



Appeal Decision

Site visit made on 3 August 2022

by Mrs H M Higenbottam BA (Hons) MRTPI

An Inspector appointed by the Secretary of State

Decision date: 16 November 2022

Appeal Ref: APP/M5450/C/21/3276542
64A Hindes Road, Harrow HA1 1SL

- 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 Vishal Shah against an enforcement notice issued by the Council of the London Borough of Harrow.
 - The enforcement notice was issued on 10 May 2021.
 - The breach of planning control as alleged in the notice is 'Without planning permission:
 - 1) The construction of a loft conversion comprising of rear roof extension and gable end **(Unauthorised Development)**
 - 2) The installation of an Air Conditioning unit **(Unauthorised A/C Unit)**
 - 3) The installation of hardstanding to the front of the property **(Unauthorised Hardstanding)**.
 - The requirements of the notice are:
 - 1) Remove the Unauthorised Development or build in accordance with the approved plans P/4566/18.
 - 2) Remove the Unauthorised A/C Unit.
 - 3) Remove the Unauthorised Hardstanding.
 - 4) Make good any damage caused to the building as a result of the above requirements and ensure that all materials used shall match those used in the existing building.
 - 5) Remove from the Land all materials and debris arising from compliance with the aforementioned requirements of the notice.
 - The period for compliance with the requirements is six calendar months after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the appeal is allowed insofar as it relates to the construction of a loft conversion comprising of rear roof extension and gable end and the installation of hardstanding to the front of the property 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 construction of a loft conversion comprising of rear roof extension and gable end and the installation of hardstanding to the front of the property subject to the following conditions:
 - 1) The engineering or other operations for the installation of hardstanding to the front of the property hereby permitted shall be removed and all materials resulting from the demolition shall be removed within 6 months of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 3 months of the date of this decision a scheme for a bonded gravel finish, including colour, and a scheme to direct run-off water

from the hard surface to a permeable or porous area or surface within the curtilage of the dwellinghouse shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.

- ii) If within 6 months of the date of this decision the local planning authority refuse to approve either or both schemes or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
- iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved schemes specified in this condition, those schemes shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 2. The appeal is dismissed and the enforcement notice is upheld for the installation of the A/C unit and planning permission is refused in respect of the installation of the A/C unit on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary matter

- 3. Requirement 1 refers to the approved plans for planning permission 4/4566/18. This permission relates to a single storey rear extension. I sought clarification from the Council in relation to requirement 1 and the reference to plans. The appellant has raised the point that this permission is not related to the alleged development.
- 4. The Council have confirmed that the reason for referring to the plans for planning permission reference P/4566/18 is that *'the roof plans from the proposed plans on the planning application are the same as the roof plan as shown on the existing plans from the certificate application'*. In essence the Council is seeking the requirement to put back the roof on the dwelling to match what was there prior to the unauthorised development. Albeit this was not clear from the requirements drafting.
- 5. A lawful development certificate for alterations to roof to form end gable and rear dormer, installation of three rooflights in front roof slope and outbuilding in rear garden (reference P/3703/18) was granted on 11 October 2018. The appellant has requested that this should be referenced in requirement 1.

Ground (c)

- 6. In appealing on ground (c) the burden of proof is firmly on the appellant to demonstrate, on the balance of probabilities, that the matters alleged do not amount to a breach of planning control. I will deal with the loft conversion, the A/C unit and the hardstanding in turn.

Loft Conversion

7. I note that there is an LDC for a similar, albeit smaller and of different materials, loft conversion than that enforced against. The GPDO does not grant retrospective planning permission. A development has to be constructed in compliance with all the limitations and conditions of the relevant class or classes of the GPDO to be permitted development. What has been built does not comply with those limitations and conditions and is therefore unauthorised and is a breach of planning control.

A/C unit

8. The appellant states that the A/C unit can be permitted development depending upon the size and materiality of the impact on the appearance of the building. The appellant does not explain why he considers it is permitted development. It is not clear on what basis the appellant considers that the A/C unit is permitted development or what class of the GPDO he considers permits the A/C unit. As stated above the burden of proof in a ground (c) appeal is on the appellant.
9. Under class A, part 1 of Schedule 2 of the GPDO the external finishes of the development must be similar in appearance to those on the existing dwelling. In my view, the external finishes of the A/C unit fail to be of a similar appearance to the existing dwelling. On the basis of the evidence before me the appellant has failed to demonstrate that the A/C unit meets the limitations and conditions of any specific class of permitted development in the GPDO.
10. In relation to the '*materiality of the impact on the appearance of the building*' I have taken that to imply the A/C unit may not amount to development. Section 55 (2)(a)(ii) of the Act states that the carrying out for maintenance, improvement or other alteration of any building works which do not materially affect the external appearance of the building does not involve development. The term 'materially affect' has no statutory definition but is linked to the significance of the change which is made to a building's external appearance. However, for a material effect on external appearance to have occurred there should be a substantial or significant physical change. The A/C unit is clearly visible behind the satellite dish on the roof of the single storey extension. The form and visibility of the A/C unit means, to my mind, that it has resulted in a significant physical change to that part of the building. Therefore, in my view, it materially affects the external appearance of the building and as such does amount to development.
11. As such, it has not been demonstrated on the balance of probabilities that the A/C unit is either not development or is permitted development it is therefore unauthorised development and a breach of planning control.

