



Appeal Decision

Site visit made on 2 June 2020

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 June 2020

Appeal Ref: APP/R5510/C/20/3245581

Land at 28 Lees Road, Uxbridge UB8 3AT

- 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 Mrs Diva Patang Wardak against an enforcement notice issued by the Council of the London Borough of Hillingdon.
- The enforcement notice was issued on 18 December 2019.
- The breach of planning control as alleged in the notice is without planning permission, the erection of [a] two-storey, four-bed detached dwelling.
- The requirements of the notice are:
 - (i) Demolish and remove the two storey building on site or implement and erect the building in strict accordance with the proposed plans and relevant documents approved under planning permission reference 16733/APP/2019/128, including but not limited to:
 - The removal of the additional extended section to the north-east elevation of the site;
 - The removal of the additional dormer roof extension to the north-east of the building;
 - The removal of the overhanging canopy to the ground floor rear section of the building, and;
 - The infill of the additional side openings to the south-western elevation of the site.
 - (ii) Remove from the land the debris, items, fixtures and fittings, furniture, building materials, plant and machinery resulting from the dismantling works listed above.
- The period for compliance with the requirements is three 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.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with variation.

Preliminary Matters

1. The Hillingdon Local Plan Part 2-Development Management Policies (LP) was adopted in January 2020 and superseded policies in the previous version of the LP. In addition, the Council confirmed that the Residential Layouts, Hillingdon Design & Access Statement Supplementary Planning Document (SPD) has been withdrawn. Accordingly, the superseded policies and withdrawn SPD carry no weight in my decision.
2. An alternative scheme was submitted with the appeal, which showed the hipped roof treatment of the dwelling as built changed to a gable end. However, the Act at s177 (1) (a) does not provide for the granting of planning permission where it is other than for the whole or part of the matters alleged in the enforcement notice. As the scheme would entail a significant enlargement to the dwelling, it involves works which are not part of the dwelling as built; enlarging the dwelling would make it a different development to that enforced

against. Therefore, the scheme works do not comprise part of the breach described in the notice and cannot form part of the deemed planning application arising from the ground (a) appeal. Moreover, the Council has not had an opportunity to formally consider the scheme and interested parties may wish to make further representations in that respect. As a result, there would be injustice if the scheme's planning merits were to be considered in this appeal.

Ground (a) appeal

Main Issues

3. The main issues in this ground of appeal are:

- The effect of the dwelling as built on the character and appearance of the area.
- The effect on the living conditions of occupiers of adjoining residential property, having regard to outlook, daylight and privacy.

Reasons

Character and appearance

4. The appeal property is located in a row of detached chalet bungalows, within an established residential area. Dwellings in the row usually occupy similarly-sized, reasonably generous rectilinear plots, within which the built forms are arranged at regular distances from the plot boundaries. Most of the dwellings are comparable in terms of their scale. There are also similarities in terms of architectural style, many dwellings having well-balanced front elevations which include equal pitched gabled roofs below a central ridge line. The prevalence of similar built forms in the row contributes significantly to the sense of rhythm in the street scene, as well as providing a notable degree of spaciousness between the dwellings, particularly at roof level. The few dwellings with gables at the sides observe the prevailing spatial character. Roof enlargements to the dwellings, notably front and side dormers of varying size and design, have not appreciably eroded the above qualities. These factors contribute significantly to the pleasantly spacious and harmonious suburban character and appearance of the surrounding area.
5. The property formerly contained a chalet bungalow, similar in architectural style to 26 Lees Road (No 26) next door and other properties in the row. Planning permission was granted for erection of a replacement dwelling in April 2019¹. The approved drawings depict a chalet bungalow having a well-balanced front elevation including three 'cottage style' roof dormers, with gable ends parallel to the property boundaries on either side, positioned on part of the pre-existing bungalow footprint around 5 m from the boundary with No 26. At the rear, a single storey projection and one large roof dormer are shown.
6. As built however, the dwelling has been substantially enlarged over the approved scheme, including by incorporating the remainder of the pre-existing bungalow footprint and part of its built envelope. This has elongated the front elevation of the dwelling by almost a third and also involved forming a hipped roof treatment on the side adjacent to No 26.

¹ Council Ref: 16733/APP/2019/128.

