court, states, 'In light of the above I have concluded that for the purpose of the exception under Class A, paragraph A.1(g) of the GPDO "the enlarged part of the dwellinghouse" refers to development comprising the enlargement of a dwellinghouse proposed to be carried out under Class A. The proper question is whether that proposed development would be single storey'. In other words, it is necessary to examine the operational development that is proposed at the time.

13. Paragraph 27 of the judgement states, 'it will always be a question of fact in any particular case what, on a holistic basis, is the operational development by way of enlargement that is in fact taking place and whether or not on the facts that included earlier extensions as part of the single operational development'.
14. In the case before me, the appellant contends that the ground and first floor elements are 'physically separate' and that they were 'separate enlargements, built at the same time'¹. However, that statement is contradicted by a previous letter sent to the Council by Mr Kingsley-Smith on 22 June 2015 which stated that 'the house was first extended from the original rear wall by a 3m rear projection at ground and first floor level in accordance with the PD Order mentioned above. As a separate operation the ground floor was then extended within the envelope authorised by the Council's prior approval'.
15. Thus, the sequence of events in terms of how the rear extension was erected is less than clear on the evidence provided. What is clear is that the Council had previously granted approval for a ground floor extension with a depth of 6m, a maximum height of 3m and a height to eaves of 2.7metres². Whichever version of the appellant's case is to be believed, it would appear that a single storey extension was not constructed in line with that prior approval as a single entity. Under the two scenarios presented, either the entirety of the ground and first floor extension was constructed at the same time or a two storey element was constructed first, after which a single storey element was added.
16. No evidence has been provided in support of the claim that the first and ground floor elements were constructed at different times. It appears that a considerable amount of work has been undertaken at the property with various elements being undertaken concurrently as part of that refurbishment. Given that the work was part of a wider redevelopment I consider it likely that the elements were, in fact, undertaken at the same time, as suggested by Mr Kingsley-Smith in his letter of 19 September 2016.
17. Moreover, it appears to me that the two floors are not 'physically separate' but the first floor element sits directly on top of the ground floor; both elements are physically linked. It seems most probable to me that the extension was built as a single entity – whilst the appellant may have sought prior approval for the single storey ground floor element separately, that proposal was not constructed. What was constructed was an extension that was partly two storeys in height and partly single storey in height.
18. On that basis, this is not a case where different extensions were constructed separately, at different times, as in *Hilton*. That judgement requires that the works are assessed on an holistic basis, in order to determine what the proposed enlargement is. For the reasons given I conclude that the 'enlarged part of the dwellinghouse' in this case is the ground and first floor extension, taken as a whole.
19. Thus, the enlarged part of the dwellinghouse, has more than a single storey and projects by more than three metres from the original rear wall of the dwellinghouse such that it would fail to comply with the terms of paragraph A.1(h) of Class A. It also has a height of more than 4 metres, such that it does

¹ As described in a letter from Mr Kingsley Smith, dated 19 September 2016

² Council reference: 1414/3

not comply with the terms of paragraph A.1(g). Consequently, in my view, the ground and first floor extension does not amount to 'permitted development'. Planning permission would have been required for the erection of the extension. Whilst I acknowledge that *Hilton* has implications for the way in which potential fall-back scenarios may be considered, that is a matter for consideration in relation to the planning merits of the development under ground (a) and is not relevant to the ground (c) appeal.