Hardstanding

12. The Council have provided a photograph that shows the front area of the property had some hardstanding and some planting on it. The hardstanding I saw at the site visit covered the whole of the front area and there was no planting. The appellant has not demonstrated that any of the original hardstanding was retained and as such I consider the whole of the hardstanding is one new development.

13. The appellant states that the total hardstanding is now 30.78 sq m. the hardstanding base is largely impermeable, but it is intended to be topped by resin bound gravel that is permeable and that it is proposed to add an aqueous channel to deal with any excess rainwater. He further states that what has been done would be permitted development under Class F of Part 1 of Schedule 2 of the GPDO.
14. Class F provides permitted development rights within the curtilage of a house for requires that where:
- (a) *the provision of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse as such or*
 - (b) *the replacement in whole or in part of such a surface*

F.1 Development is not permitted by Class F if permission to use the dwellinghouse as a dwellinghouse has been granted only by virtue of Class M, N, P, PA, or Q of Part 3 of this Schedule (change of use)

Conditions

F.2 Development is permitted by Class F subject to the condition that where -

- (a) *the hard surface would be situated on land between a wall forming the principal elevation of the dwellinghouse and a highway, and*
- (b) *the area of ground covered by the hard surface, or the area of hard surface replaced, would exceed 5 square metres,*

either the hard surface shall be made of porous materials, or provision shall be made to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the dwellinghouse

15. The hard surfacing as laid and attacked by the enforcement notice exceeds 5 sq m and is not porous. Furthermore, while it is stated to be the intention of the appellant to add an aqueous channel to deal with any excess rainwater this has not been demonstrated to exist at this time. The hard surface therefore does not comply with the conditions of Class F and it has not been demonstrated to be permitted development. As such it is a breach of planning control and is unlawful.

Conclusion

16. The appellant has failed to demonstrate on the balance of probabilities that the loft conversion, A/C unit or the hardstanding are permitted development. As such they are breaches of planning control and the appeal on ground (c) fails.

Ground (d)

17. This ground of appeal is made in relation to the allegation of the installation of hardstanding to the front of the property only.
18. In appealing on ground (d) the burden of proof is firmly on the appellant to demonstrate on the balance of probabilities the installation of the hardstanding was lawful through the passage of time when the enforcement notice was issued. This means that the appellant must show that the hardstanding was

substantially complete four years before the date of the issue of the notice, prior to 10 May 2017 (the material date).

19. The Council have as an appendix to their officer's report produced a photograph stated to be dated April 2018. This shows that there was some hardstanding and some vegetation to the front of the dwelling house.
20. The appellant has stated that what exists is the first phase of the renewal of deteriorated materials that previously existed at the property. Previously around 85% of the front area consisted of hardstanding materials and the other small percentage predominantly consisted of a hedge row that has been removed.
21. The appellant has failed to demonstrate that what exists at the property now has existed or was substantially complete prior to the material date. It is not clear whether the previous hardstanding was repaired or newly laid incorporating previous materials or was all new. In a ground (d) appeal it is for the appellant to demonstrate on the balance of probabilities that the hardstanding attacked by the notice was substantially complete prior to 10 May 2017.
22. Therefore, on the evidence available the appellant has failed to demonstrate that the hardstanding is immune from enforcement action and the appeal on ground (d) fails.

Ground (a)

Main issues

23. The main issues in relation to the ground (a) appeal are:
 - Whether the loft conversion comprising of a rear roof extension and gable end harms the character or appearance of the area;
 - Whether the A/C unit has an unacceptable effect on the living conditions of nearby residents in particular with regard to noise and disturbance;
 - Whether the A/C unit harms the character and appearance of the area;
 - Whether the hardstanding harms the character and appearance of the area and the visual and residential amenity of occupiers of neighbouring properties.

