
Appeal Decisions

Site visit made on 24 July 2017

by K R Saward Solicitor

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 3 August 2017

2 Linksway, Northwood HA6 2XB

Appeal A: APP/R5510/C/17/3172497

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Kelly Vhora against an enforcement notice issued by the Council of the London Borough of Hillingdon.
- The enforcement notice was issued on 3 March 2017.
- The breach of planning control as alleged in the notice is without planning permission, the substantial enlargement of a dwellinghouse, to include a material increase in height, width and depth.
- The requirements of the notice are:-
 - (i) Reduce the height, depth and width of the dwellinghouse and return it to its former height, depth, width and design as shown by the plan marked A attached to the notice or;
 - (ii) Implement the details approved on drawing numbers P102 Rev. A and P201 Rev. A dated February 2015 submitted with planning application 36910/APP/2015/621 and granted planning permission on 28 April 2015.
 - (iii) Remove from the Land all materials, debris, plant and equipment associated with requirement (i) or (ii) above.
- The period for compliance with the requirements is 6 calendar months.
- The appeal is proceeding on the grounds set out in section 174(2)(a),(f)&(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 s177(5) of the Act.

Summary of Decision: The appeal on ground (a) is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Appeal B: APP/R5510/D/17/3176155

- 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 K Vhora against the decision of the Council of the London Borough of Hillingdon.
- The application Ref 36910/APP/2016/4594, dated 21 December 2016, was refused by notice dated 7 April 2017.
- The development is described as "proposed retention of extensions and alterations to property, further to those approved under application 36910/APP/2015/621."

Summary of Decision: The appeal is allowed, and planning permission granted in the terms set out below in the Formal Decision.

Application for costs

1. In Appeal B, an application for costs was made by Mr K Vhora against the

Council. This application is the subject of a separate Decision.

Procedural Matters

2. The development for which permission is sought in Appeal B has already been carried out. Section 73A of the Act allows permission to be granted for development carried out before the date of the application. The application refers to "retention" of extensions and alterations to the property. "Retention" is not development within the meaning of section 55 of the Act. Therefore, I have dealt with the appeal on the basis of the application being for development as described in the Council's decision notice i.e. "Part two storey, part first floor side extension, single storey rear extension, conversion of double garage to habitable use, installation of canopy to front and raising of roof to allow conversion of roof space to habitable use to include 3 rear dormers, 1 front dormer and 2 new gable end windows to front."
3. The development applied for in Appeal B is the same as that attacked by the enforcement notice in Appeal A where there is also a ground (a) appeal and deemed planning application. For that reason I have dealt with the appeals together in a single decision taking account of the submissions made in each.

Appeals A and B

The appeal under ground (a), the deemed planning application & Appeal B

4. Ground (a) is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. This ground is concerned with the planning merits of the case, and it raises the same issues as the deemed application for planning permission. It also raises the same issues on the linked section 78 appeal with one exception.
5. The section 78 appeal contains an additional reason for refusal not mentioned in the reasons for issuing the enforcement notice. The reason concerns the effect on living conditions for those using one bedroom within the extended property with an obscured glazed window. Submissions are made on this point in relation to Appeal A where it also has potential relevance when considering the effect of the development on neighbouring privacy. I shall therefore deal with the issue in my consideration of both appeals.

Main Issues

6. The main issues are:-
 - the effect of the development on the surrounding street scene.
 - the effect on living conditions of neighbouring occupiers at No 3 Copse Wood Way with particular reference to outlook and privacy and whether there are acceptable living conditions for future occupiers in terms of daylight and outlook.

Reasons

Background

7. Planning permission was granted on 5 February 2015¹ for the erection of a two storey, 5 bedroom detached dwelling on the plot following demolition of the

¹ pursuant to planning reference: 36910/APP/2014/2869

existing dwelling. Subsequently, approval was given to extend and alter the original dwelling by permissions granted on 2 March 2015² and 28 April 2015³, subject to conditions. The appellant sought to implement the latter of these schemes. The development has not been carried out wholly in accordance with the approved plans. The application in Appeal B seeks to regularise that position and the ground (a) appeal seeks approval for the development, as built.

