The Planning Inspectorate

Appeal Decision

Site visit made on 20 March 2017

by Pete Drew BSc (Hons) DipTP (Dist) MRTPI

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

Decision date: 31 March 2017

Appeal Ref: APP/R5510/C/17/3167027
35 Park Avenue, Ruislip HA4 7UQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 [hereinafter "the Act"] as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Praful Lakhani against an enforcement notice issued by the Council of the London Borough of Hillingdon.
- The notice was issued on 15 December 2016.
- The breach of planning control as alleged in the notice is: Without planning permission, the erection of a single storey rear extension.
- The requirements of the notice are to: (i) Demolish and remove the single storey rear extension, shown in the approximate position outlined and crosshatched in blue on the attached plan or; (ii) implement planning permission 5028/APP/2014/3264 granted on 12 January 2015 by building the rear extension to full completion in accordance with approved proposed plan BD/14/33/2A. (iii) Remove from the Land all materials, debris, plant and equipment associated with requirement (i) or (ii) above.
- The period for compliance with these requirements is three (3) calendar months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) of the Act.

Formal 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.

Procedural matters

2. The main parties agreed that this should proceed as an unaccompanied site inspection. However a neighbour at No 33 Park Avenue subsequently wrote to The Planning Inspectorate [PINS] in correspondence dated 27 February 2017 and requested that the site be viewed from their property. In order to accommodate that request the Case Officer at PINS telephoned the neighbour and requested that the side gate be opened to allow me to fulfil the request without the main parties being present. In this way I was able to conduct a site inspection from the neighbouring property on an unaccompanied basis.

Ground (a), planning merits: *Preliminary matters*

3. The Appellant has lodged the appeal on grounds (a) and (f), and there is some overlap in a case such as this. In the event that ground (a) fails I shall deal, as necessary, with ground (f), but in view of the arguments advanced I need to deal with the approach here. Section 173(3) of the Act says an enforcement notice shall specify steps in order to achieve, wholly or partly, any of the purposes set out in Section 173(4). These include remedying the breach by making any development comply with the terms, including conditions, of any planning permission that has been granted in respect of the land. However the scheme advanced at Appendix 16 to the Appellant's statement is neither for the retention of what is built, which is shown on the drawings at Appendix 15,

nor does it benefit from planning permission. Accordingly, in order to give proper consideration to this alternative option I need to deal with it under ground (a) and, amongst other things, consider whether this outcome could be achieved by granting planning permission "*in relation to the whole or any part*" of the matters alleged in the notice, either with or without conditions.

Main issue

4. The main issue in the ground (a) appeal is the effect of the development on the character and appearance of the host property and the wider area.

Planning policy

5. The Development Plan [DP] includes the London Plan [LP], which was published in March 2016, and the Hillingdon Local Plan: Part 1 – Strategic Policies [SP] and Unitary Development Plan [UDP], which were adopted in November 2012 and September 1998, respectively. The UDP pre-dates the National Planning Policy Framework ["the Framework"] and so relevant policies including BE13, BE15 and BE19 fall to be assessed against paragraph 215 of the Framework. However neither party has given reasons why these policies are inconsistent with the Framework and, as such, I attach these policies significant weight.
6. The Council's statement says the Council submitted the Hillingdon Local Plan: Part 2 for examination in 2014 and that adoption is anticipated in early 2017. However the Council has not referred me to any relevant policies and in these circumstances I am unable to take any such policies into account.
7. Paragraph 5.22 of the supporting text to UDP Policy BE19 contain a cross reference to SPG, but given its date [1998] and the date of the Hillingdon Design and Accessibility Statement [HDAS] SPD "*Residential Layouts*" [2006] that is not a cross reference to the SPD. Paragraph 1.3 of the HDAS SPD "*Residential Layouts*" refers to UDP Policy BE19, but admits that the SPD has been prepared in anticipation of policies in what was then going to be a Core Strategy. In the absence of a clear cross reference from the UDP Policy to the SPD I am only able to attach the HDAS SPD "*Residential Layouts*" limited weight, having regard to the definition of SPD in the Framework.
8. Moreover despite the clear reference to the HDAS SPD "*Residential Layouts*" on the face of the notice [paragraph 4 b)] the Council's statement refers to a different document, HDAS SPD "*Residential Extensions*". Given the nature of the development I anticipate this to be of greater relevance. Paragraph 1.3 of the HDAS SPD "*Residential Extensions*" also refers to UDP Policy BE19 as being the relevant policy out of those relied on by the Council in this appeal, but that policy contains no cross reference to this SPD. Accordingly this determines that it is only appropriate to attach HDAS SPD "*Residential Extensions*" very limited weight in this appeal. My view is reinforced by the fact that the Council did not allege that it was contravened on the face of the notice. I have however taken it into account given that both main parties have referred to it.

