



Appeal Decision

Site visit made on 20 October 2022

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 January 2023

Appeal Ref: APP/J1535/C/21/3269762

Land at Forest Place, Roebuck Lane, Buckhurst Hill IG9 5QL

- 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 Martlane Limited against an enforcement notice issued by Epping Forest District Council.
 - The enforcement notice was issued on 7 December 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a structure not shown on the approved planning permission, reference EPF/1610/18.
 - The requirements of the notice are to:
 - (i) Remove from the Land the structure located approximately within the red outlined circle, on the attached plan A, and shown as hatched on attached Plan B.
 - (ii) Remove all resulting debris from the land in compliance with step 1.
 - The period for compliance with the requirements is Three (3) months after this notice takes effect.
 - 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. An application for planning permission is deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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Formal decision

1. It is directed that the enforcement notice be varied by increasing the period for compliance to twelve months. Subject to this variation 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.

Background

2. Planning permission was originally granted in 2016, under ref EPF/1957/15, for a 2.5, 3 and 4 storey development to create 125 new residential care units. The proposal was subsequently altered and, by way of a s73 application, planning permission (ref EPF/1610/18) was granted for the amended scheme in April 2019.
3. The unexpected inclusion of a substantial internal lift shaft, which has been enclosed in what appears as a large, brick-built, stack addition to the roof prompted the Council to open an enforcement investigation.
4. The Council then, in assessing the impact of the development, considered it expedient to issue an enforcement notice requiring for the structure's removal.

5. The appellant then sought pre-application advice from the Council as to the acceptability of a brick-built lift enclosure but, by letter dated 1 April 2021, the development was discouraged.

The Appeal on Ground (a) and the deemed planning application (DPA)

Main Issue

6. This is the effect of the altered roof profile on the character and appearance of the area, with particular regard to height and bulk and also, whether the proposal adversely impacts on the adjacent Nature Reserve and Metropolitan Green Belt land.

Reasons

7. The appellant explains that the problem arose due to the necessity to change the lift from the hydraulic type approved to that of a traction lift, and a letter provided from 'Total Fire and Security Solution' (TFS Services) indicates why this was the case.
8. It was clear from my site visit observations that the development as a whole has still some way to go before construction is complete. In terms of the remedy offered by the appellant the elevational drawings before me, which contrast the intended elevational finishes with those previously approved (namely drawings nos 200 EE A&AP, 200 NE A&AP, 200 SE A&AP and 200 WE A&AP), show the 1.88m partial height increase to the roofscape being masked by a series of chimney pots. This is clearly the simplest solution, but it is not necessarily the most effective in terms of softening and mitigating what appears as an unduly prominent brick-built appendage rising from the roof.
9. The development, in its entirety, is quite substantial, but also quite imaginative. However, not only is the addition to the roof of particular prominence from the east, south and north elevations, its height and bulk also somewhat detract from the building, notably the significant and characteristic gable-roofed glazed features directly below.
10. Following my site visit, as had been arranged, I visited the residence of an interested party who had objected to the development. The objector lives in an upper floor flat with rear windows looking down towards the development, albeit at some distance, and with wide ranging views beyond due to the flat's height. He considers that the development had impacted upon his outlook eastwards. Whilst I can empathise with the objector's concerns, given the substantial views possible from this vantage point, and that the development at issue in such context means that its prominence is somewhat diminished, I do not consider that his living conditions have been unduly impinged upon.
11. Of greater concern, in my opinion, is the visual impact for those persons residing much closer to Forest Place, particularly from Roebuck Lane itself and from the upper floor windows of local dwellings which face towards the development. The development is also readily visible to persons passing along Roebuck Lane, and the brick-built stack at issue, as it stands, appears significantly out of character, and more akin to something relating to a sizeable town centre development. At the very least, some degree of modification is required.

