
Appeal Decision

Site visit made on 15 May 2020

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 May 2020

Appeal Ref: APP/Z4718/C/19/3240147

Brookroyd Mills, 678 Bradford Road, Batley, West Yorkshire WF17 8NG as shown edged red on the attached plan

- 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 Modafar Alkazraji (Westend Marine (Batley) Ltd) against an enforcement notice issued by Kirklees Metropolitan Borough Council.
 - The enforcement notice was issued on 19 September 2019.
 - The breach of planning control as alleged in the notice is the erection of a building.
 - The requirements of the notice are (i) wholly demolish the building including raised platform and (ii) remove the resultant debris from the land.
 - The period for compliance with the requirements is (i) 3 months and (ii) 5 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.
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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 1990 Act as amended.

Appeal on ground (a) and the deemed planning application

2. The appeal is made on ground (a) of s174 of the Town and Country Planning Act 1990 (as amended) that planning permission ought to be granted in respect of any breach of planning control which may be constituted by the matters stated in the notice. The breach of planning control relates to the erection of a building.

Background and Main Issue

Background

3. Planning permission was approved on 23 January 2018 (2017/62/93002/E) for the erection of a first floor extension and formation of a storage area below. I have been provided with the approved plans for this development as well as plans showing the unauthorised building. The development on site does not accord with the planning permission given its height (approximately 1.2 metres higher than approved); the provision of a balcony on stanchions along the full length of the southern elevation; the provision of external stairs on the western elevation; changes to the position and design of windows and doors; its internal configuration; the enclosure of the lower part of the building using painted breezeblock walls and a metal roller shutter door, and its position.

Main Issue

4. I have taken into account the reasons for issuing the enforcement notice and appeal statements and the main issues are the effect of the breach of planning control on (i) the living conditions of the occupiers of Nos 2 and 3 Floreat Close in respect of outlook and privacy, and (ii) the character and appearance of the area.

Reasoning

Living conditions

5. As part of my site visit, I was able to consider the relationship and position of the development in respect of Nos 2 and 3 Floreat Close. Taking into account the significant difference in land levels between the appeal site and the residential properties below, the position of the building/balcony tight up against the boundary of the appeal site, separation distances and the overall height of the building at about 9.9 metres, I consider that the breach of planning control has an unacceptably overbearing and enclosing impact when viewed from the rear outside amenity areas of the aforementioned neighbouring residential properties. In addition, such adverse impacts are also prevalent when viewed from the ground floor and first floor windows of No 2 Floreat Close, albeit at an angle.
6. I acknowledge that in terms of the unauthorised balcony, it would be possible to erect a 1.8 metre high closely boarded fence thereby addressing a clear infringement of acceptable levels of privacy for the occupiers of Nos 2 and 3 Floreat Close. Such a fence would also be necessary in order to avoid some angled views towards the first floor windows of No 2 Floreat Close from the nearest first floor glazed sliding door/window of the appeal building. Whilst I note that such a fence is proposed as being set in from the edge of the balcony by 1.8 metres, it would be higher than the balcony wooden post and rail fencing (this is about 1.2 metres in height) and would be seen against an existing very tall balcony and main building. Consequently, the proposed fence would add to the overall dominant effect of the existing unauthorised development when viewed from the garden areas of Nos 2 and 3 Floreat Close and the rear windows/conservatory of No 2 Floreat Close.
7. Therefore, I do not consider that the provision of a 1.8 metre high close boarded fence would be an acceptable arrangement. The appellant contends that the overlooking of residential properties is no worse than the overlooking that takes place from the nearby public footpath in Wilton Park. I do not accept that the overlooking effects are directly comparable taking into account (i) the relative separation distances and (ii) that people are less likely to congregate on a public footpath for long periods of time, but staff are more likely to do so in terms of use of the large aforementioned balcony.
8. For the collective reasons outlined above, I conclude that significant harm has been caused to the living conditions of the occupiers of Nos 2 and 3 Floreat Close in terms of loss of outlook and privacy. Consequently, the breach of planning control does not accord with policy LP24 of the adopted Kirklees Local Plan 2019 (LP) or paragraph 127(f) of the National Planning Policy Framework 2019 (the Framework) which collectively seek to achieve high standards of amenity for future and neighbouring occupiers. In respect of this main issue, I

do not consider that policy LP52 of the LP is of direct relevance as this relates to pollution.

Character and appearance

9. The Council acknowledges that in terms of the increased height of the building, as well as other changes to the external appearance and internal configuration of the building, material harm has not been caused to the character and appearance of the area. In the context of the planning permission, which is a material planning consideration of considerable weight, I have no reason to disagree with the views expressed by the Council in terms of these matters as outlined in its appeal statement.
10. The point of contention between the parties relates to the erection of the balcony area built using timber deck boarding which the Council says, "*has created an alien feature to the building*" and "*an unnatural feature within its setting*". The balcony is large in terms of its depth and length and to this extent it appears dominant and disproportionate in terms of the rest of the building.
11. I acknowledge that not all of the building is visible from public land, but nevertheless large parts of it are still conspicuous when viewed from the public footpath in Wilton Park, from Brookroyd Lane and from the sports courts area in Wilton Park. Furthermore, and, in any event, lack of visibility from some public areas does not obviate the need to achieve good design as promoted in chapter 12 of the Framework.
12. When seen in the context of the mainly flat elevations and uniform materials for the complex of buildings on this site, and against the adjacent mill buildings which generally have a simple regularity and rhythm in terms of design, the balcony has a discordant and out of place appearance based on its considerable size, height and bulk, its tight position adjacent to the much lower mill building and its use of materials. I accept that there is a mix of materials used in the buildings in the wider locality, but these buildings are positioned some distance away from the appeal site. This is not a matter which therefore justifies allowing the unauthorised development which, when considered as a whole, fails to accord with the more simple and utilitarian design characteristics that pertain to the appeal site.
13. For the above reasons, I conclude that the breach of planning control has caused significant harm to the character and appearance of the area. Consequently, it does not accord with the design requirements of Policy LP24 of the LP or chapter 12 of the Framework. In respect of this main issue, I do not consider that policy LP52 of the LP is of direct relevance as this relates to pollution.

Other Matters

14. I acknowledge that use of the unauthorised building has some positive economic benefits and do not doubt that it is needed to store boats and other equipment and to provide a base to run a business. I also note the petition of support in respect of the breach of planning control.
15. The appellant has referred to the provision of a balcony on a building which is positioned in very close proximity to No 2 Floreat Close. I was able to see this as part of my site visit. I am not certain whether this development has the

benefit of planning permission. However, it is evident that it would be possible for individuals using this area to overlook the windows and outside amenity space of No 2 Floreat Close at close distance, albeit at an oblique angle.

16. I do not consider that the existence of the aforementioned development justifies allowing the appeal development. Allowing the appeal development, in particular the unauthorised balcony area, would seek to exacerbate what appears to be some existing harm to the living conditions of the occupiers of No 2 Floreat Close and, in any event, the two balconies and their relationship with neighbouring land/property are not identical in respect of position, height and size.
17. Comments have been made in respect of alleged damage to third party land/property. This is a private civil matter and is not therefore relevant to the determination of this appeal.
18. None of the other matters raised outweigh or alter my conclusions on the main issues.

Conclusion

19. For the above reasons, I conclude that the ground (a) appeal fails. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

D Hartley

INSPECTOR