

Appeal Decision

Site visit made on 30 May 2017

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

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

Decision date: 8 June 2017

Appeal Ref: APP/R5510/C/16/3165573

3 Burleigh Road, Uxbridge, Middlesex UB10 9BG

- 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 Amjad Ali Chaudhry against an enforcement notice issued by the Council of the London Borough of Hillingdon.
 - The enforcement notice, numbered HS/ENF/10579(B), was issued on 21 November 2016.
 - The breach of planning control as alleged in the notice is: 1. Without planning permission, the erection of a part two storey, part single storey side/rear extension incorporating a hip to gable roof extension with rear dormer (shown marked "B" on the attached photograph); 2. Without planning permission, erection of an extension fronting a highway and forward of the principal elevation (shown marked "C" on the attached photograph).
 - The requirements of the notice are: (i) (a) demolish the unauthorised part two storey, part single storey side/rear extension incorporating a hip to gable loft conversion with rear dormer and reinstate the dwellinghouse to resemble the external appearance of the dwellinghouse prior to the unauthorised development as shown on drawing labelled RPA/3/BR/105 (Existing Elevations) dated 23 April 2012 submitted with planning application reference 22604/APP/2012/978 and granted by the Local Planning Authority on 15 June 2012; OR (b) implement the details approved on drawing labelled RPA/3/BR/106 (Proposed Elevations) dated 23 April 2012 submitted with planning application reference 22604/APP/2012/978 and granted by the Local Planning Authority on 15 June 2012; (ii) demolish the unauthorised extension erected against the principal elevation and fronting Burleigh Road; (iii) Remove from the land the debris, items, fixtures and fittings, furniture, building materials, plant and machinery resulting from the demolition works.
 - The period for compliance with the requirements is three (3) months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Act [but see also below].
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Decision

1. I direct that the enforcement notice be corrected and varied by:
 - i. the deletion of the words in paragraph 3.1. of the notice and their replacement with the words "*Without planning permission, the erection of a part two storey, part single storey side/rear extension*";
 - ii. the deletion of the words "*(shown marked "C" on the attached photograph)*" in paragraph 3.2. of the notice;
 - iii. the deletion of the photograph attached to the notice;
 - iv. the deletion of the words in paragraph 5 (i)(a) of the notice and their replacement with the words "*demolish the unauthorised part two storey, part single storey side/rear extension; OR*"; and,
 - v. the deletion of the word and figure "*Three (3)*" in paragraph 5 of the notice and their replacement with the word and figure "*Six (6)*" months.

2. Subject to these corrections and variations 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

3. Section 6 of the Appellant's statement alleges the notice is: "...*fundamentally flawed and beyond correction*"¹ which, given the wide powers of correction available to the Secretary of State, suggests it is being claimed that the notice is a nullity, even if that word is not expressly used. If the notice were to be found to be a nullity there is, in effect, no notice at all and therefore nothing that can be corrected or, indeed, form the basis of an appeal. For this reason I have to deal with this argument before considering the grounds of appeal.
4. A notice is a nullity if it is missing some vital element, such as a requirement or a date for compliance, and so is defective on its face. This does not apply to this notice, which is similar to the example notice in the Planning Practice Guidance [the Guidance]². The argument here is more subtle insofar as it is said there is ambiguity as a result of the point marked "B" on the photograph.
5. Case law determines that the relevant test is whether a notice is hopelessly ambiguous and uncertain so that the recipient could not tell in what respect it was alleged that he had developed the land without permission. In this case, it is said the breach alleged in the notice is confusing and the notice lacks clarity, but no appeal under ground (b) has been lodged. If it had the onus of proof would fall on the Appellant to show that: "...*the breach of control alleged in the enforcement notice has not occurred as a matter of fact*" [as per section E. (b) of the appeal form]. In that context, when one compares what has been built to drawing No RPA/3/BR/105 [Existing Elevations] dated 23 April 2012 it is clear that insofar as it is alleged that: "...*a hip to gable roof extension with rear dormer*" has been built without planning permission that relates to the original dwelling. There was only ever one existing hipped roof form and so the Appellant can be under no illusion as to what it is alleged he has done wrong.
6. Nevertheless I consider the photograph attached to the notice does introduce a degree of ambiguity insofar as the annotation "B" has been placed on the two storey extension rather than the roof extension. In my view this can be corrected without causing injustice because there can be no ambiguity as to what hip to gable roof extension has been constructed. The words are plain on their face and do not require reference to a photograph. In the circumstances I shall correct the notice by striking through the references to a photograph and deleting it from the notice. I shall also make minor changes to the allegation itself in order to deal with any inference that the notice does not attack the hip to gable conversion, so that the corrected paragraph 3.1 would read: "*Without planning permission, the erection of a part two storey, part single storey side/rear extension and a hip to gable roof extension with rear dormer*". For the reasons given I am satisfied that these corrections can be made without injustice, most significantly because it is clear that the notice is not a nullity.
7. The Appellant's statement seeks to introduce a ground (c) appeal, but the original claim that the dormer roof extension was permitted development is also evident from the grounds of appeal. Given that the Council have had an