8. The parties agree that the main differences between the approved and built development are (i) the extended property has been stepped in from the southern side boundary (ii) the eaves height of the main roof has been raised by 0.825m to 5.4m (iii) the ridge height has been raised by 0.335m to 8.95m (iv) the rear facing dormer windows now all serve a bedroom (v) first floor windows have been altered and enlarged (vi) the height of the flat roofed single storey element has been raised and incorporates a parapet wall.
9. Internal changes have been made to the layout from that approved with consequential alterations to the exterior. There is an enlarged fifth bedroom which is served by all of the rear facing dormer windows instead of one window with the others serving an en-suite bathroom and storage space. Temporary obscured glazing has been undertaken to some windows.

Effect on the street scene

10. The appeal property is a large detached property occupying an irregular shaped plot on the corner of Linksway with Copse Wood Way. It is located within the Copsewood Estate Area of Special Local Character. Saved Policy BE5 of the Unitary Development Plan⁴ (UDP) relates specifically to Areas of Special Local Character and requires development within such areas to harmonise with the materials, design features, architectural style and building heights predominant in the area. Further, extensions to dwellings should respect the symmetry of the original buildings.
11. Linksway is a pleasant tree lined road composed of large houses lining both sides of the road. It is evident that a number of plots have been redeveloped in recent years with some building works still ongoing. The houses are set back from the road by a similar distance with enclosed frontages. As originally built, the appeal property was modest in size of dark red brick with a distinctive front gable element (which has been retained) but few other distinguishing features. A detached double garage near to the boundary with neighbouring No 4 has since been removed to accommodate the considerable extension.
12. The appellant has drawn my attention to the dwelling at No 36 which was approved on appeal⁵ on 3 December 2013, following demolition of the existing house and garage. In describing the locality, the Inspector in that case referred to the ample evidence of recent development and redevelopment in Linksway and adjoining streets and a wide variety of architectural styles on display. In that particular case, the Inspector found that insufficient weight had been given to the design and appearance of other redeveloped houses along Linksway, several of which displayed similar classical features.

² pursuant to planning reference: 36910/APP/2014/3930

³ pursuant to planning reference: 36910/APP/2015/621

⁴ London Borough of Hillingdon Unitary Development Plan (adopted 1998) Saved Policies 27th September 2007

⁵ Appeal ref: APP/R5510/A/13/2201434

13. From my own observations, there is a wide variance in the age, materials and architectural design of the properties in Linksway ranging from very traditional to modern and contemporary in style. No two properties are alike although there are common threads that appear. For instance, many feature roof dormers or have roof lights. Whilst a number of the properties have first floor windows positioned immediately beneath the eaves, there are many others that do not. Therefore, although the eaves have been raised so that there is now a gap above the first floor windows, this is not untypical of the road given the other examples that exist. Moreover, as all the windows now have wall space above and those in the extension are of similar size, there is a consistency and balance in the external appearance.
14. Now that the eaves are raised, the proportions of the property have altered in consequence. The height of the vertical walls has increased leading to larger areas of blank wall. The roof is also shallower than the scheme approved because the ridge height has not increased to the same degree as the eaves. The single storey element to the side and rear is also higher and incorporates a parapet wall. These may be notable differences between the two sets of plans, but when viewing the property from the street or rear garden, they are not particularly significant in terms of visual impact. The roof does not appear unusually shallow in the context of its surroundings or cause the roof dormers to seem overly pronounced. Nor does the side extension appear disproportionate to the rest of the dwelling.
15. Being a corner plot, it is a relatively prominent position with much of the frontage and part of the side extension being visible from the highway in Linksway. The extended property is large and has clearly changed dramatically in appearance from its original form, but that would have been the case with the approved scheme also. Figures produced by the appellant comparing the height, width and depth of the development as built against the three schemes granted planning permission have not been contested by the Council. They indicate that the width is slightly less than that for the approved extended property and the ridge height is marginally under that for the replacement dwelling. Thus, in terms of overall dimensions, the property is within the parameters of development previously authorised at the appeal site.
16. Although the scale and mass has been altered, the property does not appear overly bulky or imbalanced. The introduction of painted render contrasting with the brick of the existing dwelling assists in breaking up the mass. When viewed as a whole, the additions and changes do not cause this to be an unduly prominent dwelling. Furthermore, given the multitude of architectural styles and differing proportions of houses in the road there is nothing peculiar to this property which prompts it to be out of keeping with its surroundings.
17. Therefore, I find no harm to the surrounding street scene or its status as an Area of Special Local Character to cause conflict with Policies 3.5, 7.4 or 7.6 of the London Plan, 2016, Policy BE1 of the Hillingdon Local Plan⁶, UDP Policies BE13 and BE19, and Paragraphs 56 and 58 of the National Planning Policy Framework. All of these policies, amongst other things, seek high quality design appropriate to its environment. I also find no conflict with UDP Policy BE5 which aims specifically to protect Areas of Special Local Character or guidance within

