



Appeal Decision

Site visit made on 26 November 2024

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 December 2024

Appeal Ref: APP/R5510/C/22/3313119

56 Ferrers Avenue, West Drayton, Middlesex UB7 7AB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Shakeel Malik against an enforcement notice issued by the Council of the London Borough of Hillingdon.
 - The enforcement notice was issued on 9 December 2022.
 - The breach of planning control as alleged in the notice is failure to comply with conditions imposed on planning permission Ref 27828/APP/2020/1693 granted on 12 August 2020.
 - The development to which the permission relates is addition of first floor to existing bungalow at 56 Ferrers Avenue West Drayton.
 - The conditions in question are condition no 2 which states that the development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plan numbers 146/PP/007, 146/PP/008, 146/PP/009, 146/PP/011 and 146/PP/012, and condition no 4 which states that notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)(or any order revoking and reenacting that Order with or without modification), no additional windows, doors or other openings shall be constructed in the walls or roof slopes of the development hereby approved facing 54 or 58 Ferrers Avenue.
 - The notice alleges that the conditions have not been complied with in that additional windows openings have been constructed in the walls and roof slopes of the development that are facing 54 and 58 Ferrers Avenue.
 - The requirements of the notice are: (A) Demolish the addition of first floor to existing bungalow and remove from the land all debris, building materials, plant and equipment resulting from compliance. Or (B) Undertake remedial works so that the addition of first floor to existing bungalow is in full accordance with the details as shown on drawing number 146/PP/009, submitted and approved by application reference number 27828/APP/2020/1693 and remove from the land all debris, building materials, plant and equipment resulting from compliance.
 - 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 (c) 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. The appeal is allowed and the enforcement notice is quashed. In accordance with section 177(1)(b) and section 177(4) of the 1990 Act as amended, condition Nos 2 and 4 attached to the planning permission dated 12 August 2020, ref 27828/APP/2020/1693 are discharged and the following new condition is substituted. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the addition of a first floor to an existing bungalow at 56 Ferrers Avenue, West Drayton, Middlesex UB7 7AB without complying with the said conditions

but subject to the other conditions attached to that permission and the following new condition:

- 1) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended), at Article 3, Schedule 2 Part 1, Classes A and C, no alterations to the dwelling consisting of additional windows, doors or other openings shall be made in the side elevations of the dwelling above ground floor level.

Preliminary Matter

2. My decision takes into account the revised National Planning Policy Framework, published on 19 December 2023.

Ground (c) appeal

3. The ground of appeal is that the matters alleged in the enforcement notice do not constitute a breach of planning control. The onus is on the appellant to show why their appeal should succeed on this ground, the relevant test of the evidence being on the balance of probability.
4. The appeal property contains a detached two storey dwelling. Formerly a chalet bungalow, the dwelling has been enlarged following the grant of planning permission in August 2020.¹ Condition No 2 of that permission required the development to be carried out in complete accordance with the specified drawings. Condition No 4 restricted 'permitted development' rights in Article 3, Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) to insert additional openings including windows in the side facing walls and roof slopes of the dwelling.
5. The drawings specified in condition No 2 show a first-floor window in the side elevation of the enlarged dwelling, parallel to the boundary with the neighbouring residential property at 54 Ferrers Avenue (No 54). The drawings show no first-floor windows in the side elevation parallel to the boundary with 58 Ferrers Avenue (No 58). No rooflights are shown. However, as enlarged the dwelling has two windows at first floor level along with three rooflights in the roof slope, in the side elevation facing towards No 54. There is also a window at first floor level along with three rooflights in the roof slope, on the side elevation of the enlarged dwelling facing towards No 58.
6. Previously, the chalet bungalow had a rooflight and a dormer window in the side roof slopes. However, those openings were both removed as part of enlarging the dwelling. In any event, as noted above a number of other openings have been inserted in the side elevations of the enlarged dwelling.
7. Inserting the additional windows and rooflights in the side elevations does not comply with condition Nos 2 and 4 of the above-referenced permission. The definition of a breach of planning control in s171A(1) of the Act includes failing to comply with any condition or limitation subject to which planning permission has been granted.
8. Therefore, the appellant has been unable to show that the matters stated in the notice do not constitute a breach of planning control. The available evidence shows otherwise. The ground (c) appeal fails.

¹ Council Ref: Ref 27828/APP/2020/1693

Ground (a) appeal

Main Issues

9. The main issues in this ground of appeal are:

- The effect of the additional windows and rooflights ('the works') on the living conditions of existing and future occupiers of neighbouring residential property, having regard to privacy, outlook and daylight.
- The effect on the character and appearance of the surrounding area.

