



Appeal Decision

Site visit made on 6 February 2023

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 February 2023

Appeal Ref: APP/R5510/C/22/3293492

81 Lothian Avenue, Hayes UB4 0EQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Farooq Ahmed against an enforcement notice issued by London Borough of Hillingdon.
- The notice, numbered HS/ENF/019623(B), was issued on 14 January 2022.
- The breach of planning control as alleged in the notice is the development of a first floor rear extension (as shown in the approximate position hatched in blue on the attached plan).
- The requirements of the notice are:
 - (i) Demolish and remove the first floor rear extension hatched in blue on the plan attached.
 - (ii) Amend the development so it accords with the plans approved on the planning ref: 17603/APP/2020/222.
 - (iii) Remove from the land all debris, waste, building materials, plant equipment and machinery resulting from the demolition works.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (g) of the Town and Country Planning Act 1990 as amended. 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 Act.

Summary of decision: The appeal is dismissed and the enforcement notice is upheld with corrections in the terms set out below in the Formal Decision.

Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matter

1. Planning permission is sought for the erection of a first-floor rear extension. The appellant states they wish for the scheme that was previously refused planning permission¹ to be considered in the event that I find the existing extension to be unacceptable.
2. Section 177(1)(a) of the Town and Country Planning Act 1990 (the Act) only allows the grant of planning permission in respect of matters stated in the enforcement notice (the notice) as constituting a breach of planning control "whether in relation to the whole or any part of those matters". The scheme that was refused planning permission was similar to the existing first-floor extension. However, it included a hipped roof. Whilst this would involve additional works, these would be very minor and would relate to the whole or any parts of the matters alleged. Therefore, I shall consider the alternative scheme under s177(1)(a) and no injustice would be caused in me doing so.

¹ Council reference: 17603/APP/2019/3624

The Enforcement Notice

3. Development is defined in section 55(1) of the 1990 Act as 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. In this context, the reference to '...the *development* of a first floor extension...' in paragraph 3 of the notice is imprecise. In the interests of clarity, I am satisfied that a correction of the notice to include reference to '...the *erection* of a first floor extension...' would not cause injustice in this case.
4. Requirement (i) under paragraph 5 of the notice states 'Demolish and remove the first floor rear extension...'. However, requirement (ii) goes on to state 'Amend the development so that it accords with the approved plan under planning ref: 17603/APP/2020/222'. Given that the first-floor extension would have already been removed by way of requirement (i), it cannot then be amended so that it accords with the approved plan in requirement (ii). Therefore, I shall correct the notice by substituting the reference to 'the development' in requirement (ii) with reference to 'the effected parts of the dwelling'. I am satisfied that such a correction would not cause injustice in this case.

The Appeal on Ground (a)

Main issues

5. The main issues are the effect of the development on the character and appearance of the area and the living conditions of the occupants of neighbouring properties, with regard to outlook.

Reasons

Living Conditions of Neighbouring occupants

6. The first-floor extension is located on top of a single-storey extension, within proximity of the shared boundary with 79 Lothian Avenue. No 79 has a number of windows within its rear elevation at both ground and first-floor level that are close to this boundary.
7. The appellant has provided drawings indicating the first-floor extension would not breach the 45 degree rule set out in Policy DMHD1 of the Hillingdon Local Plan Part 2: Development Management Policies 2020 (LP2), which the Council does not dispute. However, paragraph A1.24 of the LP2 states the 45 degree rule is only a general rule of thumb and the Council may, on occasion, consider an extension to be unacceptable, even if it appears acceptable on paper. From the observations I made on site, with the ability to see the effect of the development in situ, I consider the extension would not unduly harm the outlook from these neighbouring windows.
8. Notwithstanding the above, the first-floor extension rises substantially above the boundary with No 79 and given its proximity it would significantly dominate the outlook from the garden of No 79 resulting in an unacceptable overbearing impact on the occupants of the property. As a result, the dwelling would adversely affect the ability of the occupants of No 79 to enjoy their private outdoor garden space.

