



Appeal Decisions

Site visit made on 15 June 2023

by **Diane Lewis BA(Hons) MCD MA LL M MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 28 June 2023

Appeal A Ref: APP/Z3825/C/22/3296057

Land at 24 Wellington Road, Horsham, West Sussex RH12 1DD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr I A Bhatti against an enforcement notice issued by Horsham District Council.
 - The notice, numbered EN/22/0050, was issued on 23 March 2022.
 - The breach of planning control as alleged in the notice is Without planning permission, the erection of a domestic outbuilding in the approximate position shown hatched blue on the attached plan.
 - The requirements of the notice are:
 - i. Demolish the said building shown hatched green on the attached plan and remove the resulting debris from the land;
 - ii. Following step (i) above, make good any damage to the original building where it is joined to the host building by means of a covered passageway.
 - The period for compliance with the requirements is within six calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) 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.
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Appeal B Ref: APP/Z3825/W/22/3295475

24 Wellington Road, Horsham RH12 1DD

- 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 & Mrs Bhatti against the decision of Horsham District Council.
 - The application Ref DC/21/2683, dated 1 December 2021, was refused by notice dated 8 February 2022.
 - The development proposed is Erection of an outbuilding in the garden.
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DECISIONS

APPEAL A

1. It is directed that the enforcement notice is corrected:
 - In paragraph 3 by the deletion of the word 'blue' and the substitution of the word 'green', and
 - In paragraph 5 by the deletion of the wording of step (ii) and the substitution of the wording "Following step (i) above, make good any resulting damage to the adjacent rear wall of the dwelling."
2. 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.

APPEAL B

3. The appeal is dismissed.

REASONS

Planning Policy Appeals A and B

4. The development plan for the area comprises the Horsham District Planning Framework (HDPF) adopted in 2015 and the Horsham Blueprint Business Neighbourhood Plan (the NP) made in December 2022. The most relevant policies are Policies 32 and 33 in the HDPF and Policies HB3 and HB4 in the NP. In summary, development is expected to demonstrate high quality design that takes account of the local context and responds to local character.
5. The National Planning Policy Framework identifies good design as a key aspect of sustainable development. Developments should be visually attractive and add to the overall quality of an area.

APPEAL A

Enforcement notice

6. The alleged breach of planning control refers to the outbuilding hatched blue on the plan attached to the notice whereas the hatching on the plan is in green. The local planning authority requested the notice be corrected so that the wording in the alleged breach is consistent with the plan. There is no doubt as to the outbuilding being enforced against and correction of this minor typographical error will not cause injustice to the appellant.

Appeal on ground (a)/deemed planning application

7. The appellant has stated that the purpose of the outbuilding is to provide a safe and secure place for the occupants of the dwelling to store their personal belongings and domestic paraphernalia. They say this gives them peace of mind and frees up space within the main dwelling, which results in a higher quality of life.
8. The main issues are the effects of the outbuilding on (i) the character and appearance of the site and its surroundings, and (ii) the residential amenity of neighbours.

Character and appearance

9. 24 Wellington Road is located close to the town centre, where the pattern of development is of period housing fronting onto the streets, typically with gardens to the rear. The residential area is identified as an Edwardian Character Area in the NP.
10. The house (No 24), on the south side of the residential street, is one of a group of three attached houses and reflects the Edwardian character. It is separated from the middle house, number 22, at ground level by a passageway leading to the rear. Like its immediate neighbours in the group, the dwelling is primarily two storey. There is also a single storey element attached to the back of the larger two storey rear projection. The host dwelling is of brick and has pitched roofs covered in tiles. The plot is slightly smaller than its neighbours in the

group. The dwelling house occupies much of the plot area and consequently the garden amenity space is small.