Loft Conversion

24. I note that there is an LDC for a similar, albeit smaller and of different materials, loft conversion than that enforced against. The GPDO does not grant retrospective planning permission. However, I consider it is reasonable to take into account the 'fallback position' of the loft conversion that was the subject of the LDC as an important material consideration on the merits of any deemed planning application. It is clear that the appellant considers that a requirement to alter the loft conversion development to be in accordance with the plans for the LDC scheme is preferable to removal of the whole development. However, that of itself would not make the works permitted development for the reasons set out above.
25. The width height and depth of the rear roof extension in the LDC scheme was 6.1m by 2.51m by 3.51m and the Gable End addition was 3.39m by 4.55m by 9.19m with a total cubic content, minus the existing roof, of 49.65 cubic meters. The loft conversion as built is stated by the Council to be

approximately 53.82 cubic meters. This additional bulk has been created as the development was off the eaves of the original roof and is not set back within the roof. The Council have also commented that the cheeks have not been tiled to match the original roof.

26. The Council has produced a supplementary planning document entitled Residential Design Guide (2010) (DG) which provides guidance on amongst other things roof alterations to existing dwellings. The guidance on this form of development is that generally dormers should be subordinate features. The preferred form of roof alteration to semi-detached dwellings is the extension of a hipped roof to form a gable with the addition of a rear roof extension or a rear dormer window. It advises how visual containment can be achieved and states that a rear roof extension or dormer must leave a minimum of 500mm from the main and return roof slopes and further visual containment may be achieved by setting the top of the rear extension or dormer down from the ridge and 500mm is recommended. The loft conversion does not comply with the guidance within the DG in relation to visual containment within the roof of the dwelling house.
27. The area to the rear of dwellings has a mixed character and appearance with many nearby properties having been extended to the rear and/or at roof level. There is no single form of alteration or addition predominant to the rear of nearby properties and as such there are a variety of additions and alterations to houses in the area that can be viewed from the rear garden of the appeal site. The appeal loft conversion does not look out of place within its setting.
28. The flank elevations of the rear roof extension are the same as those on the rear and flank elevations of the property. In my view, they are appropriate in terms of materials as it is seen as a vertical extension rather than an inset within the roof slope. I therefore consider the use of materials is acceptable on the flank elevations.
29. In my view, the loft conversion as built is less complex and simpler in design than the scheme the subject of the lawful development certificate. This simplicity to the design results in the development being more harmonious with the dwelling house. Whilst the loft conversion is larger than that permitted under the GPDO the additional cubic content is limited and overall the development does not detract from the character or appearance of the area and respects the host building.
30. I appreciate that the loft conversion does not comply with the DG in relation to visual containment within the roof slope. However, I have found that the loft conversion does not detract from the character or appearance of the area or the host building. As such it complies with Policy D3 (11) of the London Plan 2021 (LP), Policy DM1 of the Development Management Policies Local Plan (2013) and Policy CS1B of the Core Strategy (2012) which require development to respond to the existing character of a place as well as achieving a high standard of design and layout that is not detrimental to local character and appearance and resists development that would harm the character of suburban areas and requires extensions to respect their host building.

A/C unit

31. The A/C unit is sited adjacent to the flank wall of the rear out rigger at first floor level. As the property is a semi-detached dwelling it is about 3.15m to the property boundary with No 64 and is therefore in close proximity to the habitable rooms of that property. The Council state that there have been complaints about noise nuisance from the A/C unit.
32. The appellant stated that traffic flow in front of the property is frequent through the day and the biggest sources of noise pollution in the area and the A/C unit noise is inconsequential and below background noise levels on the few occasions it has been used¹. The appellant has provided the manufacturers sound data sheet which he states demonstrates there will be no issue with noise. Two letters of support from neighbours who are happy for the A/C unit to remain are referenced.
33. The manufacturers information does not demonstrate that the A/C unit that has been fitted operates at the intended noise levels in the actual location it has been sited. While the information states that cooling would generate 48 dBA and heating 49 dBA it is not clear whether it does operate at these noise levels or whether the external unit has been connected to the recommended indoor units set out on the data sheet.
34. The World Health Organisation Guidelines for Community Noise 1999 gives guidance on suitable internal and external noise levels for steady sound in and around residential properties. It recommends:
 - 30 dB LAeq in bedrooms, with <45 dB LAmax, over 8 hrs at night;
 - 35 dB LAeq in living rooms over 16 hrs in the day;
 - 50 to 55 dB LAeq in gardens/outdoor living areas over 16 hrs in the day; and
 - 45 dB LAeq outside bedrooms with an open window over 8 hrs at night
35. The evidence submitted by the appellant does not demonstrate that the noise levels within adjacent properties would meet the recommended levels set out by WHO when the A/C unit is in operation. Neither does it demonstrate the existing level of background noise in the area, albeit the appellant considers that the A/C unit noise levels would be inconsequential and below the background noise levels.
36. On the basis of the information before me it has not been demonstrated that the A/C unit can be operated in a way that would not result in noise and disturbance to the nearby residential occupiers. Moreover, I am not satisfied that the imposition of conditions to limit noise levels from the unit would be reasonable as there is no information of existing background noise levels or actual noise readings from the unit as installed or an installers confirmation that the unit has been installed in accordance with the manufacturer's requirements with internal fittings/equipment such that the stated manufacturers noise levels of the unit can be relied upon. I therefore cannot be satisfied that any imposed condition to limit noise levels could be complied with.

