
Appeal Decision

Site visit made on 21 February 2020

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 30 March 2020

Appeal Ref: APP/A1910/C/19/3238714

28 Boxwell Road, Berkhamsted, Hertfordshire HP4 3ET

- 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 Harry Cowan against an enforcement notice issued by Dacorum Borough Council.
 - The enforcement notice was issued on 9 September 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission, the demolition of a front wall and creation of a parking bay
 - The requirements of the notice are
Step 1: Reinstate the front boundary wall to its original height in the construction style of the remaining existing front boundary wall with materials that match in size and appearance the original materials used.
Step 2: Remove the hard surfacing materials from the site and reinstate the front garden to its original condition.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a)(f)(g) of the Town and Country Planning Act 1990 (the Act) as amended.
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Decision

1. It is directed that the enforcement notice is varied by deleting 2 months from Paragraph 5 for the period of compliance and substituting 4 months.
2. Subject to the variation, the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the planning application deemed to have been made under Section 177(5) of the Act as amended.

Background Matters

3. An appeal against the refusal by the Council of a retrospective planning application for the development already carried out was dismissed on the 29 July 2019. After the issue of the appeal decision, the appellant sought advice about a revised scheme but was told by the Council that the dismissed appeal could not be revisited unless further examples could be presented that would support a reconsideration of the refusal on conservation grounds. The appellant is therefore now seeking to present further information.

The appeal under ground (a) and the deemed planning application

4. The main issue is whether the development preserves or enhances the character of the Berkhamsted Conservation Area (the Conservation Area).
5. Conservation areas are designated heritage assets as defined by the National Planning Policy Framework (the Framework) and great weight is to be given to

their preservation and conservation. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 also requires that special attention be given to the desirability of preserving or enhancing the character and appearance of a conservation area.

6. The previous Inspector assessed the development and found that "regard has been had to the character and appearance of the site and the established character of the terrace frontage." Nevertheless, "these elements of the resultant situation do not mitigate the harm that has been caused by the loss of the enclosed garden area." Having visited the site, I see no reason to disregard the previous Inspector's view.
7. The appellant has referred to a number of examples of other frontages to show that the street scene around the appeal dwelling is significantly diverse and that the development does not cause significant or less than significant harm to the Conservation Area. The first example provided is the proposed replacement of the existing bungalow next to the other side of the appeal dwelling with a new dwelling. The previous Inspector dealt with the existing bungalow and the proposed dwelling at No 29 in his decision letter at paragraph 10. The existing bungalow is of different character to the prevailing pattern of two storey dwellings on Boxwell Road and has an existing driveway and is therefore not comparable to the development.
8. Similarly, the proposed replacement 5 bedroomed dwelling with integral garage and driveway would also be of materially different character to the appeal site. I therefore do not consider that either the existing or proposed replacement dwelling at No 29 are comparable to the terrace of dwellings of which the appeal dwelling is a part. For similar reasons, I do not share the appellant's view that the presence of nearby bungalows means that the street scene is sufficiently diverse to allow the development.
9. Photographs have been provided of other frontages on Boxwell Road including No 27 which is to the other side of the appeal dwelling where the whole of the front garden and front boundary were removed to create a parking area. However, the Council states that the works to No 27 were carried out prior to the introduction of an Article 4(2) direction. The purpose of the Article 4(2) direction was to prevent harmful alterations to the quality of the streetscene as the Conservation Area Character Appraisal & Management Proposals document identified loss of front gardens and walls to parking as detracting from the streetscene. The development has to be assessed against existing policies. I also share the previous Inspector's view that most of the dwellings with existing car spaces benefit from taller boundary treatments and landscaping and are more discreet.
10. The development at 2 Kitsbury Road was brought to the attention of the previous Inspector. Nevertheless, the appellant has provided photographs of dwellings at Kitsbury Road. The dwellings on Kitsbury Road which are largely semi-detached are of a different style and character to the terraced dwellings on Boxwell Road. As such, I do not find them comparable to the appeal dwelling. Photographs of off street parking on Shrublands Road also show semi-detached dwellings with a different character to the appeal dwelling. The photographs of off street parking on Park View road show an end dwelling with railings and a brick wall retained to the end dwelling of the row but with space

for a separate adjacent garage and drive. The other dwelling is of a modern style.