11. The outbuilding has a footprint of approximately 23m² and extends across the full width of the plot, apart from the inset at the front. Whilst it takes up less than 50% of the total area around the house and is around 2.63m in height¹, it dominates the area of back garden. There also is very little space between the dwelling and the structure. The small gap between the outbuilding and the facing rear wall of the dwelling is covered by a 'roof' of plastic sheeting, to increase storage space but also increasing the degree of enclosure.
12. The amenity space that remains now consists of a small area of standing room in front to the outbuilding and a narrow 'yard' between the rear projection and the common boundary with number 22. The use and potential enjoyment of this remaining space are restricted by its shape, its function as a means of access and circulation, the enclosure from the rear elements of the dwelling and the boundary fence, plus the close proximity to the adjacent dwelling.
13. The structure is faced in brick, in keeping with the house. However, there is a lack of consistency in the bricks used, with the eastern wall appearing to be constructed of different types of brick. The wall facing the gap is of breeze blocks and appears unfinished. The addition of an outer brick facing may reduce the gap to an extent the space becomes very difficult to use. The flat roof is covered in felt and just below is a white plastic fascia and guttering. The incorporation of a relatively deep white fascia is not a feature seen on the principal building. The plastic sheeting covering the gap appears to be an afterthought. The material of this add-on and the finish do not fit with either the outbuilding or the house.
14. The outbuilding, by reason of its siting in the back garden, is not visible from Wellington Road and therefore it has no effect on the appearance of the street scene. However, in this quite tightly developed residential area the back gardens assist in creating a sense of spaciousness. This contrast between the street and the more private garden areas behind adds positively to local character. The erection of the outbuilding has resulted in over-development of the appeal site at the back of the house which fails to respect this quality.
15. In conclusion the scale of the outbuilding is excessive and results in a cramped form of development that has not taken sufficient account of the constraints of the plot. It fails to relate sympathetically to the dwelling house and its built surroundings. The building materials and finishes are not to a high standard. As a result there is conflict with Policies 32 and 33 of the HDPF and Policies HB3 and HB4 of the NP.

Residential amenity

16. Policy 33 requires development to be designed to avoid unacceptable harm to the amenity of occupiers/users of nearby property and land, for example through overlooking or noise, whilst having regard to the sensitivities of surrounding development.

¹ The appellant relied on a height of 2.54m taken from the officer report. However, this figure was updated in the Council's appeal statement to 2.63m, the height as measured on site by the Council. The appellant has not disputed the height measurement of the structure as built.

17. The outbuilding is on the common boundary with number 22, which too has a small rear garden. The likelihood is that all the garden space is well used by the neighbouring residents, consistent with my observations on the site visit. The physical presence of the outbuilding would be clearly visible and experienced from all the garden. The height and building mass are greater than a 2m boundary wall or fence (which would be allowed under permitted development rights) and therefore the effect is an increased sense of enclosure. However, the single storey height, its small size and the set back of part of the structure help to limit harm to neighbours' outlook and amenity. The probability is that any overshadowing of the neighbouring garden would be limited and there would be no loss of light or other unneighbourly effect on living conditions within the dwelling. Unacceptable harm is not caused.
18. The dwelling to the east has a different orientation. The rear of the house, the garage and its hardstanding are on the Wellington Road side of the plot. The main garden and the front of the house face south and are accessed via a pathway from Park Terrace West. The east wall of the outbuilding is sited on the common boundary and it projects well above the small shed in the neighbouring garden. The different types of brickwork and poor quality workmanship are apparent. The outbuilding is in the direct line of sight when entering the garden and does not present an attractive appearance.
19. In conclusion the outbuilding does not cause unacceptable harm to the amenity of occupiers/users of nearby property and land and criterion 2 of Policy 33 is met. However, the appearance of the outbuilding is unneighbourly and is likely to detract from the enjoyment of the adjacent homes. This finding reinforces my conclusion that the outbuilding does not relate sympathetically with its built surroundings, bearing in mind the importance of spaces between and around the dwellings in this residential area.

Other considerations

20. In support of the development the appellant emphasised the fallback position related to permitted development rights. In order to be permitted development the building would have to be no more than 2.5m in height, if it was sited within 2m of the boundary of the curtilage. The existing building is above this height. The difference causes significant harm, taking into account the mass of the building and the confined space around it. The fallback would cause less harm and accordingly has limited weight.
21. The outbuilding may well provide valuable safe storage space for the appellant. However, the outbuilding is of a disproportionate size when tested against development plan requirements. The probability is alternative, more appropriate means exist to provide additional storage space for the home.
22. Planning conditions, as suggested by the Council, would not alter the siting or scale of the outbuilding and hence would not mitigate the adverse effects so that permission could be granted. Likewise, the appellant's proposal to remove the plastic sheeting covering the gap between the building and the house would be insufficient to overcome the identified harms.
23. Under a ground (a) permission may be granted for all or part of the development². The appellant has not put forward an alternative form of

² Section 177(1)(a) of the 1990 Act

development for consideration within this context. In this case a reduction in height to just over the permitted development limit of 2.5m, whilst reducing the mass to some extent, would not overcome the cramped form of development or the impact on useable amenity space. Furthermore, it is unclear how a reduction in height would relate to or incorporate the existing doors and windows. I am not prepared to grant planning permission for this possible alternative form of development under the ground (a) appeal.

Conclusion

24. The outbuilding is not in accordance with the development plan and there are no considerations of sufficient weight to overcome this strong objection. The appeal on ground (a) does not succeed.