Reasons

Living conditions

10. The side elevations of the enlarged dwelling are parallel to and a limited distance from the side elevations of Nos 54 and 58. As noted above, two first-floor windows face towards the side elevation of No 54, a two-storey dwelling. These windows are located towards the middle of the side elevation. Although fitted with clear glazing views from the windows are limited, having regard to their reasonably modest proportions and the proximity to No 54's side elevation. A nearby first-floor window in the side elevation of No 54 is obscure glazed. Consequently, there is little opportunity to overlook private internal or external spaces at No 54 from the two windows. Since the rooflights in this elevation are positioned above eye level, they also afford little opportunity for overlooking of No 54 to occur.
11. No 58 is a chalet bungalow, with no windows in the side elevation. On the enlarged dwelling, the window in the first-floor side elevation parallel to No 58 looks towards the roof of that property. Along with the rooflights inserted in the roof slope on this elevation, the first-floor window also affords limited opportunity for overlooking to occur, for similar reasons to those set out above.
12. Since the works do not increase the scale of the enlarged dwelling over that already permitted, there has been no additional effect on the levels of outlook and daylight at neighbouring residential property.
13. Therefore, the works have had no unacceptable adverse effect on the living conditions previously enjoyed by the occupiers of neighbouring residential property. There is no conflict with Policy BE1 of the Hillingdon Local Plan: Strategic Policies, as the amenity of surrounding residential property is protected. Also, there is no conflict with Policy DMHB 11 of the London Borough of Hillingdon Local Plan: Part 2-Development Management Policies (LP), as there is no adverse impact on the amenity of adjacent properties and open space.

Character and appearance

14. The property is located in an established residential area, generally comprising two storey and single storey dwellings which exhibit significant similarities in terms of their age, architectural style and external materials. These factors contribute to the largely coherent and pleasant residential character and appearance of the locality. The property is outside but adjoining the Garden City, West Drayton Area of Special Local Character (ASLC).
15. The works have involved limited change to the scale and design of the enlarged dwelling compared to the permitted scheme. There is little effect in terms of how the enlarged dwelling sits in relation to the general pattern of local development. Similar alterations are not uncommon at residential property in the vicinity. Moreover, there are limited views, either public or private, of the works in the surroundings. The above factors along with substantial maturing

trees and vegetation on the banks of the Fray's River also mean that the works have negligible effect on the ASLC.

16. Therefore, the works have not harmed the character and appearance of the surrounding area. There is no conflict with LP Policy DMHB 11, which requires development to, amongst other things, harmonise with the local context including by taking into account the architectural composition and quality of detailing. As LP Policy DMHB 5 relates to development in the ASLC, it is of limited relevance to this appeal.

Other matters

17. As the windows and rooflights serve additional bedrooms and bathrooms, suitable levels of outlook and natural light are provided for the existing and future occupiers of the dwelling.
18. The drainage provision, standard of construction and other matters relating to the building operations carried out to enlarge the dwelling are beyond the scope of this appeal. Similarly, whether other development undertaken at the property benefits from planning permission is not before me.

Conditions

19. Since the operations to enlarge the dwelling are substantially complete, a condition specifying the permitted drawings is not necessary. After seeking the views of the main parties, I shall impose a condition to remove 'permitted development' rights to insert additional windows or other openings in the side elevations of the enlarged dwelling above ground floor level, similar to condition No 4. In doing so, I am mindful of the advice in the Planning Practice Guidance concerning the circumstances in which such conditions should be used. The condition defines precisely which rights are being restricted and is both reasonable and necessary to safeguard the living conditions of occupiers of neighbouring residential property, having regard to privacy.
20. However, I do not intend to impose a condition requiring the first-floor side windows to be fitted with obscure glazing and to be non-opening less than 1.7m above the finished floor level, as suggested by the Council. Given that there is no unacceptable overlooking, such a condition is not necessary.

Conclusion

21. The works do not harm the living conditions of existing and future occupiers of neighbouring residential property or the character and appearance of the surrounding area and there is no conflict with the Development Plan. There are no material considerations that indicate the decision should be made other than in accordance with the Development Plan.
22. Therefore, I conclude that the appeal should succeed on ground (a) and the enforcement notice should be quashed. I shall discharge the conditions which are subject to the notice, and grant planning permission on the application deemed to have been made for the operations previously permitted without complying with the conditions enforced against but subject to a new condition as described above.

Stephen Hawkins

INSPECTOR