¹ Source of quote: paragraph 6.1.

² See: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/548727/17b-061-20140120_example-enforcement-notice-operational-development.pdf

opportunity to respond to this argument at both stages I can be satisfied that there would be no injustice from admitting this additional ground of appeal.

Ground (c)

8. Under this ground of appeal the Appellant needs to show that: “...*there has not been a breach of planning control*” [as per section E. (c) of the appeal form]. The Guidance makes clear³ that in enforcement appeals the onus of proof in respect of matters of fact is on the Appellant.
9. The letter, or contract, at Appendix 6 to the Appellant’s statement records that the works comprising the loft conversion commenced on 25 February 2015 and were completed on 2 April 2015. The second letter, or contract, at Appendix 6 to the Appellant’s statement, relates to the single and two storey side extension and records that those works commenced on 20 June 2015. I have been given no reason to doubt the authenticity of these documents and so, applying the balance of probability, I accept that the Appellant has shown that the roof extension with rear dormer was undertaken first and was substantially complete before the works on the other extension[s] were commenced.
10. The Appellant has referred in a generic sense to “*the GPDO*”. However in view of the above dates there is a necessary distinction to be drawn. The Town and Country Planning (General Permitted Development) (England) (Order) 2015 [the 2015 Order] came into force on 15 April 2015. Section 56 of the Act states that for the purposes of the Act development of land shall be taken to be initiated if the development consists of the carrying out of operations, at the time when those operations began. Since the works to the loft conversion began prior to this date the relevant Statutory Instrument is the Town and Country Planning (General Permitted Development) Order 1995 [the GPDO]. However, the provisions of the 2015 Order are similar to those in the GPDO insofar as they cite relevant criteria in Class B with regard to the enlargement of a dwellinghouse consisting of an addition or alteration to its roof.
11. The Appellant’s unchallenged calculation is that the loft conversion extends to 43.79 m³, which is below the permitted 50 m³ figure. The loft conversion complies with all the remaining criteria in Class B of Part 1 to Schedule 2 of the GPDO. In the circumstances I consider the Appellant has discharged the onus of proof to show that the loft conversion was undertaken first and that it was a separate building operation that benefitted from a grant of planning permission that was deemed to be granted by virtue of Article 3 of the GPDO.
12. In reaching this view I have noted the assertion that the building has: “...*been sub-divided into two separate self-contained residential units*”⁴. However this is not reflected in the allegation in the notice and nothing that I saw during my inspection led me to conclude that this claim is made out. I acknowledge that the introduction of a second stairway is unusual which, together with the layout that permits access via a separate front entrance door, might suggest a degree of independence. However the internal layout facilitated my movement from one part of the dwelling to the other and in my view that is determinative that there are not two separate self-contained dwellings at the property. Moreover the loft conversion is accessed solely via the first floor of the original dwelling and given my analysis of dates I can be satisfied that those works were not

³ See for example paragraph: 053, Reference ID: 16-053-20140306.

