



Appeal Decision

Site visit made on 1 August 2023

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 August 2023

Appeal Ref: APP/D3830/C/22/3306677

Land at Beaumont House, Orchard Way, Warninglid, Haywards Heath, West Sussex RH17 5ST

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Saifain Bosotor against an enforcement notice issued by Mid Sussex District Council.
 - The notice was issued on 2 August 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of an ancillary building in the approximate position hatched blue on the plan [attached to the notice] of two storeys with kitchen and bathroom and open storage on ground floor and ancillary (storage) accommodation over ('the unauthorised development').
 - The requirements of the notice are: (1) The demolition of the unauthorised building in the approximate position hatched in blue on the plan. (2) The removal of all associated debris and waste from the land resulting from compliance with requirement (1) above using a licenced waste carrier.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.
-

Decision

1. It is directed that the enforcement notice be varied by in paragraph 6 substituting '3 months' with '6 months' as the period for compliance. 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.

Preliminary Matters

2. The enforcement notice attacks operational development consisting of a freestanding two-storey ancillary building erected in the grounds of a substantial detached dwelling. The building contains a garage, shower room and a kitchen/utility room on the ground floor with an open area at first floor level.
3. There is little to suggest that reference in the allegation to 'ancillary (storage) accommodation' has led to uncertainty. There is no dispute that the building was erected to serve the use of the dwelling. The first floor is labelled 'storage space' on the drawings accompanying the deemed planning application arising from the ground (a) appeal. Both floors are currently being used for storage ancillary to the use of the dwelling. An outbuilding supporting a primary residential use within the same planning unit would ordinarily be regarded as

an ancillary structure. In any event, as the requirements involve total demolition, the reference in the allegation to the facilities provided and the use of the building is ultimately of little substance in terms of whether the notice is sufficiently precise.

4. The notice therefore specifies with sufficient clarity the matters required by the Act in s173 and in the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 (ENAR). There is nothing which makes the notice defective due to uncertainty in a manner akin to that in the case law referred to¹, or otherwise. The notice tells the appellants fairly what they have done wrong and what they must do to rectify it.
5. The notice specifies the precise boundaries of the land to which it relates, as required by Regulation 4 (c) of the ENAR. The plan attached to the notice shows the affected land edged in red. The building is located within the red edged area. The actual location of the building is not dissimilar to the approximate position shown hatched blue on the plan. There is no requirement for the notice to identify the precise location of the building. Realistically, the appellant can be in no doubt that the notice attacks the building. There are no other buildings in that part of the red edged area. Consequently, the position of the building shown on the plan has also not led to uncertainty.

Ground (b) appeal

6. The ground of appeal is that the matter alleged in the notice has not occurred as a matter of fact. It is for the appellant to show why their appeal on this ground should succeed, the relevant test of the evidence being on the balance of probability.
7. There is no dispute that a building has been erected. As a smaller structure in relation to the dwelling, the building clearly has an ancillary quality.
8. The matter alleged has therefore occurred and the ground (b) appeal fails.

Ground (a) appeal

Main Issue

9. The main issue in this ground of appeal is the effect of the building on the character and appearance of the area.

Reasons

Character and appearance

10. The dwelling is set back from a narrow private street, behind an established maturing evergreen hedge. Nearby are a number of substantial detached dwellings occupying generous plots, most of which are set back from the street behind maturing planting and ample front garden areas. Although the dwelling is of modern appearance, for the most part residential properties in the vicinity are of traditional character and materials. The A23 is a short distance away, but also nearby are open fields and tracts of woodland forming part of the wider countryside within the High Weald Area of Outstanding Natural Beauty (AONB). These factors contribute significantly to the pleasantly spacious and secluded rural character and appearance of the surroundings.

¹ *Sarodia v Redbridge LBC* [2017] EWHC 2347 (Admin).