20. Even if my conclusions in relation to *Hilton* are wrong I note that the materials of the extension, as constructed, did not appear to match those of the original dwelling. In the letter dated 22 June 2015, Mr Kingsley-Smith noted that 'with some reluctance, our client will render the side walls to match: a planning application will shortly be submitted for your consideration'. By the time of my accompanied site visit the walls of the extension had been rendered to match the dwelling but it is not clear whether that work was undertaken prior to the service of the notice. Under the ground (a) submissions in his statement of 10 May 2016, the appellant notes that 'materials can be governed by condition and the side wall is rendered'. Thus, the appellant has not demonstrated, on the balance of probability, that the external materials of the extension were of a similar appearance to those of the original dwelling at the point the notice was issued. In that respect, it is likely that the development failed to comply with the terms of paragraph A.3(a) of Class A, Part 1 of the GPDO and, as such, the ground and first floor extension would not have constituted 'permitted development'.
21. For reasons given, on the balance of probability I conclude that the ground and first floor extension represented a breach of planning control and the appeal on ground (c) in relation to that extension fails.
22. The roller shutter gate was originally constructed as a free standing structure but has now been incorporated into a car port and now forms part of an outbuilding to the rear of the dwelling. The Council granted a certificate of lawful development (under section 192 of the Town and Country Planning Act 1990) (LDC) in relation to a proposed car port, incorporating a roller shutter, on 24 December 2015. The appellant maintains that the structure, as it currently exists, complies with the details submitted in relation to the certificate of lawfulness application. Having viewed the structure, and in the absence of any evidence to the contrary from the Council, I concur with that view.
23. The LDC was issued in December 2015 and the enforcement notice was served on 20 April 2016. If the works to integrate the roller shutter into the car port had been undertaken prior to the service of the notice it would not have represented a breach of planning control at that point in time. Within his statement, under the heading 'Ground C', the appellant suggests that the roller shutter had been incorporated into the car port prior to the date of the notice. In an earlier statement, he suggested that materials were on site and the works were on-going. However, notwithstanding that uncertainty, at the very least, the evidence indicates work to incorporate the roller shutter into the car port was underway, if not fully completed, at the time the enforcement notice was served.
24. In the absence of any contrary information from the Council, on the balance of probability, I consider that the roller shutter was not a free standing structure

at the time the notice was served but part of the car port that the Council had accepted was lawful on 24 December 2015. As such, the roller shutter gate did not represent a breach of planning control the appeal on ground (c) succeeds in that respect.

25. Very little information has been presented by either party in respect of the rear dormer extension. The enforcement notice states that *'the rear dormer does not comply with Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 and materials [sic]'*. The sentence does not read properly but reference to 'and materials' would appear to suggest that it failed to comply with the terms of the GPDO due to the materials. The requirements of the notice at 5(ii) are simply to tile the side cheek of the dormer; which side cheek is not clear. However, that would appear to confirm that the Council's concerns related purely to materials and not the overall size of the dormer. I note that the conditions at paragraph B.2(a) of Class B of the GPDO requires that the materials used in any exterior work must be of a similar appearance to those used in the construction of the existing dwellinghouse.
26. The appellant's statement suggests that render may have been used as the external finish for the side cheeks at the time the notice was served. Photographs of similar dormers within the local area with hanging tiles on the rear elevation and render on the side cheeks were provided as part of the appellant's statement. At the time of my visit, the dormer was finished in interlocking grey hanging tiles, including the side cheeks. Having regard to the appellant's statement it is possible that works to fit the hanging tiles were undertaken following the service of the enforcement notice; the statement notes that 'If the appellant has to get up on the roof to do as 5(ii) requires by tiling, it risks damage to the roof'.
27. Thus, the only evidence before me is that provided by the appellant which indicates that the side cheeks were rendered and the rear elevation was finished in hanging tiles at the time the notice was served. The condition imposed by paragraph B.2(a) of Class B is that the materials of any exterior work should be of similar appearance to those used in the construction of the dwellinghouse. The dwellinghouse has a rendered finish, as is typical of a property of its period. To my mind, a rendered side cheek would match that of the dwelling and comply with the terms of paragraph B.2(a).
28. The Council have raised no other matters relating to the dormer and, on the evidence before me, it would have complied with the terms of Class B, Part 1, Schedule 2 of the GPDO, at the time the notice was served. Consequently, the dormer extension would have benefitted from permitted development rights under the terms of the GPDO and did not constitute a breach of planning control. Therefore, the appeal on ground (c) succeeds in respect of the dormer window.