⁴ Source of quote: paragraph 2.16 of the Council’s statement.

- precluded from being permitted development by virtue of the property not being in use as a single dwellinghouse on the date that they were undertaken.
13. I conclude on the ground (c) that the works comprising a roof extension with rear dormer are permitted development by virtue of the GPDO and do not represent a breach of planning control. As a consequence it is necessary to vary the corrected allegation in paragraph 3.1 so that it would read: "*Without planning permission, the erection of a part two storey, part single storey side/rear extension*". The corrected and varied allegation, together with existing paragraph 3.2, forms the basis of the deemed planning application.
14. In that context it is also appropriate to record that my inspection confirmed the Appellant's assertion that the porch, at 1.05 m deep, 1.85 m wide and 2.45 m high, is permitted development by virtue of Article 3 and Class D of Part 1 to Schedule 2 of the 2015 Order. On the balance of probability those works, outside the front door of the original dwellinghouse, started after 15 April 2015, but even if I am wrong the relevant provisions of the GPDO are not materially different. Although the porch is not expressly within the ambit of the notice, in the scenario that it might be said to be within paragraph 3.2 thereof, I make clear it does not form part of the deemed planning application for this reason.

Ground (a): the deemed planning application

Main issue

15. 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

16. The Development Plan [DP] includes the Hillingdon Local Plan: Part 1 – Strategic Policies [SP] and the 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, BE19 and BE21 fall to be assessed against paragraph 215 of the Framework. However the Appellant has offered no reason why these policies are inconsistent with the Framework and, as such, I attach these policies significant weight in the deemed planning application.
17. The Council's statement says the emerging UDP is scheduled for adoption 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. Similarly the Council does not rely on any policies in the adopted London Plan.
18. Paragraph 5.22 of the supporting text to UDP Policy BE19 contain a cross reference to Supplementary Planning Guidance [SPG]. However given its date [1998] and the date of the Hillingdon Design and Accessibility Statement [HDAS] Supplementary Planning Document [SPD] "*Residential Extensions*" [2006] that is not a reference to this SPD. Paragraph 1.3 of the HDAS SPD refers to UDP Policies BE19 and BE21 as being relevant policies out of those relied on by the Council in this appeal, but those policies contain no cross reference to this SPD. Accordingly this determines that it is only appropriate to attach HDAS SPD "*Residential Extensions*" moderate weight in this appeal. My view is confirmed by the fact that paragraph 1.3 says: "*This SPD will be amended in due course to make specific reference to the relevant LDF policies*", but that has not occurred despite the HDAS SPD itself being a 8-years old.