11. In September 2015, the Council approved the erection of a detached garage for the dwelling². The approved garage would have been set back from the street by about 4 m, with a footprint of around 9.4 m by 6.1 m and a dual pitched roof around 5.8 m high to the ridge. Two small 'cottage style' dormers would have been set within the roof slope facing the dwelling. The building is about 1 m closer to the street compared to the approval. At around 5.8 m by 5.1 m, the building also has an appreciably more modest footprint and the overall height is almost 1 m less.
12. The roof form differs markedly from the approval however, firstly in that a section of flat roof forms the highest part of the roof structure. At around a third of the total depth of the building and running over its entire width, the flat roof section is of considerable size in relation to the rest of the roof. The flat roof section breaks up the angled roof slopes and creates the impression of the top part of the roof having been truncated. The horizontal lines of the flat roof section are emphasised by the eaves and fascia detail, which also creates an awkward juxtaposition with the sloping sections of roof. This has led to the roof of the building having a rather contrived appearance and a somewhat squat profile that sits uncomfortably in relation to the dual pitched roof of the dwelling and the roofs of outbuildings at residential property in the locality.
13. Secondly, unlike in the approval the roof slope facing the dwelling incorporates a single dormer. The dormer is significantly taller and closer to the eaves compared to the approved dormers. At around half the width of the building, the dormer occupies a substantial portion of the roof slope. The width of the dormer is almost double that of one of the approved dormers. The unbroken expanse of glazing and horizontal emphasis of the window reinforces the sense of the overall width of the dormer and fails to reflect the proportions of windows in other dormers in the locality. The external materials and central position do little to integrate the dormer satisfactorily with the roof of the building. Although the dormer is similar in size to some other dormers in the environs, generally those structures sit within a larger expanse of roof on a building of greater overall scale and therefore appear more comfortable and assimilate better visually with their host building.
14. Due to the above factors, the dormer is of a substantial scale and it dominates the roof slope, providing the building with a top-heavy appearance which fails to reflect the character of the dwelling or the traditional characteristics of residential property in the locality. The dormer does not take sufficient account of the Mid-Sussex Design Guide Supplementary Planning Document (SPD). This advises that care should be taken with the design, proportions and position on the roof of dormers and that they should be visually subordinate to the roof slope, enabling a large proportion of the main roof to remain visible and not be excessively wide. As a result, together with the section of flat roof the dormer contributes significantly and appreciably to the building appearing as an alien feature in its surroundings.
15. At around 5 m in height, the hedge running along most of the dwelling frontage is taller than the building and is also dense. I understand that the hedge has been in existence for many years. Given its situation adjacent to the back of the hedge, views of the building from the street are in consequence largely limited to glimpses of the upper part of the end elevation above the tall solid

² Council Ref: DM/15/3163.

entrance gates. This would be the case even during the winter months and would continue, provided the hedge is maintained at its current height and density and the gates are retained.

16. I cannot reasonably be assured however that the hedge would be retained for the foreseeable future. Some of the planting fronting residential property in the vicinity is maintained at a height well below that of the hedge. Circumstances can change and the contribution made by the hedge to the occupiers' privacy might not be regarded as being so important, for instance if the dwelling were to change hands. It is therefore entirely possible that the hedge would at some stage be cut back and reduced in height following routine maintenance, exposing the building to greater views from the street and compounding the visual harm identified above. Equally, part or all of the hedge could be removed in future, particularly as a result of disease or damage. Even if the hedge were to be replanted, any replacement planting would take a long time to reach the same level of maturity as the existing hedge. A condition requiring the hedge to be maintained at a minimum height in perpetuity would not pass the tests of enforceability and reasonableness set out in paragraph 56 of the National Planning Policy Framework (the Framework). In any event, the availability of screening is not a good reason for granting permission for an otherwise unacceptable development as it could be repeated.
17. The reduced scale of the building compared to the approval does not outweigh the objections identified above. The roof form, including the dormers, of the approved garage would have been more respectful of other outbuildings in the vicinity and the prevailing pattern of local development.
18. Therefore, the building has an unacceptably harmful effect on the character and appearance of the area. This fails to accord with Policy DP26 of the Mid-Sussex District Plan, which requires development to be well-designed and to reflect the distinctive character of towns and villages whilst being sensitive to the countryside and to create a sense of place while addressing the character and scale of the surrounding buildings and landscape. Furthermore, given the failure to sympathise with the surrounding built environment and landscape setting or to reflect local design policies taking the SPD into account, the building is inconsistent with the Framework.

Other Matters

19. The Council did not seek to argue that the building failed to conserve the landscape and scenic beauty of the AONB. On the evidence before me and on balance I do not disagree with the Council's assessment, having regard to the localised visual impact of the building. However, the absence of such harm is a neutral factor which neither weighs in favour nor against granting permission.

Conclusion-Ground (a)

20. The building causes unacceptable harm to the character and appearance of the area, failing to comply with the Development Plan, being inconsistent with the Framework and not reflecting advice in the SPD. Therefore, the ground (a) appeal does not succeed.

Ground (g) appeal

21. The ground of appeal is that the time for complying with the notice requirements falls short of what should reasonably be allowed.
22. The notice specifies three months as the period for compliance. This provides limited opportunity in which to make a further application in respect of the revised scheme for a structure similar to the approval detailed in the submissions and to have the building either partly or totally demolished depending on whether such approval is forthcoming. Since enforcement action is intended to be remedial, whether the planning difficulties could be overcome at less cost and disruption than total demolition is highly relevant. As the appellant is entitled to expect that their ground (a) appeal will succeed, whether they could have submitted a revised application in the period prior to making the appeal is of limited relevance when evaluating the reasonableness of the compliance period.
23. Six months would provide a more realistic timescale in which to submit a planning application for the revised scheme to the Council, for the application to be determined and for arranging the required demolition works and having them carried out. Such a period would therefore achieve an appropriate balance between remedying the planning harm identified in a timely fashion whilst also not imposing a disproportionate burden on the appellant. Any longer period however would perpetuate the breach.
24. Accordingly, it is proportionate and reasonable to lengthen the compliance period to six months. To this limited extent, the appeal on ground (g) succeeds.

Conclusion

25. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the deemed application.

Stephen Hawkins

INSPECTOR