7. Elongating the dwelling has significantly increased its overall size and bulk, with the effect that the built form is of a scale which is appreciably greater than that of most other dwellings in the row. The increase in coverage by built form has also considerably eroded the sense of space about the dwelling. The dwelling is adjacent to the boundary on the side of 32 Lees Road (No 32), consistent with the approved scheme. However, at only around 1 m away the dwelling is significantly closer to the boundary with No 26 than that scheme. The above has all given the dwelling an uncomfortably 'cramped' appearance and created a markedly more built-up and enclosed feel in the street scene, when compared with the approved scheme and the pre-existing bungalow. The private track between the property and No 32 does not offset the greater sense of enclosure created by the dwelling as built. Other larger residential plots in the locality generally retain a significant sense of spaciousness and are therefore not comparable with the dwelling.
8. The side of the dwelling closer to No 32 has a gabled roof treatment as depicted on the approved drawings. Although the hipped roof has a pitch similar to the roof of No 26, the use of two different roof forms has given the dwelling an awkward and unbalanced look. This is given further emphasis by the irregular grouping of the ground floor and first floor openings in the front elevation, when compared with the more symmetrical and ordered arrangement depicted in the approved scheme. As a result, as built the dwelling also has a rather lop-sided appearance, in marked contrast to the well-balanced roof forms and front elevations of other residential properties in the vicinity.
9. Other material differences between the dwelling as built and the approved scheme, which amongst other things include a second rear dormer, a rear ground floor canopy and further fenestration, have had relatively limited additional visual impact. Nevertheless, due to the above factors the dwelling as built is entirely at odds with the established pattern of residential development in the vicinity and it is viewed as an alien feature in the street scene. I understand that the former occupier of No 26 (who has since sadly passed away), might have been in favour of the dwelling as built. However, I give that little weight; such opinions might not be held by future occupiers whilst the effects of development are more permanent.
10. Therefore, the dwelling as built has caused unacceptable harm to the character and appearance of the area and by failing to incorporate principles of good design which harmonise with the local context, taking the surrounding height mass and bulk of adjacent structures, plot coverage and streetscape rhythm into account, it does not accord with criterion in LP Policy DMHB 11. My attention was drawn to LP Policy DMHB 12, concerning design of the public realm. However, based on the available evidence I find no conflict with that policy; the Council did not offer a detailed explanation of its relevance.
11. Nevertheless, the dwelling as built also fails to accord with criteria in Policy BE1 of the Hillingdon Local Plan Part 1: Strategic Policies (SP), as it does not achieve a high quality design enhancing local distinctiveness nor contribute to a sense of place, its design is not appropriate to the identity and context of the townscape and it does not contribute positively to the local area in terms of its form and scale. The main parties referred to Policy BE1 in their submissions.

12. Attention was also drawn to London Plan (MALP) Policies 7.4 and 7.6. The dwelling as built fails to accord with criterion in MALP Policy 7.4, as it does not have regard to the pattern and grain of the existing spaces and streets in scale, proportion and mass. The dwelling as built also fails to accord with criteria in MALP Policy 7.6, as it is not of high architectural quality nor of a scale that enhances the public realm and it does not comprise details that complement the local architectural character. Furthermore, not achieving a well-designed place is inconsistent with chapter 12 of the National Planning Policy Framework.

Living conditions

13. As built, the dwelling is not significantly closer to the boundary with No 26 than the side elevation of the pre-existing bungalow. Also, the part of the dwelling adjacent to No 26's boundary does not project beyond the rear elevation of the pre-existing bungalow. Furthermore, this part of the dwelling as built is of a size, height and bulk not dissimilar to that part of the pre-existing bungalow. The other enlargements have not significantly increased the size and bulk of the dwelling as built over the approved scheme. As a result, the dwelling as built has not created a substantially greater feeling of oppressiveness or enclosure, nor appreciably eroded natural daylight levels at the rear of No 26, compared with the pre-existing bungalow or the approved scheme. As the additional rear dormer is offset from No 26's boundary by several metres, any overlooking of that property's rear garden is from an appreciable distance and at an oblique angle. Consequently, the dwelling as built has also not appreciably eroded the degree of privacy enjoyed by the adjoining occupiers.
14. Therefore, the dwelling as built has not had an unacceptable effect on the living conditions of occupiers of adjoining residential property. This accords with criterion in LP Policy DMHB 11, as there is no adverse impact on occupiers' amenity and light. Also, as the amenity of surrounding residential properties is protected, there is accordance with SP Policy BE1. Additionally, as there is no unacceptable harm to the amenity of residential buildings in relation to privacy and overshadowing, the dwelling accords with criterion in MALP Policy 7.6.

