



Appeal Decision

Site visit made on 13 October 2020

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 November 2020

Appeal Ref: APP/R5510/C/20/3250088

Land at 159 Charville Lane, Hayes, Middlesex UB4 8PB

- 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 Thomas Martin Ward against an enforcement notice issued by the Council of the London Borough of Hillingdon.
- The enforcement notice was issued on 5 March 2020.
- The breach of planning control alleged in the notice is failure to comply with a condition of planning permission Ref 4734/APP/2017/4236 granted on 7 February 2019.
- The development to which the permission relates is erection of a replacement bungalow with associated access, parking and landscaping works. The condition in question is no 2 which states that: *"Within two months of the date of this permission, a landscape scheme, based upon Drawing No. BP-05-2018 shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include:*
 - 1. Details of Soft Landscaping. 1.a Planting plans (at not less than a scale of 1:100).*
 - 1.b Written specification of planting and cultivation works to be undertaken.*
 - 1.c Schedule of plants giving species, plant sizes, and proposed numbers/densities where appropriate.*
 - 2. Details of Hard Landscaping. 2.a Refuse Storage.*
 - 2.c (sic) Means of enclosure/boundary treatments.*
 - 2.d Car Parking Layouts.*
 - 2.e Hard Surfacing Materials.*
 - 3. Details of Landscape Maintenance 3.a Landscape Maintenance Schedule for a minimum period of 5 years.*
 - 3.b Proposals for the replacement of any tree, shrub, or area of turfing/seeding within the landscaping scheme which dies or in the opinion of the Local Planning Authority becomes seriously damaged or diseased.*
 - 4. Schedule for Implementation. Thereafter the development shall be carried out and maintained in full accordance with the approved details."*
- The notice alleges that the condition has not been complied with in that on 28 August 2019 approval of details in pursuance of condition 2 was granted under reference 4734/APP/2019/1234 on the basis of the landscaping scheme submitted, drawing number CHARVILLE/BLOCK/01/Rev A (received 9 July 2019). The erection of the replacement bungalow is complete but works have not been carried out in full accordance with the details as shown by the approved landscaping scheme.
- The requirements of the notice are: A. Demolish the bungalow and remove from the land all debris, building materials, plant and equipment arising from compliance; OR B. (i) Carry out the landscaping scheme in full accordance with the details shown in drawing number CHARVILLE/BLOCK/01/Rev A (received 9 July 2019), submitted and approved by application reference 4734/APP/2019/1234, in conformity with condition 2 of planning permission reference 4734/APP/2017/4236 (erection of a replacement bungalow with associated access, parking and landscaping works) and (ii) Remove from the land all debris, building materials, plant and equipment resulting from compliance.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended.

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

Ground (a) appeal

Main Issue

1. The main issue in this appeal is whether condition 2 is necessary and reasonable, having regard to the effect of the development on the character and appearance of the area.

Reasons

2. The deemed planning application arising from the appeal on ground (a) is for the erection of a replacement bungalow with associated access, parking and landscaping works granted planning permission by Council reference 4734/APP/2017/4236, without complying with condition 2 of that permission. Condition 2 requires the implementation of a scheme of hard and soft landscaping, following its submission to and approval by the Council. The reason given for the condition was *"To ensure that the proposed development will preserve and enhance the visual amenities of the locality and provide adequate facilities in compliance with Policies BE13, BE38 and AM14 of the Hillingdon Local Plan and Policy 5.17 of the London Plan"*. Policies in the Hillingdon Local Plan Part 2-Development Management Policies (LP), have superseded the above policies in the previous version of that document.
3. The appeal site is located towards the end of a row of bungalows and chalet bungalows. For the most part, dwellings in the row occupy spacious, similarly-sized rectilinear plots and they have extensive well-landscaped front and rear gardens, with maturing tree and shrub planting and generously lawned areas. The dwellings front onto a lane bordered by grassy verges and trees and they are situated on the edge of an established residential area, adjoining a substantial tract of open countryside. The above factors all contribute significantly to the pleasant, semi-rural character and appearance of the locality.
4. The site is similar in size and shape to other plots in the row. The replacement dwelling is largely consistent with the adjoining dwellings in terms of its scale and design. However, the external areas of the site are largely covered by hardsurfacing and there is a general absence of soft landscape features, giving the site a harsh, built-up and urbanised appearance. This is entirely at odds with the general pattern of local development and the semi-rural qualities of the surroundings identified above and has contributed to a considerable and harmful erosion of the character and appearance of the area. As a result, the submission and implementation of a landscaping scheme which includes soft landscaping, as required by condition 2, is necessary and reasonable to ensure that the development achieves a satisfactory level of visual integration with its surroundings.
5. I am mindful that public views of the area behind the dwelling are limited. However, parts of the site can be seen from the lane, particularly when the entrance gates are left open. Also, there are likely to be some views of the rear of the site from adjoining property. In any event, the fact that a site is open to limited views is not a good reason for permitting unacceptable development as it could be repeated too often, causing further visual harm. Given these factors, granting permission subject to a condition requiring only the provision of soft landscaping at the front of the dwelling would not adequately soften the appearance of the development.

