



Appeal Decision

Site visit made on 20 February 2024

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 March 2024

Appeal Ref: APP/R5510/C/23/3314014

37 Burwood Avenue, Eastcote, Pinner, Ruislip HA5 2RY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Rikesh Chauhan against an enforcement notice issued by the Council of the London Borough of Hillingdon.
 - The notice was issued on 22 November 2022.
 - The breach of planning control as alleged in the notice is a breach of condition for failure to comply with planning condition 2 of planning permission reference 40305/APP2021/363 dated 30/03/21 ('Single storey rear extension with roof light, two storey side extension and conversion of roof space to habitable use to include a rear dormer, 2 x front rooflights') requiring the development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans, numbers 13A, 14A, 15A, 16A, 17A, 18A, 19A.
 - The requirements of the notice are: Either: (A) (i) Demolish and remove the single storey rear extension and rear raised patio. (ii) Remove from the land all debris, items [and] building materials resulting from compliance with point (i) above. Or (B) (iii) Reduce the height of the single storey extension by 400mm, when measured from the existing as-built height, so that it accords with the height shown on approved drawing no 17A - 'Elevations' approved under application reference: 40305/APP/2021/363 (attached to the notice). (iv) Reduce the height of the patio extension by 530mm, when measured from the existing as-built height. (v) Alter the raised patio to include the installation of all steps and glass balustrades so that it accords fully with the details shown on approved drawing no 13A- 'Proposed Ground Floor Plan' and approved drawing no 18A- 'Elevations Side' approved under application reference: 40305/APP/2021/363 (attached to the notice). (vi) Remove from the land all debris, items [and] building materials resulting from compliance with points (i) to (v) above.
 - The period for compliance with the requirements is three 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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Decision

1. It is directed that the enforcement notice be varied by in paragraph 5 substituting step (iv) with the following step: *'Reduce the level of the surface of the raised patio so that it is at least 0.53 metres below the finished floor level of the single storey rear extension, as shown on drawing no 13A.'* 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 revised National Planning Policy Framework (the Framework), published on 19 December 2023, has been taken into account in my Decision.

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3. Since the appellant confirmed that no appeal was being made on ground (g), I intend to take no further action in that respect.

Ground (a) appeal

Main Issues

4. The main issues in this ground of appeal are:
- The effect of the single storey rear extension and raised patio on the living conditions of the existing and future occupiers of neighbouring residential property, having regard to outlook and privacy.
 - Whether the rear extension preserves or enhances the character or appearance of the Eastcote Park Estate Conservation Area (CA).

Reasons

Living conditions

5. The appeal property contains an enlarged two-storey, semi-detached dwelling. In March 2021, planning approval was granted which included erecting a single storey extension at the rear of the dwelling¹. The approved drawings also show a raised patio, set 0.53 metres below the finished floor level of the rear extension.
6. There is no dispute that, as built, the rear extension is taller than that approved. Although varying figures were supplied, based on what I observed during the visit the increase in overall height is likely to be close to 0.4m as referred to by the Council. There is also no dispute that as built, the patio surface level is well above that shown on the approved drawings. The appellant referred to the patio surface level being around 0.2m lower than the finished floor level of the rear extension and in my estimation, that figure is broadly accurate. In addition, the steps and balustrades associated with the patio shown on the approved drawings have been omitted.
7. The neighbouring attached property at 35 Burwood Avenue (No 35) has previously been enlarged, including by erecting a substantial rear conservatory. The depth of the rear extension and proximity to the boundary with No 35 are similar to that shown on the approved drawings. Due to the greater overall height and the corresponding increase in scale over the approval, the rear extension is a more obvious built feature when viewed from No 35, including in the conservatory and parts of the rear garden. Even so, the increase in massing adjacent to the boundary is not so great that the rear extension is viewed as a significantly more overbearing, dominant or oppressive built feature from No 35 compared to the approved scheme. Nor has the rear extension given rise to a substantially greater feeling of enclosure by built form at the rear of that property in comparison with the approved scheme. The rear extension is still perceived as being essentially a single storey structure from No 35. Accordingly, the rear extension has a limited adverse effect on the levels of outlook enjoyed by the occupiers of that property, compared with in the approval. Similar considerations apply in relation to neighbouring property at 39 Burwood Avenue (No 39), having regard to the greater distance from the rear extension.
8. The patio protrudes around 3.5m beyond the rear extension and extends with a levelled surface across most of the enlarged rear elevation of the dwelling. The patio is in proximity to the boundary with No 35 and not far from the boundary with No 39, the surface being at a much higher level in relation to ground levels in both neighbouring rear gardens. There is no dispute that when in use

¹ Council Ref: 40305/APP2021/363

the patio causes unacceptable harm to the privacy of occupiers of neighbouring residential property through overlooking. I concur. When stood on various parts of the patio it is possible to experience direct, close-up views over substantial parts of the rear of the neighbouring properties, where occupiers might otherwise reasonably expect to enjoy good levels of privacy.

