The Planning Inspectorate

Appeal Decision

Site visit made on 16 March 2021

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 04 May 2021

Appeal Ref: APP/C1950/C/20/3259464
Land situated at and known as 51 School Lane, Welwyn AL6 9PL

- 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 Amy Victoria Pattison against an enforcement notice issued by Welwyn Hatfield Borough Council.
- The enforcement notice was issued on 13 August 2020.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a detached outbuilding and associated engineering operations involving the construction of an access driveway, other hard surfaces, a retaining wall and raising the level of the land.
- The requirements of the notice are: -
  (i) Demolish and remove the detached outbuilding as shown by the attached plan labelled A and by the attached photograph labelled B.
  (ii) Remove from the Land the access driveway and the other hard surfaces as shown by the attached plan labelled A and by the attached photographs labelled C.
  (iii) Demolish and remove the retaining wall as shown in the approximate position by the green line on the attached plan labelled A.
  (iv) Restore the Land to the condition it was in prior to the commencement of the unauthorised development, including its ground level, as shown by the attached photographs labelled D.
  (v) Remove from the Land all materials, debris, waste, plant and equipment associated with requirement (i) to (iv) above.
- The period for compliance with the requirements is three (3) calendar months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended (the 1990 Act). 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 1990 Act.

  Summary Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Preliminary Matters and Background

1. Due to the restrictions in place in relation to the COVID-19 pandemic I undertook an unaccompanied site visit on the basis that I was allowed access, alone, on to the site in question. Both main parties agreed to the appeal being dealt with on this basis.

2. The alleged breach of planning control relates to a relatively large outbuilding that is within the rear garden area of 51 School Lane (No 51). The outbuilding has been erected on a hardsurfaced slab that has raised the level of the land. A block paved drive extends from that slab to the rear of part of No 51.

3. The evidence before me cites the past and current use of the outbuilding. However, the enforcement notice relates to operational development and not a material change use. As such, I have taken into the account the evidence in relation to the use of the building in so much as it relates to the grounds of appeal below.

4. In September 2018 the Council granted a certificate of lawfulness of development[1] (2018 LDC) in respect of the erection of an outbuilding. This followed the earlier refusal of an LDC application for an outbuilding on the site. By April 2019 the outbuilding that is the subject of the enforcement notice had been constructed. In May 2019 a planning application was submitted to change the use of the outbuilding to a self-contained, one-bedroom dwelling[2]. That application was refused and the subsequent appeal[3] was dismissed in 2020 (2020 appeal).

Application for costs

5. An application for costs was made by Mrs Amy Victoria Pattison against Welwyn Hatfield Borough Council. This application is the subject of a separate decision.

The ground (c) appeal

6. This ground of appeal is that those matters, if they occurred, did not constitute a breach of planning control. In an appeal on this ground the appellants have to demonstrate on the balance of probability that the matters alleged, to have occurred, in the notice do not constitute a breach of planning control.

7. The appellant has stated that the topographical surveys submitted with her evidence demonstrate that there have been very minor land levelling operations. She considers that these operations were reasonably undertaken to enable the safe and proper construction of the outbuilding on a flat area. She also considers that the siting, size, scale and bulk of the outbuilding has been built in accordance with the 2018 LDC. Furthermore, she states that the hardstanding areas and retaining wall are permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO).

8. Section 55(1) of the 1990 Act defines development as meaning the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. Section 57 of the 1990 Act provides that planning permission is required for the carrying out of any development of land.

9. The submitted topographical surveys indicate that prior to the alleged breach occurring that the ground levels near the rear boundary were higher than those near the historic outbuilding. To enable the new outbuilding to be erected on a level surface a hardsurfaced slab has been constructed on the northernmost part of the rear garden. In places the ground levels have been reduced but adjacent to the historic outbuilding they have been raised by approximately 0.5 metre. A concrete retaining wall has also been constructed around parts of the slab.

10. The hardsurfaced slab extends between the side boundaries of the garden, under the new outbuilding and it covers a sizeable part of the land. The construction of a slab of this size and height with its associated retaining walls

[1] Application No: 6/2018/1838/LAWP
[2] Application No: 6/2019/1064/FULL
[3] Ref No: APP/C1950/W/19/3238498

are to my mind works that involve an element of pre-planning and which would normally (but not necessarily) be supervised by a person with engineering knowledge. As such, in my view these works constitute an engineering operation for the purposes of section 55(1) of the 1990 Act and therefore constitute development requiring planning permission by reason of section 57 of the 1990 Act.

11. Even though, the footprint and height of the outbuilding appear to be similar to that shown on the submitted drawing associated with the 2018 LDC that drawing did not indicate that any alterations to ground levels were proposed. The hardsurfaced slab is an integral part of the development to construct the outbuilding. As such, the outbuilding has not been built in accordance with the 2018 LDC.

12. Class F of Part 1, Schedule 2 to the GPDO states that the provision within the curtilage of a dwellinghouse of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse as such or the replacement in whole or in part of such a surface is permitted development. In addition, Class A of Part 2, Schedule 2 to the GPDO permits the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure subject to certain limitations.

13. Nevertheless, the retaining walls are an integral part of the engineering operations cited above. Furthermore, based on the evidence before me, the hardstanding and drive have been constructed to facilitate level access to the outbuilding. As such, when considered holistically, it is reasonable to consider that the whole of the development described in the alleged breach has been designed and constructed as a single operation. That operational development included the raising of ground levels which I have found constitutes an engineering operation. As a whole, the development does not fall within permitted development rights. Therefore, express planning permission is required.