Appeal on ground (f)

25. The issue is whether the requirements are excessive, having regard to the purpose of the enforcement notice.
26. The purpose of the notice is to remedy the breach of planning control. The requirement to demolish the outbuilding is consistent with this purpose and is not excessive. The appellant's proposal to require a reduction in the height of the outbuilding to an unspecified height would not remedy the breach, fail to achieve the purpose of the notice and lack precision. By reason of the wording of sections 173 and 176 of the 1990 Act it is not open to the appellant to argue the notice should have a lesser purpose of remedying any injury to amenity. The appeal on ground (f) does not succeed.
27. The appellant did not question step (ii). This requirement seeks to ensure any damage to the dwelling is made good as a result of demolition of the outbuilding, including the removal of the plastic covering. The wording includes typographical errors which can be corrected and expressed more simply without injustice.

Conclusion

28. For the reasons given above, the appeal should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

APPEAL B

29. The proposed outbuilding as shown on the submitted plans is similar but not exactly the same as the outbuilding that has been erected and is considered in Appeal A, even though the planning application was made after development had commenced. I will determine the appeal on the basis of the proposals as submitted and which were considered by the Council when refusing planning permission.
30. The submitted plan of the internal layout shows the outbuilding would be divided into two rooms, proposed for use as a gym and as a study. A study would amount to additional living space and therefore would be a primary residential use and not an incidental use. The appellants stated that during the course of the application they confirmed to the Council the outbuilding would be for storage purposes only. This is acknowledged in the officer report but an

amended plan was not provided to fully confirm the change in the proposed use. This matter could be covered by condition in the event planning permission is granted.

Reasons

31. The main issues are the effects of the outbuilding on the character and appearance of the site and its surroundings, and on the residential amenity of neighbours. Much of the reasoning in the Appeal A ground (a) appeal applies and will not be repeated in full to avoid unnecessary repetition.

Character and appearance

32. The footprint of the dwellinghouse covers a substantial proportion of the plot and the site coverage is emphasised by the predominant two storey scale of the building. The garden space to the front is very shallow. At the rear the small garden provides a degree of spaciousness, visual relief to complement the built form, as well as functioning as amenity and circulation space. There is consistency with the prevailing pattern and character of the surrounding residential area.
33. Being sited at the back of the house, the outbuilding would not be visible from Wellington Road and would have no effect on the appearance of the street. However, the siting, when considered with the scale of the proposed structure, raises other concerns. The outbuilding would be single storey with a flat roof but the roof height (2.63m on plan) would be very similar to the height of the facing rear wall of the house. The structure would occupy much of the more functional area of amenity space to the back of the house, remembering that the space between the dwelling and the boundary to number 22 is constrained by its shape and the high degree of enclosure. The consequences would be a cramped form of development, out of keeping with local character and with poor quality external amenity space to serve the dwelling.
34. Brickwork is proposed as the external material, shown on plan to be consistently applied to all four external walls of the structure. This material would be in keeping with the host dwelling and the nearby houses. The treatment at eaves level (the area between the brick and the felt roof) is not clear from the application plan. Additional details could be required by condition.

Residential amenity

35. In respect of the effect on neighbours, for the reasons set out for Appeal A, the level of harm would not be unacceptable and criterion 2 of Policy 33 is met. However, the outbuilding would be unneighbourly because of its size and siting and would detract from the enjoyment of the adjacent homes. The adverse effect reinforces my conclusion that the outbuilding does not relate sympathetically with its built surroundings, bearing in mind the importance of spaces between and around the dwellings to local character and the pattern of development in this residential area.
36. In conclusion, the proposed outbuilding is not of a high standard of design and the development fails to comply with Policies 32 and 33 in the HDPF and Policies HB3 and HB4 in the NP. The identified harms, related to fundamental elements of the design and siting, cannot be addressed satisfactorily through a planning condition(s).

Other considerations

37. In terms of the fallback position, a building within the curtilage could be erected under permitted development rights. The probability is such a building would be within 2m of the boundary of the curtilage and therefore would be no more than 2.5m in height. On the appellants' figures such a building could not have a much larger footprint. It does not necessarily follow that a brick building with a similar footprint but of lower height would be practicable for the appellants and consequently it is questionable whether there is a real prospect of the fallback being carried out. In any event, the fallback as described by the appellants would cause less harm. Even if a genuine fallback existed it does not provide sufficient justification to overturn the clear direction provided by the development plan.
38. The outbuilding was initially proposed for a gym and a study, whereas the stated intention is now to use it for domestic storage purposes. The failure to achieve planning permission for the current proposal would not preclude additional secure storage space by means of alternative, more appropriate provision.

Conclusion

39. The outbuilding is not in accordance with the development plan and there are no considerations of sufficient weight to overcome this strong objection. The appeal does not succeed.

Diane Lewis

INSPECTOR