



Appeal Decisions

Site visit made on 9 February 2021

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 March 2021

Appeal A: APP/N2405/C/20/3262166

Land at 523/525 Plodder Lane, Farnworth, Bolton

- 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 Ashiq Ali against an enforcement notice issued by Bolton Council.
 - The enforcement notice was issued on 24 September 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a dwellinghouse.
 - The requirements of the notice are to dismantle and permanently remove from the land the dwellinghouse together with all fixtures and fittings.
 - The period for compliance with the requirements is 60 days.
 - 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.
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Appeal B: APP/N2405/C/20/3259476

523 Plodder Lane, Farnworth, Bolton BL4 0LB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr A Ali against the decision by Bolton Council.
 - The application Ref 06551/19, dated 18 July 2019, was refused by notice dated 29 June 2020.
 - The development proposed is described as 'proposed amendment to approved development (03579/18) to form new dwelling including retention of works to date and proposed new additional single storey rear and side extension, new openings, new Juliet balcony to dormer, amendment to bays and frontage and new front gates'.
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Decisions

Appeal A - APP/N2405/C/20/3262166

1. The appeal is allowed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the erection of a dwellinghouse, not including a dormer window on the rear roof slope, in accordance with the following plans: 01/PL/Rev D1 dated 11 September 2017, 02/PL/RevD1 dated 5 November 2020, 03/PL/RevD2 and 04/PL/RevD2 dated 10 November 2020, at 523/525 Plodder Lane, Farnworth, Bolton BL4 0LB and subject to the conditions in the attached schedule.
2. The appeal is dismissed and the enforcement notice is upheld insofar as it relates to the dormer window on the rear roof slope and planning permission is refused in respect of the dormer window on the application deemed to have been made under s177(5) of the 1990 Act as amended.

Appeal B - APP/N2405/C/20/3259476

3. Appeal B is dismissed.

Appeal A on ground (a) the deemed planning application and Appeal B

Background

4. Planning permission has previously been granted for the conversion of two dwellings into a single dwelling, including the erection of two storey extensions to the front, side and rear and a rear dormer, planning permission reference 03579/18. This was an amended scheme following an earlier approval.
5. Based on the submitted evidence and my site observations, it is evident that a significant degree of demolition has taken place such that the development was not therefore simply a conversion and extension of the original dwellings. Consequently, as a matter of fact there is no fallback position as the dwellings are no longer in existence to convert and extend.
6. Despite that, the site is in a residential area where it appears there would be no in principle policy objection to the replacement of the dwellings with a single dwelling. The Council have previously granted permission for a development which would have resulted in a dwelling with a broadly similar shape, form, and height. Consequently, whilst I acknowledge that there is no extant planning permission fallback, I consider it is legitimate and reasonable to consider the development as built against that which the Council previously found to be acceptable.
7. The terms of the appeal on ground (a) derive directly from the alleged breach of planning control set out in the notice and as built. Nevertheless, I do have the power under s177(1)(a) of the 1990 Act to grant planning permission for any part of the matters stated in the notice. I am also required to consider whether there is an obvious alternative which could overcome the planning difficulties, at less cost and disruption than total removal as currently required by the notice. I can though only grant planning permission for one scheme.
8. Under the ground (f) appeal the appellant has suggested three alternatives to demolition. First is the reinstatement of the original pair of semi-detached dwellings. Second, that the dwelling is amended to reflect the originally approved development. Third, that it is completed in accordance with a scheme which currently forms a planning application before the Council which is as yet undetermined. The Council also suggested that this latest proposal could be considered under the appellant's ground (f) appeal.
9. In respect of the first alternative, the re-building of the pair of dwellings does not form the whole or part of the development enforced against – that being the erection of a single dwellinghouse. Consequently, it is not possible to consider this proposal under ground (a).
10. In respect of the remaining alternatives, as the most recent proposal, except for the dormer, better represents what has been built on site in terms of dimensions and position, then I shall consider the merits of this alternative.
11. Ground (a) is that planning permission should be granted for the matters stated in the notice. The dwelling is not complete and since the considerations

in Appeal B are the same as for Appeal A I have considered the appeals together.