14. It is reasonable to consider that where an outbuilding within the curtilage of a dwellinghouse would contain primary living accommodation, such as bedrooms, it would not normally be considered to be in incidental use and therefore be permitted development under Class E of Part 1, Schedule 2 to the GPDO. However, these factors would not alter that the operational development as a whole requires planning permission. Therefore, the use of the outbuilding nor its layout, in this case, would not alter whether the development constitutes a breach of planning control.

15. I acknowledge that the Inspector within the 2020 appeal decision stated that *'the building already exists and benefits from planning permission'*. It is unclear as to what evidence was before that Inspector in regard to that matter. In any case, this statement was incorrect as there is no planning permission in place for the outbuilding. The 2018 LDC is not a grant of planning permission.

16. I conclude that the matters alleged constitute a breach of planning control. There is no evidence that planning permission has been granted, therefore, the appeal on ground (c) must fail.

The ground (a) appeal and deemed planning application

Main Issue

17. Based on the evidence before me, the main issue is the effect of the development on the character and appearance of the surrounding area.

Reasons

18. No 51 is within a mainly residential area that is made up of a range of age and design, mainly 2-storey, semi-detached and detached properties. These dwellings appear to have generous gardens and the mature landscaping within them give the area an open and spacious character. The hardsurfaced area surrounding the outbuilding is at a higher ground level to the part of the rear garden closest to No 51. At the time of my site visit the only fence within the garden area itself, rather than marking No 51's boundaries, was between the drive and the lower part of the rear garden.

19. I observed that detached buildings ancillary to and to the rear of dwellings are not uncommon in the surrounding area. There is a variety to the size and design of those detached buildings. Nevertheless, the outbuilding is relatively large, and it extends across a large part of the width of the rear garden area. Its overall size will be discernible from neighbouring properties. However, even with the raising of the ground levels on parts of the site its location means that it is only seen in glimpse views from the public domain. Its design and materials respect the host dwelling and surrounding area. In the context of the generous overall size of the rear garden of No 51 I do not find the development to be seriously out of scale or over dominant. Moreover, I do not consider the appearance of the development as a whole to be out of keeping with its setting.

20. In addition, the outbuilding could be demolished, the hardsurfaced slab removed and a replacement building erected that would meet the limitations of the 2018 LDC. Given the attempts by the appellant to gain approval for the LDC and that the outbuilding has been erected it is more likely than not that a replacement building would be erected. As a result, this would represent a fallback position that would have appreciable weight.

21. I note that the Inspector in the 2020 appeal decision stated that the separate residential use of the outbuilding would significantly harm the character and appearance of the area. However, a separate residential use would have very different characteristics, as found by that Inspector. The Council has raised concerns about the outbuilding being used as a separate dwelling or for bed and breakfast accommodation. Nonetheless, as stated above, the enforcement notice does not relate to the use of the outbuilding and the deemed planning application therefore only relates to the operational development.

22. Even though, the outbuilding contains primary living accommodation it could still be part and parcel of the primary dwellinghouse use if that use is physically and/or functionally connected to the use of the main house. The appellant has indicated that the accommodation is intended to be used in connection with the care and accommodation needs of her children, two of which are registered as disabled and live at home full time. In that instance, the use of outbuilding could be argued to be physically and functionally connected with the use of the house and a new planning unit would not be created.

23. Furthermore, if following a grant of planning permission, the outbuilding was not used as indicated, or if there is a future material change of use to create a separate dwelling or a different use, then another grant of planning permission would be required, and the use would be at risk of enforcement action if such permission is not granted.

24. Both parties were asked for their comments as to whether a condition that restricted the use of the outbuilding to ancillary purposes to the residential use

of No 51 would meet the six tests as stated at paragraph 55 of the National Planning Policy Framework (the Framework). The appellant considers that it would meet those tests. However, the Council raises concerns in that the condition would not overcome the harm to the character and appearance of the area and that it would be difficult to monitor and enforce. An appeal decision[4] has been submitted by the Council to support its view that such a condition would be difficult to enforce.

25. I acknowledge that such a condition could be difficult to enforce but it would not be impossible to monitor. The Council have indicated that they have found evidence of a possible bed and breakfast use of the outbuilding on the internet. Nevertheless, even if the outbuilding is not used as part and parcel of the dwellinghouse use in the future the Council could take separate enforcement action against that use if it entails a material change of use. Consequently, I do not consider that a condition restricting the use of the outbuilding is necessary. No further conditions were suggested by either main party.

26. The outbuilding that has been erected when considered as a building in use as part and parcel of the residential use of No 51 does not have a significantly greater impact on the character and appearance of the area than the building that could be constructed under the 2018 LDC.

27. Taking into account all of the above, I consider that the operational development that forms the alleged breach of planning control does not harm the character and appearance of the surrounding area. As a result, it complies with Policy D2 of the Welwyn Hatfield District Plan 2005 which, amongst other things, states that the Council will require all new development to respect and relate to the character and context of the area in which it is proposed. Even though, it is of some age this policy is consistent with paragraph 127 of the Framework which, amongst other things, states that planning decisions should ensure that developments are sympathetic to local character.

Conclusion

28. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the development as described in the notice.

29. The appeals on grounds (f) and/or (g) do not therefore fall to be considered.

Formal Decision

30. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act for the development already carried out, namely the erection of a detached outbuilding and associated engineering operations involving the construction of an access driveway, other hard surfaces, a retaining wall and raising the level of the land at the land situated at and known as 51 School Lane, Welwyn AL6 9PL as shown on the plan attached to the notice.

D. Boffin

INSPECTOR

[4] Ref No: APP/B1930/W/18/3217177