¹ At the time of the submission of the evidence it is noted that the A/C unit had been used about 3 times in nearly two years.

37. DM Policy DM12 seeks measures, where relevant, to mitigate any significant noise arising from the future use of the development and to make provision for natural ventilation and shading. It does not prohibit A/C units or relate to noise generation of a developments effects on adjacent residents, as such it is not directly applicable to the A/C unit. LP Policy D3 (7) requires development to deliver amongst other things appropriate amenity and DM Policy DM1 resists development which would be detrimental to the amenity of neighbouring occupiers. In my view, on the basis of the evidence provided, the A/C unit is contrary to LP Policy D3 (7) and DM Policy DM1 in relation to neighbour amenity.
38. The design of the unit is functional and due to its discrete location it does not detract from the character or appearance of the host property or the wider area. As such I consider it complies with DM Policy DM1 in relation to its design.

Hardstanding

39. Prior to the hardstanding that is attacked by the notice being created, a smaller area of hardstanding existed. To the boundary with No 66 was vegetation. The requirement of the notice seeks the removal of the hardstanding.
40. DM Policy DM9 is concerned with managing flood risk and in relation to hard surfacing there has been an identified issue due to incremental urbanisation of the Borough and finite drainage network capacity resulting in increasing incidence of surface water flooding. DM Policy DM10 advises that development that fails to make adequate provision for the control and reduction of surface water runoff will be refused. The appellant has stated that it is his intention to finish the hardstanding in resin bound gravel and to add an aqueous channel to deal with any excess rainwater. In my view, these could be required by the imposition of suitable conditions and would ensure compliance with Policies DM9 and DM10.
41. In the context of the street scene, while the loss of the vegetation has resulted in a harsher frontage area, the Notice does not require its reinstatement. The provision of hard surfacing to the frontage is not out of context within the street scene as there is a variety of hard surfacing and other treatments within the street. While the loss of soft landscaping is unfortunate, the requirements of the Notice do not require any soft landscaping to be reinstated. In this context, to my mind, the hardstanding does not harm the visual or residential amenity of neighbouring occupiers.
42. In relation to the visual and residential amenity of neighbouring occupiers the requirements of the Notice do not seek reinstatement of the soft landscaping and whilst requiring the hardstanding to be removed, some hardstanding has existed at the appeal site in the past. In my view, the retention of the hardstanding, subject to the imposition of suitable conditions, would result in a hardstanding that would not detract from the visual or residential amenity of neighbouring occupiers. This would comply LP D3 (7).
43. As such, I consider that subject to the surface water drainage being addressed and a resin bound gravel finish in a suitable colour being achieved through the imposition of conditions, then the hard surfacing would respond to the existing character of the area, achieve a satisfactory design, and would not harm the

character or appearance of the street scene. This would comply with LP D3 (11) DM Policy DM1, DM9 and DM10.

Conclusions

44. I consider that the loft conversion and hardstanding (subject to the imposition of suitable conditions) comply with the development plan as a whole and planning permission will be granted and the appeal on ground (a) succeeds to that extent.
45. In relation to the A/C unit this is contrary to DM Policy DM1 and the appeal on ground (a) fails in relation to this element.

Ground (f)

46. In the light of my conclusions on ground (a) the ground (f) appeal only relates to the A/C unit.
47. The appellant considers that the unit does not need to be removed and it should not be switched on. This is on the basis that the unit is permitted development to be sited on the host building. In the light of my findings in relation to the ground (c) appeal I consider that the unit is not permitted development.
48. Simply not switching the unit on would not remedy the breach of planning control. In my view, the removal of the unit is the minimum that is necessary to remedy the breach and there are no lesser steps which would achieve this. The appeal on ground (f) therefore fails.

Ground (g)

49. This ground of appeal is that the time given to comply with the notice is too short. The Council has given six months for compliance with the notice. The appellant is seeking a period of 12 months if the appeal is dismissed on all grounds.
50. In the light of my decision to grant planning permission for both the loft conversion and the hardstanding, the only remaining requirements relate to the removal of the A/C unit. In my view, six months is an adequate period for the appellant to comply with this requirement. The appeal on ground (g) fails.

Conclusion

51. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for two parts of the matter the subject of the enforcement notice, but otherwise I will uphold the notice and refuse to grant planning permission on the other part. The requirements of the upheld notice will cease to have effect so far as inconsistent with the permission which I will grant, by virtue of s180 of the Act.

Hilda Higenbottam

Inspector