



Appeal Decision

Site visit made on 16 May 2019

by Simon Hand MA

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

Decision date: 9 August 2019

Appeal Ref: APP/B1930/C/18/3204290

Land at 149 Hatfield Road, St Albans, Hertfordshire, AL1 4LB

- 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 M Khan against an enforcement notice issued by St Albans City & District Council.
 - The enforcement notice was issued on 27 April 2018.
 - The breach of planning control as alleged in the notice is without planning permission the carrying out of development consisting of a first floor side extension, rear roof extension with three side dormer windows to create second floor and alterations to openings and internal alterations to existing first floor two bedroom flat to create four one bedroomed self-contained flats and construction and installation of a ventilation and extraction system and external ducting.
 - The requirements of the notice are re-build in accordance with planning permission 5/2013/1167 and its conditions. Remove from the land all rubble and building materials arising as a result of compliance with the step above.
 - The period for compliance with the requirements is 9 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be varied by deleting "9 months" from the time for compliance and replacing it with "12 months". Subject to this variation the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Application for costs

2. An application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

Background to the Appeal

3. In July 2013 planning permission was granted for works to the roof and the existing first floor flat to create 4 one-bedroom flats above a ground floor restaurant. This permission (reference 5/2013/1167) came with several conditions, a number of which were pre-commencement conditions, in particular, condition No 8, which said that no development should take place until details of an extraction and ventilation system had been agreed and the agreed system should be installed prior to occupation of the flats. In January 2014 the Council agreed to discharge two of the pre-commencement

conditions, but not No 8, due to lack of details. At some point work began on the development, and it was realised the roof details shown on the approved plans would not provide for adequate head heights in the flats contained within the roof space. An application was made to solve this problem but was refused by the Council in October 2015. The final building looks very much like the refused 2015 application.

4. There is no dispute that the building as constructed is quite different from that granted approval. The main differences are in the roof, especially when seen from Sandfield Road. The building turns the corner from Hatfield into Sandfield Road and ends at a gable wall above a single storey element, thus exposing the flank wall and its roof. The rest of Sandfield Road is made up of similar sized two storey houses, some with rooms in the roof. The original intention was that the ridge of the part of the roof facing Hatfield Road would be stepped down slightly and end in a hip.
5. What has been constructed is a ridge at the same height as the main roof facing Hatfield Road, with a steeper pitched roof facing Sandfield Road, resulting in a section of flat roof joining the ridge to the slope. The hip has been done away with leaving a full gable end facing down Sandfield Road. The dormers have been moved up the roof to be level with the new ridge, which creates a quite different profile when viewed from Sandfield Road and this is the main problem the Council have with the design.

The Status of the Notice

6. The appellant argues that, as the finished development is different from that granted planning permission, then the original planning permission was never implemented and is now time expired. As a consequence the notice cannot require the development to be altered to meet the requirements of that planning permission. Furthermore the condition requiring the ventilation system was a pre-commencement condition and so failure to have that approved before beginning works is another reason why the development was not built in accordance with the previous planning permission and as that planning permission no longer exists that condition can no longer be enforced. As a result of this, the appellant argues, the notice is fundamentally flawed and should be quashed.
7. This is a confusing area of law, but in my view, even if the original planning permission could no longer be implemented, there is no problem with the Council referencing it in their requirements. They are seeking to under-enforce, by turning the building back into something that is acceptable. To do so, they need specific plans to refer to and those plans are provided by the planning permission. So in that limited sense the Council are not seeking to resurrect an expired planning permission, but merely seeking to reference it for the sake of good planning.
8. However, I agree that if the planning permission was expired, it would not be possible to enforce the conditions on that permission, which is what the requirements seek to do. However, I do not agree that the permission has expired. There are considerable changes to the roof profile, but there seems to me no doubt the planning permission was implemented originally, and various pre-commencement conditions were discharged. The Courts have held¹ that it

¹ Fazal Hussain v SSCLG [2017] EWHC 687 (Admin)