Other matters

15. The dwelling as built makes provision for suitable living conditions for its occupiers, having regard to internal space and external amenity space. Also, there has been no unacceptable harm to highway safety. Even so, the above factors do not weigh in favour of granting permission.

Conclusion on ground (a)

16. Whilst there has been no unacceptable harm to the living conditions of adjoining residential occupiers, the dwelling as built unacceptably harms the character and appearance of the area, it does not accord with the Development Plan and it is inconsistent with the Framework. Therefore, the ground (a) appeal does not succeed.

Ground (f) appeal

17. The ground of appeal is that the requirements of the notice are excessive for its purpose.
18. At s173 (4), the Act provides that an enforcement notice can have two purposes, namely: (a) remedying a breach of planning control, including by

- making development comply with the terms, including conditions and limitations, of any planning permission which has been granted in respect of the land, or by restoring the land to its condition before the breach took place, or; (b) remedying any injury to amenity caused by the breach.
19. The notice requires either total demolition of the dwelling as built or its alteration to accord with the plans and documents of the planning permission, including removal of all the unauthorised elements. Such requirements seek nothing less than the remedying of the breach. The notice does not seek any modifications to the dwelling which are not in the approved scheme. Therefore, although the notice does not state as such, its purpose must fall within s173 (4)(a).
20. Given the above context, the notice requirements are entirely reasonable. Any requirements which stopped short of either demolishing the dwelling as built or making it comply with the terms of the planning permission would not remedy the breach. The appellant does not have to demolish the dwelling to remedy the breach; that is an alternative to complying with the terms of the planning permission. As a result, there is no obvious alternative to the notice requirements.
21. Accordingly, the notice requirements are not excessive having regard to its purpose and the ground (f) appeal fails.

Ground (g) appeal

22. The ground of appeal is that the time period specified for complying with the requirements of the notice is unreasonably short.
23. The notice allows three months to comply with its requirements. In my view, it is likely that the appellant would have the works undertaken to make the dwelling comply with the planning permission, rather than the alternative of demolition. The remedial works involved in the former are relatively small in scale, they could be undertaken without heavy plant and equipment and a substantial part of the dwelling is likely to remain weathertight and habitable whilst the works are carried out.
24. Therefore, although there would probably be some disruption to the living arrangements whilst the remedial works were carried out, it is not inevitable that the occupiers would have to find alternative accommodation. Also, as the remedial works are likely to be within the competency of a small building firm, there is no good reason why they could not be completed within a three-month timeframe. Furthermore, that period would allow the appellant a sufficient opportunity to arrange any finance required for the works. Accordingly, a twelve-month compliance period would perpetuate the breach of planning control unnecessarily.
25. However, I am also mindful that, at this time, the UK is still at a relatively early stage in its emergence from the COVID-19 pandemic. Restrictions on businesses and movement associated with the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 continue. The above, together with uncertainty concerning when the restrictions might be further eased, is likely to have an effect on the appellant's ability to arrange for the remedial works to be undertaken. For example, building firms might have to fulfil commitments to other clients which pre-date the pandemic before being available to undertake

the remedial works, or they may not have access to sufficient labour. An appropriate balance must be struck between remedying the planning harm caused as soon as is practicable, whilst allowing the appellant sufficient time to source a suitable builder, arrange for them to undertake the remedial works and have such works completed. Therefore, it is not unreasonable to conclude that the period for compliance should be extended by a further three months, to take proper account of the effects of the pandemic and in order to ensure that the appellant is not disadvantaged by its consequences.

26. I have reached the above conclusion based on the evidence before me, also recognising that given ongoing uncertainty regarding the consequences of the pandemic, the current situation is likely to evolve and change in the future. In particular, there is a likelihood for the foreseeable future of the continuing in force of restrictions on movement, together with the possibility of further local restrictions being imposed. However, in this respect I am also mindful that s173A (1)(b) of the Act affords the Council the power to extend the compliance period, should they consider that the circumstances at the time make it appropriate to do so.
27. For the reasons given above I conclude that the period for compliance falls short of what is reasonable. I shall vary the notice prior to upholding it. The appeal on ground (g) succeeds to that limited extent.

Conclusion

28. For the reasons given above I shall uphold the enforcement notice with variation and refuse to grant planning permission on the deemed application.

Formal Decision

29. It is directed that the enforcement notice be varied by in paragraph 5 the deletion of "3 months" and the substitution of "6 months" for the period for compliance. Subject to this variation 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 as amended.

Stephen Hawkins

INSPECTOR