9. The appellant's revised scheme for the patio involves reducing the surface to the approved level and incorporating fewer, narrower steps with glass balustrades alongside. It is appropriate to consider whether planning approval should be granted for the revised scheme. The patio is part of the breach referred to in the notice. The 1990 Act at s177(1)(a) provides that planning permission may be granted in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters or any part of the land to which the notice relates. It is well-established that the *Wheatcroft*² principle (since advanced by the High Court in *Holborn Studios Ltd*³) does not apply to the ground (a) appeal and the deemed planning application, in the light of the clear wording of s177(1)(a).
10. Be that as it may, the revised scheme does not satisfactorily address the objections to the patio as built. Reducing the size and number of steps would largely retain the levelled surface area at its current extent, meaning that the patio would be capable of accommodating a wide range of outdoor activities, including for example sitting out by more people or for larger gatherings during family or social events. This is likely to lead to a significant increase in incidences of the occupiers of neighbouring properties experiencing overlooking from persons using the patio, compared to the approved scheme. It is unlikely that the stepped arrangement of the approved patio could accommodate comparable levels of activity. Reducing the surface level to that approved would make little difference to the additional overlooking that would occur from the patio in the revised scheme. It is perhaps unsurprising that the approved patio was not given detailed scrutiny in the Officer Delegated Report for the original application, having regard to the limited effects on the neighbours' privacy.
11. I am given to understand that the appellant has attempted to discuss the proposed screening of the patio from Nos 35 and 39 with the Council, albeit without success to date. I have considered whether a suitable planning condition could be imposed requiring the patio to be screened from the neighbouring properties. However, as this is likely to involve erecting substantial structures there are potential adverse implications for the living conditions of the occupiers of neighbouring property. Erecting such structures could also involve significant additional works that are not part of the breach of planning control, thereby falling outside the scope of what can be considered in the deemed planning application arising from the ground (a) appeal. Moreover, a requirement to erect substantial screens as a condition of planning permission would deprive neighbours of the opportunity to comment and so would not meet the test of reasonableness applicable to conditions in paragraph 56 of the Framework.
12. Therefore, although the rear extension does not harm the levels of outlook enjoyed by the occupiers of neighbouring residential property, the patio nevertheless significantly and harmfully erodes their privacy. The unacceptable harm to neighbouring occupiers' living conditions is in conflict with criteria in Policy DMHD 1 of the London Borough of Hillingdon Local Plan Part 2- Development Management Policies (LP Part 2), which requires alterations and extensions to dwellings to achieve a satisfactory relationship with adjacent

² *Bernard Wheatcroft v SSE* [1982] 43 P&CR 233

³ *Holborn Studios Ltd v The London Borough of Hackney* [2017] EWHC 2823 (Admin)

dwelling and which seeks to resist balconies which result in loss of privacy to nearby dwellings or gardens. It is also in conflict with criterion in LP Part 2 Policy DMHB 11, which requires development to have no adverse impact on the amenity of adjacent properties. Furthermore, there is conflict with Policy BE1 of the Hillingdon Local Plan Part 1-Strategic Policies (LP Part 1), which requires development to protect the amenity of surrounding land and buildings, particularly residential properties.

Character, appearance of the CA

13. The planned residential estate which makes up the CA originated during the 1930s. The dwelling, which has a half-timbered front gable projecting over the brick ground floor, a hipped roof, 'Ipswich' style front windows and an oriel window over the front entrance, represents an example of a limited number of carefully conceived, attractive and well-executed house type designs reiterated throughout the estate. In general, the dwellings have been well-maintained, with later alterations and extensions being sympathetic to each house type and their surroundings. The continued integrity of the house type designs and the faithfulness of alterations and extensions thereto makes an important contribution to the significance of the CA.
14. The increase in the overall height of the rear extension is substantial. A roughly 10% increase in height cannot reasonably be regarded as immaterial. The greater height of the extension has the corresponding effect of considerably increasing its scale over the approval. This results in the rear extension appearing as an appreciably more obtrusive built feature on the rear elevation of the dwelling, compared to the approved scheme. What was originally intended as a relatively low profile, subordinate addition to the dwelling is now perceived as having a much greater size and bulk. The increase in scale over the approval is given emphasis by the greater expanse of masonry above the patio windows in the rear elevation and by an appreciable reduction in the distance between the tops of the parapet walls and the level of the window cills in the first-floor rear elevation of the dwelling.
15. The use of matching bricks on the external walls and careful detailing, including on the parapet walls, are insufficient to successfully integrate the rear extension with the dwelling in visual terms. The substantial scale of the rear extension does not compare favourably to additions at the rear of neighbouring properties, which, even where the design and external materials might not reflect important qualities of the CA, are nevertheless of considerably more modest proportions and exhibit suitable subservience to their host dwellings.
16. Therefore, the rear extension does not sit comfortably on the rear elevation and is poorly related to the dwelling and neighbouring property. The rear extension does not appear as a subservient addition and is viewed as a disproportionately large built feature on the rear elevation, in doing so significantly and harmfully eroding the design integrity of the dwelling. This has led to the rear extension having a modest but nevertheless appreciable adverse effect on the contribution made by the dwelling to the significance of the CA.
17. For the above reasons, the rear extension fails to preserve or enhance the character or appearance of the CA. This is in conflict with LP Part 1 Policy BE1, which requires development to achieve high-quality design, including by enhancing local distinctiveness, contributing to a sense of place, being designed to be appropriate to the identity and context of local buildings and making a positive contribution to the locality including in terms of its scale. The failure to conserve the CA also conflicts with LP Part 1 Policy HE1. Furthermore, there is conflict with criteria in LP Part 2 Policy DMHB 1, which requires extensions or alterations to be designed in sympathy, without detracting from