12. Installing a series of chimney pots and rendering the stack, as the appellant has proposed would not give satisfactory mitigation. Accordingly, I would instead consider that some form of redesign is required. In this respect I note that an alternative proposal has been floated in the form of what the appellant describes as a “clocktower design” option. Whilst this could be worthy of consideration in terms of planning merit and/or impact I am unable to assess this for reasons I return to later in this decision letter.
13. Given though the size of the nursing home itself, and the elevated car park terrace to its rear, both previously approved by the Council, I must disagree that the stack addition to the roof has had any appreciable effect on either the adjacent Linders Field Nature Reserve or the Green Belt land, also beyond. From this distance, and in this context, the variation from the approved scheme does not impact to any significant extent on the enjoyment of this land’s character. As such, policy GB7A of the Council’s adopted Local Plan (LP), which is concerned with conspicuous developments affecting Green Belt land, does not apply in this instance.
14. Instead, the LP’s policies which I consider are most pertinent to the development are CP7, which requires for a high quality and sympathetic design, DBE9 which, in referring to loss of amenity arising from new development, mentions that visual impact will be taken into account, and CP2, which is a general policy to protect the quality of the built environment.
15. I have concluded that the development’s height and bulk is harmful to the character and appearance of the area. Further, taking into account the above policies’ aims and objectives I also conclude that their requirements have not been met in terms of the development here enforced against.

The appeal on ground (f)

16. The appeal on ground (f) is that the requirements of the enforcement notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. S173(4) provides that the purpose shall be to remedy the breach of planning control or to remedy any injury to amenity. It would appear that the notice here was drafted to address the latter.
17. Notwithstanding the submitted drawings, as referred to, the appellant has also produced a drawing showing an alternative proposal (drawing no 200 W&E E) which, the appellant explains, would involve the lift structure disguised by way of a clocktower design. Irrespective of my view as to the planning merits of such a design and the degree of resultant mitigation, this form of development is of such significant materiality as to warrant the submission of a planning application.
18. Should I accept the said drawing for consideration at this appeal then my approach would run contrary to the recognised *Wheatcroft* principles in that those local persons, in total, who would normally be afforded the opportunity of commenting on the development, as opposed to those interested parties who have made representations on the current appeal, would be denied such consultation.
19. Further, in the Court of Appeal judgement, *Ioannou v SSCLG* [2014] EWCA Civ 1432, it was held that the power to allow an appeal on ground (f) is not a

power to grant planning permission. There is no free-standing 'obvious alternative' test. The Inspector's powers to vary the enforcement notice mirror those conferred on the Council to under-enforce under s173(4)(b). It is only the buildings, works or activities in existence when the enforcement notice is issued which can benefit from s173(11), not a different scheme.

20. In this particular instance, whereas it is open to me to allow the DPA and grant planning permission for the stack in situ, the 'clocktower' option would represent development requiring planning permission, and it is not currently in situ. This could, therefore, only be dealt with under the DPA but, for the reasons given it is not appropriate, nor indeed fair to neighbouring occupiers who have not yet seen drawing no 200 W&E E, for me to accept it for consideration.
21. Accordingly, s173(11) cannot be a means to sidestep the limitation to ground (a), which is only to grant planning permission under s177(1). As such, s174 appeals made under ground (f) do not provide a vehicle to grant permission for developments not physically in existence at the time the notice was issued.
22. In the circumstances, the appeal under ground (f) does not succeed.

The appeal on ground (g)

23. An appeal under ground (g) is that the stipulated time period for compliance is unreasonable. Given my findings, and the apparent need for the appellant to draw up alternative proposals, preferably involving discussions with the Council, and the preparation of a planning application to this end with a view to completing the development, the stated compliance period would be too short in such circumstances.
24. The appellant has asked that the period be increased to twelve months in order that the necessary internal layout arrangements can be made and the existing lift decommissioned. A period of one year would also reasonably allow for an acceptable alternative scheme to be negotiated, the application determined and, if successful, its implementation. The submission of any new planning application is, of course, without prejudice to the Council's eventual decision in this regard.
25. If the decision was unfavourable the appellant would still retain a right of appeal and, given such circumstances, the Council does hold powers to extend the compliance period further, but that is purely a matter for the Council's discretion. Nonetheless, if ultimately unsuccessful, my decision to uphold the enforcement notice, albeit varied, will necessitate that its requirements are put into effect.
26. With the variation in the compliance period, the appeal succeeds, but only to this extent.

Timothy C King

INSPECTOR