Reasons

19. The scheme that was granted by the Local Planning Authority on 15 June 2012 under reference 22604/APP/2012/978 shows a well-mannered extension with a hipped roof that mimics the original but is set down from the main ridge with the 2-storey face set back from the main façade in a deferential form. Whilst the 2-storey side extension that has been built is set back from the façade of the original dwellinghouse and the ridge of its roof is lower, the hipped roof form has been abandoned. Moreover, and in contrast to the permitted scheme, the single storey front extension projects forward of the original dwellinghouse. Crucially the delegated report on that application says the proposed two storey side extension: "...*would be set-in from the boundary by 1m to 1.3m*"⁵, which is confirmed by reference to the approved Block Plan and Ground Floor plan⁶.
20. The Appellant says the extension is set in 0.1 m from the side boundary with No 1, but that is materially less than the minimum of 1 m specified on page 20 of the HDAS SPD and the permitted scheme, as described above. There is no reason to doubt the estimate of 0.1 m, but in practical terms that setback cannot be perceived and the side extension results in a form of development that fills the width of the plot. The overall effect is an overdevelopment of the plot, which contrasts with the other half of the semi at No 5 and the character of the area more generally. The increased mass of the roof above the 2-storey extension and the roof of the forward projection are material to this finding.
21. If such a form of development were to be permitted and a similar form of development were to take place elsewhere in the street it could lead to a terracing effect which, over time, could fundamentally alter the character and appearance of the street scene. Permitting this scheme could therefore set an undesirable precedent for the area, the ultimate result of which is that it could become a terraced street where there was no spaces between built forms, which the UDP and the HDAS SPD specifically seek to prevent.
22. The Appellant says that on a corner site adjoining an open space or a road that the HDAS SPD allows flexibility from set-ins. That is true but by reference to the illustrations on page 20 thereof it is quite clear that the appeal site is not on such a corner site because there might be scope to extend No 1. Whilst the neighbouring property occupies what the Appellant calls a *wedged shape site* there could be scope to replace the garage at No 1 with a 2-storey form. The prospects of doing so would be greater if planning permission were granted for the 2-storey extension that is the subject of the deemed planning application.
23. The Appellant claims there were practical problems in providing a hipped roof form because the adjoining landowner refused to co-operate, but there is no evidence to support the claim. In any event that provides no explanation for why a materially different scheme was built from that which had been granted planning permission, which was expressly shown to be set in from the party boundary. The Appellant asserts that the plan showing the proposed elevations cannot be relied on. Given the unorthodox massing of the roof extension, a hipped roof to the 2-storey extension, whilst potentially still deliverable, would not result in the attractive finish anticipated by the permitted scheme.

⁵ Source of quote: paragraph 1.2 of the report, which was submitted with the Council's questionnaire.

⁶ Drawing Nos RPA/3/BR/100 and RPA/3/BR/103, respectively, the latter being specifically annotated to show the "1000" [mm] gap adjacent to the front of the proposed extension, confirming what the delegated report says.

24. The Appellant claims the footprint of the as-built side extension excluding the front projection almost matches that which was approved, but the delegated report and the approved plans give a clear basis to dispute that claim. The side extension appears to be up to 1.2 m wider than that permitted and so this claim, combined with the different roof design and the front projection, is not a sound basis to grant planning permission for what has been built. Moreover the finish of the 2-storey extension is very poor with, by way of example, different colour bricks having been used in the end gable, which are not even distinguished along a continuous line. That contrasts with the rendered end wall of the original house. The side of the front extension has, in contrast to the remainder of the 2-storey end brick wall, been rendered. Parts of the rear elevation have been left with exposed blockwork and are not even rendered. Although the neighbours have expressed reservations about the standard of construction generally that is covered by Building Regulations. In any event there is no clear evidence before me to substantiate the various claims that are made, including the assertion that some walls do not have any foundations.
25. The porch is lawful but that does not justify the front extension. Page 18 of the HDAS SPD envisages a set back from the front wall and whilst it does allow for the front wall of an extension to be in line with that of the original house, as was permitted by the Council in 2012, forward projections are not permitted. The neighbour has commented on the “...*huge plastic facade*” to the front projection, which I agree contrasts with the permitted scheme that shows a single window, the height and sill of which was shown to match the existing. No reason is given as to why an additional front entrance is necessary.
26. The Appellant has referred to front extensions at Nos 16 and 24 Burleigh Road, both of which I inspected. The former does not appear to have been extended. There is what appears to be an original, or historic, small porch, but that is in no way comparable to the scale of the porch that has been erected on the appeal site, let alone when combined with the front extension. The latter has not been extended at all. It is not for me to speculate on which properties the Appellant intended to refer to⁷, but the bottom line is that there appears to be nothing comparable in the street scene that might justify what has been built.
27. I appreciate the appeal site is in an established built-up area, such that there can be no objection to the principle of extensions. I acknowledge that many of the houses in the area have been extended, but I find no basis to support the claim there is anything similar in the area, at least in terms of the cumulative level of extensions. By way of example my inspection revealed that the pair of semis at Nos 11 and 13 no longer has the symmetry of hipped roofs that characterise many of the original houses, following a roof extension to No 13. However, whilst that has unbalanced the pair, which has now happened in the case of Nos 3 and 5, there remains a clear gap between Nos 13 and 15. Thus my key concern about the terracing effect is not evident from other examples.
28. As such I find a conflict with the following DP Policies for the reasons set out in the bullet-points set out overleaf:

⁷ I have however noted the photographs of Nos 10, 12, 14 and 26 at Document 1 to the Appellant’s statement, but none of these are comparable. Nos 10 and 12 essentially share a porch with a hipped roof, but the combined structure does not extend beyond the width of the respective dwellings. No 14 has a small porch with a linked structure that gives access to a side passage, which ensures the gap with No 16, above ground floor level, is maintained. No 26 has been extended in a 2-storey form with a hipped roof, the end wall of which is set in from the party boundary to ensure a gap is maintained. The porch has an extended roof with a matching hipped form and the area underneath has not been infilled but includes a bay window to echo the character of the street scene.

- SP Policy BE1: conflict with point 1 because the development would not comprise a high quality design and would detract from, rather than enhance, the local distinctiveness of the area; conflict with point 2 because it makes a negative, rather than positive, contribution to the local area, particularly in terms of form, scale and materials; and conflict with point 7 because it fails to respect the local character;
 - UDP Policy BE13: conflict because its appearance fails to harmonise with the existing street scene and features of the area that it is desirable to retain, including gaps between properties;
 - UDP Policy BE15: conflict because the extension fails to harmonise with the scale, form and architectural composition of the original dwelling;
 - UDP Policy BE19: conflict because the development fails to complement the character of the area; and,
 - UDP Policy BE21: conflict because by virtue of its siting, bulk and proximity, the extension would result in a significant loss of residential amenity which, for this purpose, having regard to the supporting text in paragraphs 5.24 and 5.27, should be interpreted generously and not restricted to neighbour amenity, there being no dispute that this is not harmed in this instance.
29. Against a finding of a clear conflict with the DP as a whole, the other significant consideration that is advanced, albeit only explicitly under the ground (f) head, is that the permitted scheme represents a fallback that would be very similar and so there would be no material difference between the respective schemes. I disagree for a number of reasons. First, the Appellant appears to have failed to appreciate that the footprint of the permitted scheme is materially smaller than what has been built, specifically in terms of its width and proximity to the boundary. Second the permitted scheme would also have a hipped roof form, which would exacerbate the clear separation with the boundary. Third the front projection would not extend so far forward and its façade would be more appropriate without the assemblage of openings that presently exist. Fourth the approved plans clearly require that the external finish should match.
30. For these reasons this is not a case where tweaks can be made to the existing structure via the imposition of conditions, crucially because of the different siting of the flank wall of the side extension. Although it might be possible to demolish what has been erected and rebuild in accordance with the planning permission that scenario is expressly envisaged by the requirements of the notice. As such this consideration does not outweigh the clear policy conflict.
31. On the main issue I conclude that the development harms the character and appearance of the host property and the wider area, in conflict with SP Policy BE1, UDP Policies BE13, BE15, BE19 and BE21 and the HDAS SPD.

Ground (a): Overall conclusion

32. I have taken account of all other matters raised in the Appellant's submissions, but there are no material considerations of sufficient weight that indicate that the determination should be made otherwise than in accordance with the DP. For the above reasons, having regard to all other matters raised, I conclude that the ground (a) appeal, the deemed planning application, should fail.