Conclusions on Ground (c)

29. The appeal on ground (c) succeeds insofar as it relates to the dormer extension and the roller shutter gate but fails insofar as it relates to the first floor and ground floor rear extension. I shall correct the terms of the notice accordingly, to remove reference to the dormer window and roller shutter gate in the alleged breach and to delete the requirements at section 5(ii) and 5(vi).

The Appeal on Ground (a)

30. An appeal on ground (a) is made on the basis that planning permission should be granted for the breach of planning control that is alleged in the notice. As set out, I have concluded that the rear dormer and the roller shutter gate do not constitute breaches of planning control and it is not necessary to consider the planning merits of those elements in relation to the appeal on ground (a).
31. I consider that the main issues in respect of the appeal on ground (a) are the effect of the first floor and ground floor extension and the outbuilding on the character and appearance of the dwelling and the surrounding area and the effect on the living conditions of the residents of No. 140 Beehive Lane.

Character and Appearance of the Area

32. The gable end of the side wall of the outbuilding runs parallel with Wycombe Road and is set in by approximately a metre from the garden boundary which is enclosed by a timber fence. As the property is the end dwelling in the row, the rear garden and the outbuilding are clearly visible from Wycombe Road as it passes the site. Nonetheless, to my mind, there is nothing particularly obtrusive or incongruous about the form, appearance and scale of the outbuilding. It is a modest structure with a pitched roof and materials that are not out of character with other buildings within the vicinity. In that regard, there is a mix of house types within the street, from the red-brick single storey property directly opposite which has an ecumenical appearance, to the inter-war rendered semi-detached dwellings immediately to the rear and the earlier semi-detached dwellings, constructed from stock bricks, on the opposite side of Wycombe Road.
33. In addition to the range of materials, the surrounding buildings all contain pitched roofs, including a number with pitched gables. Thus, the pitched roof of the outbuilding conforms to that pattern and the overall appearance of the structure is not out of kilter with the pattern of development on the street. I note that a lawful development certificate has been granted for a flat roofed outbuilding, with the same footprint. The steps required to be taken by the notice are either to demolish the building or reduce its height to 2.5m. In terms of appearance, a flat roofed structure, or one with a very shallow roof, would be out of kilter with the prevailing theme and it seems to me that the alternative of what could be constructed as 'permitted development' would be less sympathetic to the character of the area than that which has been constructed. In view of the above, I am satisfied that the outbuilding does not cause harm to the character or appearance of the surrounding area.
34. Similarly, the rear extension is of a scale that is commensurate with the scale of the original property and the design takes account of the proportions and external appearance of the host dwelling. In particular, the first floor element of the extension is set in from the boundary with No. 140 Beehive Lane, such that it does not dominate the rear elevation, and the pitched roof and materials are appropriate, having regard to the appearance of the original dwelling. The ridgeline of the roof is set well below that of the main dwelling ensuring that the scale of the extension is subservient to the main house.

35. The ground floor element has a mono-pitch roof – to the side of the first floor section – and a flat roof where it projects beyond the first floor element. The flat roof is hidden behind a parapet wall; a common feature which helps to conceal the flat roof when viewed from the street. The depth of the ground floor extension is not excessive, given the size of the available garden, and, when considered in the round, I am satisfied that the design and appearance of the rear extension, encompassing ground and first floor elements, is acceptable, having regard to the character and appearance of the surrounding area. The extension is prominent within the street scene by virtue of the location of the property at the junction between Beehive Lane and Wycombe Road. However, given that the design and appearance respect the dwelling and the surrounding area, the fact that the structure is visible does not amount to a reason to withhold permission.
36. Therefore, I consider that the design and appearance of the outbuilding and the rear extension are acceptable, having regard to the prevailing character of the surrounding area and that of the host dwelling. In those respects, the development complies with the requirements of policy SP3(d) of the London Borough of Redbridge Core Strategy (2008) (the CS) and policies BD1 (1,2 & 4) and BD5 (1,2,3 and 5) of the London Borough of Redbridge Borough Wide Primary Policies Development Plan Document (2008) (the DPD). It is also compliant with the need for good design, as required by paragraph 17 and section 7 of the National Planning Policy Framework (the Framework).