the heritage asset and to relate appropriately, including in terms of their scale and height, as well as conflict with LP Part 2 Policy DMHB 4, which requires extensions to buildings within the CA to preserve or enhance its character or appearance.

18. Additionally, there is conflict with LP Part 2 Policy DMHB 11, which requires development to be designed to the highest standards and incorporate principles of good design by, amongst other things, harmonising with the local context by taking into account, amongst other things, the scale of development considering the height, mass and bulk of adjacent structures. There is conflict with Policy D3 of the London Plan, as the rear extension does not respond positively to local distinctiveness through its scale. In not conserving the significance of the CA, the rear extension also conflicts with Policy HC1 of that document.
19. As well as the above, the rear extension conflicts with criteria in LP Part 2 Policy DMHD 1, which requires residential extensions to, amongst other things, appear subordinate to the main dwelling in their floor area, width, depth and height respecting the design of the original dwelling and where in the CA, to be of a design in keeping with the original dwelling including in terms of their scale and proportions. Although not referred to in the relevant reason for issuing the notice, this Policy was referenced by the appellant in their written submissions. There is no conflict with LP Part 2 Policy DMHB 12, which concerns streets and the public realm. Even so, by failing to conserve the historic environment the rear extension is inconsistent with the Framework.

Planning Balance & Conclusion-Ground (a) appeal

20. The patio causes unacceptable harm to the living conditions of existing and future neighbouring residential occupiers, whilst the rear extension fails to preserve or enhance the character or appearance of the CA. This is in conflict with the Development Plan and is inconsistent with the Framework. The harm caused to the significance of the CA is less than substantial. The Framework advises that such harm should be weighed against any public benefits. It also advises that when considering the impact of development on the significance of designated heritage assets, great weight should be given to their conservation. Refurbishment of the dwelling carries limited weight as a benefit in terms of erecting the rear extension, since this could equally have been achieved through the approved scheme. The benefits of increased employment and economic activity during the construction phase also carry limited weight, for a similar reason. Therefore, I conclude that the ground (a) appeal should not succeed.

Ground (f) appeal

21. The ground of appeal is that the requirements of the notice are excessive.
22. An enforcement notice can have the purpose of remedying the breach of planning control, including by restoring the land to its condition before the breach took place, or by making any development comply with the terms (including conditions and limitations) of any planning approval which has been granted in respect of the land. Alternatively, the notice can have the purpose of remedying any injury to amenity which has been caused by the breach. Although the notice does not state as such its purpose must be to remedy the breach, as opposed to solely remedying an injury to amenity. Either by removing the rear extension and the patio and restoring the property to its condition prior to the breach taking place, or otherwise by altering the rear extension and patio to comply with the terms of the planning approval, the breach would be remedied.

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23. As the rear extension is around 0.4m taller than that approved, requiring it to be reduced in height by a lesser amount would leave part of the development that sustained the breach in situ. This would not restore the property to its condition prior to the breach taking place nor would it comply with the terms of the planning approval and so would not achieve the purpose of the notice.
24. Providing the steps and balustrades shown on the approved drawings would mean that the patio complied with the terms of the planning approval. There is no time limit in the approval for completion of the approved steps and balustrades. Even so, that is of limited relevance in terms of the scope of the works necessary to remedy the breach. The patio would still be in breach without the steps and balustrades, as it would be substantially complete but would not comply with the approved drawings. Therefore, a requirement which stopped short of insisting on provision of the steps and balustrades would not remedy the breach and so would not achieve the purpose of the notice.
25. Nevertheless, as the patio surface is currently about 0.2m below the finished floor level in the rear extension, requiring it to be reduced by 0.53m would involve works going beyond that necessary to comply with the approved drawings and so would be excessive in terms of remedying the breach. In the circumstances, I shall exercise the power in s176(1)(b) of the 1990 Act to vary that requirement so that the patio surface level is reduced to that shown on the approved drawings. This would be sufficiently certain. There would be no injustice by varying the notice accordingly.
26. Therefore, I conclude that although most of the notice requirements are proportionate, being the minimum necessary to remedy the breach, one of the requirements is excessive. To that limited extent, the appeal on ground (f) succeeds.

Conclusion

27. For the reasons set out above, the patio and the rear extension conflict with the Development Plan taken as a whole. There are no other considerations that outweigh this conflict. Therefore, 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 application deemed to have been made under section 177(5) of the Town and Country Planning Act 1990 as amended.

Stephen Hawkins

INSPECTOR