



Appeal Decision

Site visit made on 6 July 2020

by Hilary Orr MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 August 2020

Appeal Ref: APP/R5510/C/19/3234217

78 Hoylake Crescent, Ickenham, Uxbridge UB10 8JF

- 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 Ms Bina Maistry against an enforcement notice issued by the Council of the London Borough of Hillingdon.
 - The enforcement notice, numbered HS/ENF/015447, was issued on 1 July 2019.
 - The breach of planning control as alleged in the notice is the erection of a single storey extension.
 - The requirements of the notice are:
 - (i) Demolish and remove the single storey extension as shown in the approximate position hatched blue on the attached plan.
 - (ii) Remove from the land all debris, waste, building materials, fixtures and fittings, plant equipment and machinery resulting from the demolition listed at (i) 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) (b) (c) and (d) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. The appeal is dismissed, 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.

Procedural matters

2. The Local Plan: Part 2 - Development Management Policies (2020) was adopted by the Council in January 2020. This has altered the policy position in relation to this appeal. The Council have confirmed that the Local Plan Part 2 Saved UDP Policies (2012) against which the planning permission was initially determined has now been withdrawn. They have advised that they now rely on policies DMHB 11, DMHB 12 and DMHD 1. The aims and objectives of these policies reflect those contained in their withdrawn policies and Policy DMHD1 replaces the Residential Extensions SPD, which has also been withdrawn. I have determined the appeal on this basis.
3. The evidence provided by the appellant generally relates to the planning merits of the development, and that original structure having benefitted from permitted development rights conveyed by The Town and Country Planning (General Permitted Development) (England) Order 2015 (GDPO). Both of these will be considered later. However, the evidence also refers to the development having been undertaken more than four years ago. This would more correctly

be considered under ground (d) and I shall deal with it accordingly. This ground has been added to the above heading.

Ground (d)

4. An appeal on this ground seeks to demonstrate that on the balance of probability, at the date the notice was issued no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters, (i.e. the matters alleged in the notice). This ground of appeal assumes that there has been a breach of planning control, but that it is immune from enforcement, having subsisted for the four year period laid down by s171B for operational development. The burden of proof lies on the appellant.
5. No appeal under ground (d) has been pleaded. Nonetheless, I have had regard to the evidence provided by the parties. The appellant refers to the structure being constructed on or around March 2015. This is not disputed by the Council, although their evidence refers to an investigation of an unauthorised outbuilding in December 2014. The Council go on to describe the building as a gazebo and describes the location as being the same as the extension under consideration in this appeal.
6. The evidence provided by the Council suggests that a gazebo was indeed constructed, but that it required planning permission, as it exceeded the height limitation set out in the GDPO. At that stage, it constituted unauthorised development. However, they go on to confirm that the height was then reduced to conform with the GDPO. This is substantiated in the emails between the appellant and the Council in June and July of 2015 where the reduction in height was discussed and then confirmed. The Council's file was closed in August 2015.
7. I have not been provided with any evidence by the parties, save from its description as a gazebo, to assess how it was constructed, or its appearance when first completed. Moreover, I do not have any evidence that details precisely when the subsequent alterations to enclose the structure took place, or how these were carried out. It was clear from my site visit that the building that now exists is not a gazebo and appears as an extension to the building. I am therefore unable to conclude whether the structure as now exists, is the same as that first built.
8. Limited evidence has been submitted in support of the appellant's case and it is far from being precise and unambiguous. Therefore, I find that the appellant's evidence is not sufficient to demonstrate, on the balance of probabilities, that the subject extension has been substantially complete for the necessary period. While the Council has not provided evidence to contradict the evidence provided by the appellant. Nonetheless, the appellant's evidence falls short of discharging the burden of proof. The appeal on ground (d) therefore fails.

Ground (b)

9. The appeal is proceeding on ground (b), that the matters alleged in the notice have not occurred. This is another of the legal grounds and therefore the onus of proof is on the appellant.
10. The appellant's case on ground (b) is unclear and mainly relates to the appeals lodged under ground (a) and (c). The sequence of events is set out above.