Main Issues

12. The main issues are the effect of the dwelling on (i) the character and appearance of the area and (ii) the living conditions of the occupants of 28 and 30 Tig Fold Road with particular regard to outlook.

Reasons

Character and appearance

13. The appeal site is in a residential area, which except for a detached bungalow on the opposite side of the road, is generally characterised by semi-detached dwellings, of similar proportions, arranged behind a discernible building line. The dwellings incorporate a similar palette of materials with the main external materials being brick and render and the dwellings typically having hipped roofs and other features such as bays. Dormer windows are not a feature of the immediate locality.
14. Policies CG3 and RA2 of Bolton's Core Strategy Development Plan Document Adopted March 2011 (Core Strategy) together require development, amongst other things, to conserve and enhance local distinctiveness ensuring development has regard to the overall built character of the area and is compatible with the surrounding area in terms of scale, massing and form.
15. The National Planning Policy Framework (the Framework) states that planning decisions should ensure developments are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change.
16. Consequently, whilst new buildings should provide an attractive design which respects the local context and responds to local character, new buildings do not necessarily need to repeat nearby designs.
17. I acknowledge that the dwelling appears large relative to the modest proportions of the typical semi-detached dwelling in the road. However, it is set back from the road, broadly in line with the existing building line and whilst the design does not replicate the appearance of dwellings in the area, it incorporates features and materials which reflect the local architectural style, including a hipped roof, bay windows and brick.
18. Furthermore, when considered against the previously approved scheme, which was for a development of a similar character, I consider the dwelling does not have a materially greater impact as a result of the increase in height and volume.
19. However, the dwelling as constructed includes a substantial flat roof dormer to the rear which is clearly visible from neighbouring dwellings and their gardens. The dormer, as built, extends to the height of the main ridge, and occupies a significant proportion of the roof slope. As a result of its scale and box-like form, the dormer has a 'top heavy' and dominant appearance within the roof slope, poorly related to the scale of the roof and character of the area.
20. Whilst the rear elevation of the dwelling is not readily seen in wider public views, the dormer is discernible in views from the public footpath which runs

broadly east of the dwelling and in glimpses from the footpath to the front because of its elevated position. In such views and from the rear windows and gardens of neighbouring and surrounding dwellings, the dormer appears as a discordant and unduly prominent feature. This effect would not be improved by the reduction in size as proposed in Appeal B.

21. However, the appellant's proposed alternative, as discussed above, proposes the removal of the dormer. Given my above findings, I consider that the dwelling without the dormer, would not cause harm to the character and appearance of the area. Therefore, there would be no conflict with the design principles set out in Policy CG3 and RA2 of the Core Strategy or the Framework.

Living conditions

22. I am aware of significant neighbour concerns about the development and I was able at my site visit to view the relationship between the appeal site and the windows and gardens of neighbouring properties, albeit from within the appeal site.
23. The Council's General Design Principles Supplementary Planning Document (SPD) sets out recommended interface distances between new dwellings. It explains that these are recommended distances aimed at ensuring that the spaces around new dwellings are related to the character of the area. Further, that new developments should not have an overbearing or overly dominant effect on adjoining dwellings, or result in loss of privacy. It is also stated that the SPD distances should not be read as a minimum standard but simply as advice on what would represent ideal layout design.
24. The dwelling consists of three floors of accommodation however, it is a two-storey dwelling. As such the recommended interface distance is 21m. The distance between the rear elevation of the dwelling and the dwellings at 28 and 30 Tig Fold Road is between 18m and 19m, around a 2 - 3m shortfall from the recommended distance.
25. The outlook from the ground floor windows in numbers 28 and 30 is towards an existing boundary and there are established conifer trees at the bottom of the appeal site which will limit, to some extent, the outlook from within the dwellings and their gardens.
26. Given these circumstances and the separation distances, which whilst less than recommended remain generous, I consider there is no materially harmful overbearing impact on the outlook from within the dwellings or gardens of 28 and 30 Tig Fold Road.
27. The dwelling extends further at the rear than the neighbouring 527 Plodder Lane and there is a kitchen window in the rear elevation of no.527, reasonably close to the shared boundary with the appeal site. However, the outlook from that window is already limited to some extent by an existing shed, otherwise views out over the garden are largely unobstructed.
28. Whilst the dwelling is visible from the garden and the area outside of the back door at no.527, the dwelling doesn't extend along the entire length of the shared boundary. As such, given the separation distance and as views over the garden offer an otherwise open aspect, I find there is no harm as a result of an

overbearing impact on the outlook from within the dwelling or garden at no.527. I note that the Council identified no harm in this respect.