- is perfectly possible for a planning permission to be implemented so that it remains alive, but for subsequent works to take the resulting development away from that which had been granted planning permission so that enforcement action could be taken against the end result. That would seem to be the case here.
9. Secondly, although the details of the extraction system were not agreed, and this condition was written as if it were a pre-commencement condition, it does not, in my view, go to the heart of the permission as described by the Court of Appeal in the Greyfort Properties² case. The extraction unit could be installed at anytime and it was not fundamental that it should be agreed before works began. Consequently, in my view, the original planning permission was implemented and still exists. There is thus no problem with the requirements of the notice referencing either the permission or its conditions.
 10. A further point is made that the red line on the plans submitted with the original planning permission and the enforcement notice are not identical. This is correct, but I am not sure how that invalidates the notice in anyway. The differences are marginal and seem to affect the rear yard area, not where the physical development has taken place.
 11. Finally the notice does not explicitly require the extraction system to be removed and, the appellant argues, as one of the main issues the Council have is with the extraction system this also makes the notice flawed. However, the situation of the extraction system is that it is currently unlawful. The notice includes it within the allegation and requires that the building is rebuilt in accordance with the plans and conditions of the original permission. These do not show the extraction unit but require it to be agreed with the Council. Thus if the notice is upheld, the unit would have to be removed to fulfil those requirements.
 12. I shall deal with the issue of head heights later in the decision, but taking all this together, I do not find the notice to be flawed and this also effectively deals with the appeal that was made on ground (f), which fails.

The Appeal on Ground (a)

13. Given my conclusions above, this ground of appeal turns solely on the issue of whether the roof as built harms the character and appearance of the area. Policies 69, 70 and 72 of the saved Local Plan deal with matters of good design, as does paragraph 130 of the NPPF which advises that planning permission should be refused for poor design that fails to take opportunities for improving the character and quality of the area.
14. In this case the end flank wall that faces down Sandfield Road is clearly visible as one moves towards the junction with Hatfield Road and because of the separation between it and the nearest houses it is a dominant feature in the streetscape. The original design would have had a lower ridge and a hipped roof, that pulled away the top of the flank wall from the neighbouring houses, softening and reducing the impact of the exposed flank on the street. The as-built version provides a much larger seeming flank wall, with an oddly shaped almost flat roof element leading to the pitched roof. This stands out as crude

² Greyfort Properties Ltd v SSCLG [2011] EWCA Civ 908

and poorly thought out. It clearly harms the character and appearance of the area and is the sort of poor design the NPPF warns against.

15. The reason the final build differed from the approved plans was because during construction it became clear the original plans were insufficient to provide a liveable space in the roof. As I saw on my site visit, the top floor flats are small and the sloping roof, already restricts movement in some of the rooms. Had the ridge been lower, and the pitch shallower, with a hip as well, there would simply not have been enough head height to create the flats. However, rather than re-designing the roof in agreement with the Council the appellant went ahead and built the current design, despite the regularisation application being refused. As this design is harmful and so contrary to local policies and the NPPF then the appeal on ground (a) should fail.
16. The extractor and ventilation duct may or may not be harmful to residential amenity, I have little hard evidence on this. However, a local resident complains of noise and smell and pointed out the black smears on the wall above the top of the duct. These were clearly visible on my site visit and suggest that all is not well. Policy 9 requires that non-residential uses in residential areas should be environmentally acceptable and the extraction equipment would seem to fail that policy. The whole point of condition 8 was to enable the Council to approve the extraction equipment to ensure there is no harm to neighbours' amenity. There is no evidence this condition was unnecessary and so the extraction equipment should not be allowed.

The Appeal on Ground (g)

17. The notice allows 9 months for the reconstruction work. However, the problem with the notice is that the work granted planning permission would now seem to produce unsatisfactory flats. However, there is nothing I can do about that, as it is something that should have been sorted out at application stage and really is a matter between the appellant and his architect, who designed the roof and the Council who granted it permission. Nevertheless, it would seem, given that my objections are to the crude flank wall, rather than the fairly minor raising of the ridge height, that a design that preserves some or possibly all of the flats while improving the streetscene could be possible. I shall therefore extend the compliance period to 12 months, as requested, to allow time for a compromise proposal to be agreed.

Simon Hand

Inspector