9. The alternative scheme would be of an identical size and position as the appeal development and therefore would similarly create an unacceptable overbearing effect on the occupants of No 79.
10. With regard to the effect on the living conditions of the occupants of 83 Lothian Avenue, the extension is within proximity of a first-floor window in this property. However, the appellant confirms this is a bathroom window and the 45 degree rule would not be breached in respect of this window. By reason of the extension being set some distance from the boundary with No 83, I do not find that there would be any harmful loss of outlook from this property.
11. I find therefore, that the appeal development, as well as the alternative scheme, would significantly harm the living conditions of the occupants of No 79, with regard to outlook. As such, the proposal is contrary to Policies DMHB11 and DMHD1 of the LP2, which, amongst other matters, seek to ensure development does not impact on the amenity of adjacent properties or result in an unacceptable loss of outlook to neighbouring occupiers.

Character and Appearance

12. Lothian Avenue is a residential road comprising two-storey, semi-detached dwellings. The setback position of the dwellings, their open frontages and wide road make a positive contribution to the openness of the area. Although most properties along this stretch of the avenue have single-storey extensions, none appear to have first-floor extensions. There are first floor extensions in the wider area, but none that are read in the same context as the appeal property.
13. Due to the first-floor extension being on the rear elevation and the narrow gap between the appeal property and 79 Lothian Avenue, it is not readily visible within the streetscene. Viewed from the rear, its flat roof matches the flat roof of the dormer and the ground floor extensions and provides a visual link between the two. The extension is relatively small, projecting not quite as far out as the single-storey extension and just over half the width of the dwelling. Moreover, the use of render is in keeping with other parts of the dwelling, including the original first-floor rear elevation. Consequently, the first-floor extension does not dominate the rear elevation of the property nor appear as an incongruous addition within the rear garden setting of the area.
14. Although the alternative scheme would have a different roof form to the existing additions on the rear of the property, it would similarly not appear incongruous or overly dominant.
15. I find therefore that the first-floor extension, nor the alternative scheme, does not harm the character or appearance of the area. As such, in this respect, the development complies with Policies DMHB11 and DMHD1 of the LP2, which, amongst other matters, seek to ensure development harmonises with the local context and has no adverse cumulative impact on the character, appearance or quality of the existing street or wider area.

Other Matters

16. The appellant has referred me to examples of other first-floor extensions on Lothian Avenue. Based on the evidence before me, the circumstances of these examples are notably different to those of the appeal development. One of the extensions referred to is centrally positioned atop the ground floor extension, away from the side elevation of the host dwelling. Two examples are directly

adjacent to one another, appearing very similar in size with similarly projecting ground floor extensions. The final example is adjacent to a ground floor extension on the neighbouring property. Consequently, for these reasons, these examples would not have the same overbearing effect on the living conditions of the of neighbouring properties as the appeal development does. As such, I cannot draw any direct comparison that weighs in favour of the appeal development.

Conclusion on the ground (a) appeal

17. Whilst the appeal development does not have a harmful effect on the character and appearance of the area, this is a neutral effect and does not outweigh the harm it has to the living conditions of the occupants of 79 Lothian Avenue. For the reasons given above, having considered the development plan as a whole and all material considerations, I conclude that the ground (a) appeal should fail and the deemed planning application should be refused.

The Appeal on Ground (g)

18. This ground of appeal is that the period for compliance is unreasonably short.
19. The period for compliance with the requirements of the notice is three months. The appellant contends that additional time is required due to the cost of the works and the need to hire contractors to do the work. Consequently, they request a period of six months to comply with the requirements of the notice.
20. Given the works required to complete the requirements of the notice are relatively minor, three months seems a reasonable period of time, even accounting for finding a contractor to carry out the works. Whilst there will undoubtedly be costs involved in carrying out the requirements of the notice, there is no evidence before me that these costs cannot be met.
21. In summary, from the available evidence, I consider the three month period specified in the notice is reasonable, and I do not see justification for extending it.
22. I therefore conclude that the ground (g) appeal must fail.

Formal Decision

23. It is directed that the enforcement notice is corrected by:
24. The deletion of the word 'development' under paragraph 3 and substituting 'erection'.
25. The deletion of the words 'Amend the development' under requirement (ii) under paragraph 5 and substituting 'Amend the effected parts of the dwelling following the completion of the works carried out in accordance with requirement (i)'
26. Subject to the corrections, 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.

Alexander Walker

INSPECTOR