6. The Council approved a scheme of landscaping pursuant to condition 2 in August 2019¹. The scheme incorporates considerable tree and hedge planting, with a substantial planting bed at the front and an extensive area of lawn behind the dwelling. Once implemented and established, the scheme would provide a soft landscaped setting for the dwelling broadly comparable with that of adjoining dwellings and would therefore be consistent with and reinforce the established character and appearance of the surroundings. Alternative landscaping proposals have been submitted with the appeal². However, as I can only consider whether condition 2 should be discharged or varied, the merits of that scheme are not before me. The correct approach to dealing with this matter is to apply to the Council to carry out the development in accordance with the alternative scheme. I am given to understand that such an application was made in March 2020 but has yet to be determined. In the event the application is refused, an appeal against the Council's decision could be made in the usual way. If an alternative scheme is approved however, the notice requirements would cease to have effect so far as they are inconsistent with that approval, having regard to s180 (1) of the Act.
7. The unacceptable harm to the character and appearance of the area caused by non-compliance with condition 2 fails to accord with criterion in LP Policy DMHB 11, as principles of good design including landscaping and tree planting to protect and enhance amenity have not been incorporated. It also fails to accord with criterion in LP Policy DMHB 12, as a landscaping treatment that is suitable for the location, serves a purpose and contributes to local green infrastructure has not been included. Furthermore, there is failure to accord with criterion in LP Policy DMHB 14, as a scheme that includes hard and soft landscaping appropriate to the character of the area has not been provided. However, I found no conflict with LP Policy DMT 6, which concerns vehicle parking. Nor could I ascertain any conflict with Policy 5.17 of the London Plan, concerning waste management proposals. The Council did not explain the significance of either policy to the matter at issue.

Conclusion on ground (a)

8. Condition 2 is necessary and reasonable, as carrying out the development without compliance with the condition has unacceptably harmed the character and appearance of the area and does not accord with the Development Plan. Therefore, the ground (a) appeal does not succeed.

Ground (f) appeal

9. The ground of appeal is that the requirements of the notice are excessive for its purpose.
10. The notice alleges a breach of condition 2. Nothing less than full compliance with the landscaping scheme approved under that condition is required by the notice. Implementing the approved scheme in full would have the effect of making the development comply with the condition and in consequence, the terms of the relevant planning permission. Therefore, although the notice does not state as such explicitly, its purpose must be to remedy the breach and not to remedy an injury to amenity.

¹ Council Ref: 4734/APP/2019/1234-Drawing no CHARVILLE/BLOCK/01/Rev A.

² Drawing no CHARVILLE/BLOCK/01/Rev B.

11. The notice does not allege that development has been carried out without planning permission. The dwelling does not form part of the alleged breach and has been erected pursuant to the relevant planning permission. Nothing in condition 2 requires the development to not be carried out, in default of compliance with its requirements. Given the above context, demolition of the dwelling would go beyond what is necessary to comply with the terms of the relevant planning permission and is not a proportionate requirement as an alternative to implementing the approved landscaping scheme.
12. Consequently, I find that the requirement to demolish the dwelling is excessive for the purpose of remedying the breach. I shall vary the notice to delete the requirement and the ground (f) appeal succeeds to that extent.

Conclusion

13. 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

14. It is directed that the enforcement notice be varied by deleting the requirement at paragraph 5.A. 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.

Stephen Hawkins

INSPECTOR