11. In summary, a number of the examples referred to by the appellant were addressed by the previous Inspector in his decision letter. However, each proposal or development does have to be assessed on its own merits. The appeal dwelling has to be assessed with regard to its prominent location as an end of row dwelling towards the end of the road which until the development took place retained features that are characteristic features of the Conservation Area designation. None of the examples provided lead me to reach a different conclusion to that of the previous Inspector with regard to harm.
12. Whilst there is no dispute about the quality of the development, nevertheless the development does harm the contribution that the appeal dwelling makes to the Conservation Area. As the harm to the significance of the Conservation Areas is less than substantial, paragraph 196 of the Framework then requires an assessment to be undertaken to weigh that harm against public benefits. However, no new public benefits are advanced since the previous decision and the creation of an off street parking space is for the appellant's benefit and is therefore a neutral benefit.
13. The development does not preserve or enhance the character of the Conservation Area. The development is therefore in conflict with Policies CS12 of the Dacorum Borough Adopted Core Strategy 2013 (the Core Strategy) which refers, amongst other things, to development integrating with the streetscape character. It is also in conflict with Policy C27 of the Core Strategy and Saved Policy 120 of the Dacorum Borough Local Plan which require that development should preserve or enhance the character and appearance of the Conservation Area. The development is also in conflict with the Framework which seeks to conserve and enhance historic assets (paragraphs 192 and 196).

Other Matters

14. The lack of objection from the Berkhamsted Town Council, the Highway Authority, and other bodies are all matters that were before the previous Inspector who considered that the lack of objection did not overcome the harm that was identified. I share that view.
15. Both parties have referred to a lack of communication since the issue of the appeal decision in July 2019. I note that the appellant refers to payment of a pre application fee and was disappointed to not receive a response. Nevertheless, in reaching my decision, I have to consider the development before me.
16. The appeal under ground (a) therefore fails.

The appeal under ground (f)

17. Under this ground, the appellant has asked that the wording of the steps required by the notice be revised to allow for the retention of the parking bay and the addition of further works. Essentially, the appellant is asking for an alternative scheme to be allowed. The power to grant planning permission under S177(1) of the Act in respect of the matters stated in the notice as constituting a breach of planning control is linked an appeal under ground (a).

18. The power under S177(1) of the Act is to grant planning permission "in relation to the whole or any part of those matters". If an alternative scheme is advanced, planning permission may be granted provided it is "part" of the development. From the drawing and photographs provided, the alternative scheme would require the addition of brickwork pillars and an increase in height to the side wall. Those elements would be new development over and above what is existing. The proposed alternative scheme put forward as an alternative requirement cannot be properly described as "part" of the development enforced against and could not therefore be granted planning permission as part of a ground (a) appeal.
19. An appeal under ground (f) has a narrower remit than ground (a) and to succeed on ground (f) the appellant would need to show that the requirements of the notice exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
20. With regard to ground (f), it is essential to understand the purpose of the notice. Under s173(4)(a) of the 1990 Act, one of those purposes is to remedy the breach of planning control by restoring the land to its condition before the breach took place. In the notice, the matters which constitute the breach of control are the demolition of the front wall and the creation of a parking bay. The notice requires the reinstatement of the front boundary wall to its original height in the construction style of the remaining existing front boundary wall with materials that match in size and appearance the original materials used. It also requires the removal the hard surfacing materials and the reinstatement of the front garden to its original condition. The purpose of the notice is therefore clearly to remedy the breach of planning control by restoring the land back to its condition before the breach took place. The requirements are therefore not excessive. As such, the ground (f) appeal must fail.

The appeal under ground (g)

21. An appeal under ground (g) is that the period for compliance specified in the notice falls short of what is reasonable. A period of two months has been provided for compliance. The appellant has asked for a period of six months to be able to raise funds to carry out the required works rather than for reasons relating to the nature of the works. However, I am mindful that in the current uncertain climate with Covid-19, it may take longer to obtain estimates and get work undertaken. In the circumstances, I do consider that a longer period of 4 months would be an appropriate timescale. The appeal under ground (g) does therefore succeed in part and I shall vary the notice accordingly.

Conclusion

22. For the reasons given, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under Section 177(5) of the 1990 Act as amended.

E. Griffin

INSPECTOR