29. Overall, for the reasons given I conclude that the dwelling causes no material harm as a result of an overbearing impact on the outlook from 28 and 30 Tig Fold Road or 527 Plodder Lane. Indeed, the dwelling would have had a very similar effect if the development had been carried out as approved. Therefore, there is no conflict with the amenity protection aims of Policy CG4 of the Core Strategy, the SPD or Framework.

Other Matters

30. Third parties raised concerns about loss of privacy. However, the dwellings are located in a suburban environment where some mutual overlooking of homes and gardens is inevitable, and it seems likely that there would have been some overlooking from the windows in the former dwellings. There are two relatively small bedroom windows at first floor level which would be clear glazed, the others being obscure up to a height of 1.6m from floor height, matters which can be secured by condition. All side windows would be obscure glazed.
31. Whilst the separation distances are reduced, given the achieved separation distances, the existing screening and that there would be only two small clear glazed bedroom windows in the rear elevation, I consider there is no significant loss of privacy for the occupants of neighbouring and surrounding dwellings.
32. I note third party comments about the potential for the trees to be removed however, the proposed plans indicate that the trees will be retained and additional landscaping can be provided, as suggested by the appellant, which can be secured by condition.
33. I acknowledge that one of the windows in no.28 serves a child's bedroom and I have had regard to this in my assessment. However, while taking this into account, the proportionate response and that supported by the Development Plan is that the appeal should be allowed. I note from the Council's Committee meeting minutes that privacy was referred to however, this was not given as a reason for refusal or for taking enforcement action.
34. A number of third parties raised concerns about overshadowing and loss of daylight, including the occupants of no.527 which is located broadly west of the dwelling. Although larger than the pair of dwellings it replaced and although it extends further at the rear, given its orientation relative to no.527, and in the absence of substantive contrary evidence, I find there is no harm as a result of overshadowing or loss of daylight and there was no objection from the Council in this regard.
35. The access and parking arrangements would be satisfactory and there is no evidence that highway safety would be compromised. I note the Council and Highways Department similarly raised no concerns in respect of these matters.
36. There is no evidence that the development would lead to unacceptable levels of noise nor that the foundations or the structure are unsafe.
37. Given that I have found the development to be acceptable, I see no reason why it would lead to harmful developments on other sites in the area. In any event each proposal must be considered on its own merits and a generalised concern of this nature does not justify withholding permission in this case.

38. Finally, residents have expressed concerns over the applicant's approach to the development of the site, the retrospective nature of the development, the intentions of the developer, the effect on property values and the Council's handling of the case. However, these concerns have no bearing on the planning merits of the proposal and could not justify the dismissal of the appeal.

Conclusion on Appeal A on ground (a) and Appeal B

39. For the reasons given, I find that the dwellinghouse as built is unacceptable, therefore Appeal B is dismissed. However, since the appellant's alternative, would resolve the harm caused by the dormer, I find this to be acceptable. I therefore intend to grant planning permission under s177(5) of the 1990 Act for the dwellinghouse as proposed with the removal of the dormer.