Effect on the Living Conditions of Residents at No. 140 Beehive Lane

37. I note that a single storey extension has been added to the rear of No. 140 at some point in the past. That extension is of a similar depth to the ground floor element of the extension at No. 138. As such, the ground floor addition does not affect the neighbouring residents in terms of loss of light, overbearing impact, or overshadowing.
38. The first floor element is set in from the side of No. 140 and projects by 3 metres from the rear elevation. There are no side facing windows within the flank wall and the development does not cause any harm by way of overlooking or loss of privacy beyond what can reasonably be expected in an urban environment – overlooking from rear facing first floor bedrooms into neighbouring gardens being common. The hipped and pitched roof also helps to minimise the scale of the extension when viewed from the neighbouring aspect. The design of the roof; the fact that the extension is set in from the side of the dwelling; the overall height of the extension; and the fact that the depth is limited to 3 metres; all combine to ensure that the impact on neighbouring residents by way of any loss of light, overbearing impact or overshadowing are within reasonable limits.
39. The outbuilding is located due south of No. 140 and that orientation is such that the building is likely to cause a degree of overshadowing in a limited area towards the bottom of the garden at No. 140. However, the height of the structure is not excessive and the extent of any overshadowing will be minimal. In my view, the impact in that regard is no more than could reasonably be expected for a domestic outbuilding and I am satisfied that the outbuilding has not had an undue impact on neighbouring living conditions.
40. Taking account of the above, I consider that the effect on the living conditions of the residents of No. 140 is acceptable and, in that respect, the development

complies with the requirements of policy SP3(f) of the CS, policy BD1(7) of the DPD and the core principle of the Framework, as set out at paragraph 17, that planning should seek to secure a good standard of amenity for all existing and future occupiers of land and buildings.

Other Matters

41. The appellant has referred to a potential 'fall-back' scenario through which an identical first and ground floor extension could be erected through the permitted development regime, having regard to the *Hilton* judgement. In my decision in relation to the ground (c) appeal I set out why I considered that the extension should be considered as a single entity, such that it would not constitute 'permitted development' having regard to the terms of the GPDO. Nonetheless, taking account of *Hilton*, it appears to me that the same result could be achieved through the implementation of permitted development rights if elements of the extension were constructed independently of one another.
42. In other words, had the 6m single storey rear extension been constructed first, in line with the prior approval granted by the Council, it would then have been possible for the appellant to construct a first floor addition above that extension, provided that the dimensions complied with the terms of Class A with regard to extensions with more than one storey. Alternatively, it would be possible for the appellant to construct a two storey extension, in line with the prior approval granted by the Council³ and subsequently to apply for prior approval for an additional 3 metre single storey extension to the rear of that two storey element, providing that the overall depth from the extension was no more than 6m from the original rear wall.
43. Consequently, a very similar result could be achieved by making use of permitted development rights and it seems likely that the appellant would pursue such an approach if necessary. The suggested fall-back therefore would appear to be a realistic prospect. However, for the reasons given, I find that the extension and outbuilding are acceptable on their own merits, without apportioning weight to the fall-back scenario.
44. I have noted comments from the neighbouring resident about potential future use of the outbuilding. The enforcement notice relates to building works to the dwelling at No. 138 and does not allege that any material change of use has taken place. Consequently, matters relating to any potential future use fall outside the scope of my decision.

Conclusions on Ground (a)

45. For the reasons given, I conclude that planning permission should be granted for the ground and first floor rear extension and outbuilding. No conditions have been suggested by either party and I am satisfied that the development, as constructed is acceptable.

The Appeal on Ground (f)

46. The enforcement notice will be quashed as a result of my decision to grant planning permission in relation to the ground (a) appeal. Therefore, in those circumstances, it is unnecessary for me to consider the appeal on ground (f).

³ Council reference: 4853/15

Chris Preston

INSPECTOR