Reasons

9. The Officer's report on application No 5028/APP/2016/3375 records that the property was extended with a 2.5 m deep 2-storey extension in 1997 and that planning permission was granted in 2014 for a 3.6 m deep, 5 m wide and 3 m high flat roofed extension. That scheme [Ref No 5028/APP/2014/3264] is a viable fallback position that is shown on drawing No BD/14/33/2A, which is appropriately reflected in the second requirement of the enforcement notice.

10. In that context the ground (a) is first and foremost for the retention of what has been built, but that scheme [Appendix 15] has previously been considered by the Secretary of State. The appeal [Ref APP/R5510/D/16/3144942] was dismissed in a decision dated 19 May 2016, in which the Inspector expressed concerns about the overall height, depth and width of the structure. He found this combination draws the eye and results in a striking and to some degree dominant addition, which he held was prominent in the surrounding area due to the presence of what he labelled the excessive white fascia boarding; I agree.

11. I have taken account of the fresh arguments advanced, but no considerations have been put forward that lead me to depart from the Inspector's very recent assessment[1]. I am particularly, but not exclusively, concerned with the height and bulk of the fascia. The fascia protrudes awkwardly beyond the original brick face of the flank wall of the house and is visible along a length of the footway along Sherwood Avenue, including from in front of the house[2]. Even with planting, principally laurel, that is now established along the Sherwood Avenue frontage, the extension is still prominent, e.g. from the junction of that road with Broadwood Avenue[3]. For these reasons the development harms the character and appearance of the host property and wider area. There are no material considerations that outweigh the clear and previously identified conflict with SP Policy BE1 and saved UDP Policies BE13, BE15 and BE19.

12. Against that finding I deal first with the scheme at Appendix 14. Drawing No PL101 shows that the footprint of the extension would remain unchanged[4] and so this scheme offers no concessions to address the Inspector's clearly stated concerns about the depth and width of the structure[5]. Drawing No PL104 shows that the highest part of the roof is proposed to be reduced by 221 mm[6], but when compared to the low profile of the approved roof I am unconvinced that this alternative scheme would be acceptable. In particular the roof would still present as a bulky addition to the property. Whilst the elevations[7] show the modified roof with what appears to be a dark finish to the uppermost part of the fascia board, few details of revised materials are given and the inference is that white UPVC would be used[8]. In any event I am not satisfied a condition to require a revised colour or finish would address my concern about its bulk and I am not satisfied that a spray painted brick colour finish would be successful.