11. I have no evidence before me from the appellant, to suggest that on the balance of probability, the building, subject to the enforcement notice, did not exist at the time that the notice was issued on 1 July 2019. Accordingly, the appeal on ground (b) fails.

Ground (c)

12. Turning to ground (c), that the matters stated in the notice did not constitute a breach of planning control. The onus is on the appellant to make out the case that there has not been a breach of planning control. Nevertheless, case law has established that the evidence of the appellant should not be rejected simply because it's not corroborated. If there is no evidence to contradict or make the appellant's version of events, less than probable and their evidence is sufficiently precise and unambiguous, there is no good reason to dismiss an appeal on any legal ground.
13. The gist of the appellant's case is the building, when constructed, was permitted under the GDPO as existing at that time. It is not in dispute that the building subject to this notice, has the necessary degree of permanence to constitute development.
14. It is clear from the evidence that a gazebo, or similar structure, was constructed. The Council considered that it required planning permission, as it exceeded the height limitations set out in the GDPO. They go on to refer remedial works carried out by the appellant, to reduce the height. This is substantiated by the exchange of emails between the appellant and the Council during June and July 2015. The Council's file was then closed in August 2015. It is clear that later works were carried out to enclose the structure. However, I have no evidence to allow me to conclude, whether the later alterations to enclose the structure with timber and glass, comprised alterations or further development.
11. Notwithstanding that the Council decided not to take any further action at that time, permitted development rights cannot be gained retrospectively. Consequently, as the unlawful development was modified to reduce the height of the roof, it could not have constituted permitted development at the time it was first constructed. As express planning permission would have been required for its retention, the appeal on ground (c) therefore fails.

Ground (a)

Background and main issue

12. Planning permission was granted for 'part 2 storey part single storey side/rear extension, first floor side extension, front canopy and alterations to front elevations, including demolition of existing rear elements' in 2017 under reference 42830/APP/2015/4735. I have not been provided with full details of this scheme, although it is understood that the rear extension, was of a different design to the development under consideration in this appeal.
13. I have had regard the reasons why the Council issued the notice and consider that the main issues are the effect of the development on the character and appearance of the area.

Reasons

14. The site is located to the east of Hoylake Crescent within a predominantly residential area. There is a mix of detached two storey and single storey dwellings of various sizes and designs. The appeal property is of two storey with two feature roof dormers and single storey side extension on the southern boundary and conservatory to the rear. In common with other dwellings in the area, the appeal property is set within a generous plot.
15. The development has introduced a single storey extension close the north boundary. It is attached to the conservatory and a small section of the rear elevation. There is pedestrian access to the boundary and to the remaining rear wall of the building. It has the appearance of timber clad extension with traditional windows.
16. The extension has a more utilitarian appearance than the more traditional design of the conservatory. This contrast is highlighted by the use of timber cladding and the flat roof. This together with the conservatory, has resulted in the rear elevation of the building having a rather piecemeal appearance, which fails to integrate with the original property.
17. I acknowledge that the extension cannot be readily viewed from Hoylake Crescent, however it would be clearly seen from the rear gardens of the adjoining properties.
18. Overall, I find that the extension is of utilitarian design and when viewed in the context of the existing conservatory has resulted in an incongruous form of development that is unsympathetic to the design of the original building and the character and appearance of the wider area. It is therefore contrary to policies DMHB 11, DMHB 12 and DMHD 1 of the London Borough of Hillingdon Local Plan Part 2, Development Plan Policies (2020). These policies in combination seek to ensure that all new development, including extensions, is of good design that harmonises with the local context and integrates with the surrounding area.
19. The appellant refers to the most recent GDPO which allows, under certain circumstances, extensions to be built without the need for express permission. I have not been provided with worked out details of any such scheme and therefore give this only limited weight. I am also aware that planning permission was granted in April 2017 for various extensions. Whilst I have had regard to this, neither of these considerations would overcome the harm that I have identified above, or lead me to a different finding.

Conclusion

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

Hilary Orr

INSPECTOR