Conditions

40. The Council has suggested a number of conditions which I have considered against advice in the Framework and Planning Practice Guidance (PPG). As a result, I have undertaken some editing and rationalisation of the conditions proposed by the Council in the interests of precision and clarity and omitted others.
41. The permission is subject to the plans specified and a separate plans condition is not necessary. A time limit condition is not necessary since the dwelling is at an advanced stage in its construction.
42. I have imposed a condition requiring the windows in the rear elevation, as indicated on the approved plans, to be obscure glazed and non-opening unless that part is above 1.6m in height from the internal finished floor level and retained as such in perpetuity, in the interests of protecting the living conditions of the occupants of neighbouring dwellings.
43. A condition requiring foul and surface water to be drained on separate systems is necessary in the interests of ensuring a satisfactory means of drainage is provided.
44. Conditions requiring the car parking areas to be formed prior to occupation of the dwelling and for any additional hardstanding to be laid facing the street frontage to be porous, are necessary in the interests of highway safety.
45. The Council suggested a condition removing various permitted development rights. However, the PPG states that conditions removing permitted development rights should only be imposed in exceptional circumstances, since the dwelling replaces two dwellings which it seems likely, in the absence of contrary evidence, would have retained their permitted development rights and as no such exceptional circumstances have been demonstrated, I have omitted this condition.
46. Nevertheless, the dwelling has resulted in reduced separation distances between neighbouring dwellings and further extensions, dormers and windows could result in an unacceptable loss of privacy and/or have an unacceptable overbearing impact. Consequently, a condition restricting the right to build extensions, dormers and insert windows is necessary in the interests of safeguarding the living conditions of neighbours.

47. A landscaping condition is necessary in the interests of the appearance of the area.
48. The Council suggested a condition requiring the construction materials to match those in the existing building however, this is not necessary since the external walls are complete and as the plans indicate what materials will be used.

The appeal on ground (f)

49. The appellant's case under ground (f) I have already considered in detail under ground (a). Although planning permission has been granted in respect of parts of the development enforced against, the notice has been upheld without varying any requirements relating to them, since this could have given rise to two separate planning permissions, namely the one that has been granted in this appeal decision and the one that would be deemed to be granted by section 173(11) due to under-enforcement.
50. Attention is drawn to the provisions of section 180(1) as to the effect on the notice of the permission that has been granted. This provides that where planning permission is granted after the service of a copy of the notice for any development already carried out, the notice shall cease to have effect insofar as it is inconsistent with the planning permission. This means that the planning permission overrides the notice to the extent that it authorises what is being enforced against, except for the dormer window.
51. The appeal on ground (f) therefore fails.

The appeal on ground (g)

52. Given what I have set out above, 60 days is a reasonable period to only remove the dormer window. Accordingly, the appeal on ground (g) fails.

Conclusions

53. For the reasons given above I conclude that Appeal A should succeed in part only, and I will grant planning permission for the erection of a dwellinghouse in accordance with the following plans: 01/PL/Rev D1 dated 11 September 2017, 02/PL/RevD1 dated 5 November 2020, 03/PL/RevD2 and 04/PL/RevD2 dated 10 November 2020 but otherwise I will uphold the notice and refuse to grant planning permission in respect of the dwellinghouse as erected, namely including the dormer. The requirements of the notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of s180 of the Act.
54. Appeal B should be dismissed.

Felicity Thompson

INSPECTOR

Schedule of conditions

- 1) Before the first occupation of the dwellinghouse hereby permitted the windows in the first floor rear elevation, which face the rear of 28-34 Tig Fold Road shall be fitted with obscure glazing as indicated on the approved plans and whose obscuration level is 5 on a scale of 1-5 (where 1 is clear and 5 is completely obscure) and retained as such thereafter. No part of those windows or any replacement window shall be openable unless that part is above 1.6m in height from the internal finished floor level.
- 2) Foul and surface water shall be drained on separate systems.
- 3) The dwelling shall not be occupied until the car parking areas to serve the development have been laid out and hard surfaced in accordance with the approved drawings and made available for use and retained as such thereafter.
- 4) Any additional hardstanding to be laid down to the street frontage of the new dwelling hereby approved shall be formed from a porous bound surface.
- 5) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order, 2015 (or any Order revoking and re-enacting this Order with or without modification), no extensions or dormers shall be erected nor shall any windows other than those expressly authorised by this permission be inserted on any elevation.
- 6) Trees and shrubs shall be planted on the site in accordance with a landscape scheme to be submitted and approved in writing by the Local Planning Authority prior to the dwelling being first occupied. The approved scheme shall be implemented in full and carried out within 6 months of the first occupation of any part of the dwelling or the completion of the development, whichever is the sooner, or in accordance with phasing details included as part of the scheme and subsequently approved by the Local Planning Authority. Any trees and shrubs that die or are removed within five years of planting shall be replaced in the next available planting season with others of similar size and species.