13. I appreciate that the highest part of the roof would be the top of the lanterns, which are not features that were identified as a particular concern by the last Inspector. However, noting that the fallback appears to allow for rooflights or

[1] Paragraph 3.2 of the Appellant's statement says that the development is 0.6 m higher than anticipated but paragraph 5.7 says the difference is 0.42 m. By reference to the Council's assessment of the approved plans that is what is shown on drawing No PL004 and so that is the basis upon which I am going to deal with this appeal.
[2] See photo 1 at Appendix 2 to the Appellant's statement which, despite the increased height of the laurels directly adjacent to the flank wall of the extension, is a view that has basically not changed.
[3] From this public vantage-point there is a largely uninterrupted view over the gated entrance to the rear garden.
[4] Comparison made to drawing No PL001.
[5] To the extent that the note of meeting [Appendix 8 to the Appellant's statement] appears to say: "…the slight excess depth of the extension and installation of windows instead of door were not material", I cannot agree that this is a reasonable interpretation of the Inspector's decision. The increased depth was a key reason for the Inspector's finding that the structure draws the eye as a striking, dominant addition. Even if the ambiguous sentence might be read a different way I do not accept it having regard to paragraph 11 of the appeal decision.
[6] Comparison made to drawing No PL004.
[7] Drawing No PL102.
[8] See paragraphs 5.25-5.27 of the Appellant's Statement of Case. In saying this I note that the note of meeting [Appendix 8 to the Appellant's statement, but reiterated in Appendix 10] refers to a sample panel of fascia board spray painted to match the brickwork of the dwelling and so I have considered this as one potential solution.

similar[9], it is unclear why the lanterns need to project above the roof as this adds to its mass. Nevertheless my main concern relates to the height and bulk of the fascia, as fully revealed on the elevations[10]. So whilst I have noted the height set out in paragraph 3.7 of the HDAS SPD "*Residential Extensions*", this does not alter my view that the revised roof design would be unacceptable such that, taken as a whole, the extension would not be subordinate to the dwelling. Amongst other things the roof form contrasts with the drawings on page 15 of the HDAS SPD "*Residential Extensions*". For all of these reasons I again find a conflict with SP Policy BE1 and saved UDP Policies BE13, BE15 and BE19.

14. In reaching this view I reject the assertion that this judgement involves an unsubstantiated requirement to impose an architectural style or particular taste, as referred to in paragraph 60 of the Framework. The issue is one of scale and massing rather than, by way of example, about the introduction of the glazing bars, which might be more subjective. There is no doubt that the Council's concerns are proper and highly relevant considerations, as is evident from the Secretary of State's earlier decision on the appeal site.

15. Turning to Appendix 16, drawing No PL201 again shows that the footprint of the extension would remain unchanged[11]. When added to the implemented 2.5 m deep 2-storey extension, it would be a sizeable rear projection and I note the Appellant acknowledges it would be 0.6 m deeper than permitted[12]. This is material and does add to the mass of the development as a whole. No lesser scheme is put forward to address this aspect of the Inspector's concerns.

16. Drawing No PL204 shows the roof would be modified as part of this scheme to a height not exceeding 3.055 m, which is only marginally higher than the permitted fallback. Nevertheless the design of the roof appears cumbersome in comparison to the permitted scheme and, as such, it would not harmonise with the proportions of the host property or the area, or achieve the slimline profile of the fallback scheme. It would fail, at a minimum, to complement the area's character. Conditions, e.g. in terms of materials, would not address this issue and so I find that this scheme would also not achieve a high quality of design or make a positive contribution to the local area in terms of, notably, scale.

17. In reaching the view that planning permission should not be granted for the extension as built or proposed to be modified I have taken account of the letter of support from a neighbour. I note that his property is on the opposite side of Sherwood Avenue and hence his view of the extension, e.g. from his back garden, is likely to be ameliorated to some degree by the laurels. However this planting scheme does not address the harm to the public realm or the visual impact of the extension when seen from some other neighbouring properties.