Ground (f)

33. 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 to require the land to be restored

- to its condition before the breach took place or by making any development comply with the terms, including conditions, of any planning permission that has been granted in respect of the land. In this context, the first requirement of the notice is expressed in the alternative. Both appear to reflect section 173(4)(a) insofar as (a) appears to require the land to be restored to its condition before the breach took place and (b) requires the development to comply with the terms of the 2012 planning permission. These are legitimate objectives by reference to the relevant provisions of the Act. The second and third requirements are a necessary consequence of the alternatives in the first.
34. Notwithstanding the above the first option (a) in the first requirement needs to be revised to reflect the success in the ground (c) appeal and the consequential variation to the allegation. I consider this can best be done by the deletion of the existing form of words and their replacement with the words: "*demolish the unauthorised part two storey, part single storey side/rear extension*". Whilst the existing elevations provide a benchmark for that assessment, to expressly refer to them in the requirement might lead to ambiguity given that there is no basis to return the roof of the original dwellinghouse to the condition shown on that drawing or a need to demolish the porch in front of the entrance door.
 35. The Appellant has expressed concern about the need to rebuild the pre-existing garage shown on the existing elevations, but I make clear that there is no such requirement. It is reasonable to conclude that the garage was demolished prior to the breach of planning control that took place on or soon after 20 June 2015 when work commenced on the single and two storey side extensions. Indeed "*Removing the Existing garage*" is the first entry on the list of works and that would have been necessary before excavating "*New foundations for the extension*", which is the second entry on that list. Thus the requirement to restore the land to its condition before the breach took place should only require the demolition of the unauthorised works because those took place on land that had been cleared of the pre-existing garage. However the variation to the first requirement that I propose deals with this substantive argument.
 36. The Appellant infers that the first requirement would still be excessive because a similar modified side extension can be erected, but because of the position of the flank wall it is not similar at all. In any event, noting there is some doubt about whether it does represent a realistic fallback position, that scenario is expressly covered by the second option, (b), in the first requirement. I cannot agree that this requirement would require the removal of the roof extension. It might be open to the Appellant to implement the permitted scheme insofar as it permits a side extension that might be compatible with the alterations that have been undertaken to the roof of the existing dwellinghouse.
 37. Despite my clear view that the requirements of the notice appear to have been drafted by reference to reflect section 173(4)(a) of the Act, paragraph 2.30 of the Council's statement exclusively refers to the need to remedy the identified injury to amenity. This appears to be a reference to section 173(4) (b) of the Act and so 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.
 38. In this respect the Appellant identifies a lesser step to be the conversion of the gable built as part of the side extension into a hipped roof. However, noting the material difference in the siting of the flank wall of the side extension between what has been built and that permitted, this would not address the concerns that I have identified under the ground (a) head. Among other things

I have also found harm by reason of the front projection and the absence of matching materials. The bottom line is that I consider that this alternative would not remedy the injury to amenity that has been caused by the breach.

39. I conclude that no reason is advanced as to why the requirements of the notice, as proposed to be varied to reflect the ground (c) success, exceed what is necessary to remedy the breach and the injury to amenity, which is the limited scope of the ground (f) appeal. In these circumstances, this ground must fail in substance and I refuse to vary the notice as has been suggested by the Appellant, notably in paragraph 6.35 of the Appellant's statement.

Ground (g)

40. The Appellant seeks 9 months, rather than the 3 months identified in the notice, in order to arrange finance, find a contractor, check quotations and undertake remedial works. I accept that even if the permitted scheme is not implemented that there is likely to be a cost implication of complying with (a) of the first requirement of the notice by demolishing the unauthorised works, such that all of these factors might reasonably come into play. A period of 3 months in order to comply with even this most basic requirement would therefore be tight. However the case for an extension to 9 months has not been clearly justified and given the likely timing of this decision any extension beyond 6 months would be likely to correspond with the winter when remedial works of this nature might best be avoided, including in the interests of the occupiers. In these circumstances I consider that 6 months would represent an appropriate compromise between the factors identified by the Appellant and the need to address the clear harm caused by the breach of planning control.

Conclusion

41. 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 corrected and varied 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