18. I have noted the reference to other extensions in the area, including those shown on photos 6 and 7 of Appendix 2 to the Appellant's statement. However photo 5 shows that in the reverse view the extension at No 36 Park Avenue does not project from the flank wall in the same way that the extension on the appeal site does in photo 6. It appears to be lower in height and less obtrusive. I have no details of the circumstances in which other extensions, which include a conventional single storey addition and a roof extension, were permitted, and

[9] See drawing No BD/14/33/2A, which appears to identify such features as rectangles on the block plans.
[10] Drawing Nos PL102 and PL103.
[11] Comparison made to drawing No PL001.
[12] Paragraph 2.16 of the Council's statement says the extension is 80 cm deeper but, whichever measurement is correct, it would appear to be materially larger in this respect than what was granted planning permission.

by their very nature they appear to be distinguishable from what is sought. It does not lead me to find that the area is characterised by large extensions. To the contrary the attractive street scene is well mannered in appearance and the excessively large extension, the subject of this appeal, detracts from this.

19. On the main issue I conclude that the development harms the character and appearance of the host property and the wider area, contrary to SP Policy BE1 and saved UDP Policies BE13, BE15 and BE19. Although reference has been made to relevant LP Policies the Council has not alleged a conflict with them and, as such, I do not intend to focus on them because it is suffice to note that when considering the DP as a whole they do not pull in the opposite direction. I have taken account of all other matters raised in the grounds of appeal, the Appellant's Statement of Case and at final comments stage, but there are no material considerations of sufficient weight that indicate that the determination should be made otherwise than in accordance with the DP.

Ground (f)

20. In the context of the provisions of the Act set out in paragraph 3 above, the first 2 requirements of the notice are expressed in the alternative. Both appear to reflect section 173(4)(a) insofar as the first appears to require the land to be restored to its condition before the breach took place and the second requires the development to comply with the terms of the extant planning permission. These are legitimate objectives by reference to relevant provisions of the Act. The third requirement is a necessary consequence of the first 2 requirements.

21. The Appellant does not appear to question the second requirement and makes reference to the planning permission in the first bullet-point of paragraph 5.30. It is important to recognise the first 2 requirements are in the alternative and so the Appellant has a viable option to implement the scheme that was granted planning permission. Viewed in that light the first requirement is not excessive. The Appellant has a simple choice as to how to remedy the breach. Demolition would result in the dwelling brought back to its pre-existing position, as set out in the third bullet-point of paragraph 5.30 of the Appellant's statement, but that is a legitimate scenario having regard to section173(4)(a) of the Act. So whilst there might be impacts, described in paragraph 5.31 of the Appellant's statement, those are a necessary consequence of remedying the breach.

22. Paraphrasing the last sentence of paragraph 2.27 of the Council's statement, it appears to say that no lesser steps have been meaningfully suggested by the Appellant to remedy the breach, which appears to be a reference to section 173(4)(a) of the Act. However the preceding sentence refers to remedying the identified injury to amenity, which appears to be a reference to section 173(4)(b) of the Act. Whilst my reading of the requirements is that they were framed in order to remedy the breach, I deal with this argument in the alternative.

23. Plainly the Appellant has put forward an alternative scheme in Appendix 16, but I have already given reasons why that is unacceptable. I have dealt with it under ground (a) because it would have been necessary to impose conditions in order to achieve that outcome on its planning merits. The second bullet-point of paragraph 5.30 expressly refers to conditions and the form of wording put forward in paragraph 5.34 of the Appellant's statement appears to be in the form of a planning condition rather than a requirement. The bottom line is that I consider that this alternative would not remedy the injury to amenity that has been caused by the breach for the reasons identified in paragraphs 15 and 16.

24. The fourth bullet-point of paragraph 5.30 of the Appellant's statement refers to the prospect of a further revised planning application. However that is not an answer to the ground (f). If such an application were registered and permitted then the provisions of section 180 of the Act might be relevant but that is not a scenario that I can consider when dealing with this appeal. I conclude that no reason is advanced as to why the requirements of the notice exceed what is necessary to remedy the breach and the injury to amenity, which is the limited scope of the ground (f). In the circumstances, this ground of appeal must fail.

Conclusion

25. For the reasons given, and having regard to all other matters raised, I conclude that the appeal should be dismissed and I shall uphold the enforcement notice. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act.

Pete Drew
INSPECTOR