⁶ Part 1 – Strategic Policies, adopted November 2012

the Supplementary Planning Document on Residential Extensions (SPD)⁷.

Living conditions – outlook of neighbouring occupiers

18. I have approached the question of outlook arising from the increased height of the property on the basis of any harm to the occupiers of No 3 Copse Wood Way which could be caused by an overbearing development rather than in the sense of a loss of view given that there is no right to a view.
19. At 8.95m the extended property is much higher than the original dwelling which the appellant identifies as being 7.45m in height. It is also wider bringing two storey development closer to the shared boundary. However, in comparison to the fallback position and the development which was approved and could be undertaken in compliance with the enforcement notice, the difference in height is relatively minor and there is the same rear building line.
20. The orientation of No 3 means that there are only two small upper windows directly facing the development, one of which is obscured glazed. Neither these windows nor the garden are so close to the development for it to be oppressive or overbearing for occupiers using either the rooms or garden. Any views of the development from a larger ground floor window will be obtuse thereby avoiding any adverse effect on outlook.
21. Consequently, I find no harm to the living conditions of neighbouring occupiers in terms of outlook.

Living conditions – privacy of neighbouring occupiers

22. The internal reconfiguration has resulted in a second roof dormer serving a bedroom instead of a bathroom. There is also a larger bedroom window on the first floor where there would have been an en-suite bathroom. These first and second floor level windows face towards the boundary with neighbouring No 3 Copse Wood Way. Its flank wall is estimated to be around 10m away.
23. Plastic film has been attached to some upper rearward facing windows and retaining straps fitted to restrict their opening. Clearly, these measures could be removed easily at any time. If that were to happen then there would be direct views of the rear garden of No 3 at quite close range even though the first floor bedroom (identified in the plans as 'bedroom 3') is further away from the shared boundary than previously approved.
24. Indeed, whilst there was opaque film stuck to the first floor en-suite bathroom for bedroom 3, the bedroom window itself was clear glazed. The patio closest to the house at No 3 was visible as were other parts of the garden. This is overly intrusive given the size, position and distance of the window to the neighbouring rear garden. It gives rise to an unacceptable interference with the privacy of neighbours using their garden. That is so irrespective of whether the approved scheme allowed a smaller (bathroom) window in a similar position without any restriction on the type of glazing.
25. The harm is not dissimilar to that found in two previous Appeal Decisions drawn to my attention by the neighbouring occupier of No 3 Copse Wood Way. One decision⁸ concerns a proposed first floor extension where there would be

⁷ Hillingdon Design and Accessibility Statement (HDAS) Supplementary Planning Document titled 'Residential Extensions', December 2008

⁸ Appeal ref: APP/R5510/D/16/3151565 dated 2 September 2016

reduced separation distance of approximately 8-9m to the boundary. In that case, the Inspector found that there would be an increased threat to the privacy of neighbouring occupiers when they are in their garden. In the other decision⁹ the Inspector found that windows to a proposed first floor bedroom would cause unacceptable levels of overlooking of the neighbours private outside amenity space because of the position of the windows which would not be obscured glazed.

26. However, it is necessary to go on to consider whether in the circumstances of this particular case, it is possible to address privacy issues by the imposition of a condition for permanent obscured glazing and restricted window openings.

Living conditions – existing & future occupiers, daylight & outlook

27. The Council acknowledges that a condition for obscured glazing could be imposed for 'bedroom 3', but raises concern over the quality of the resultant habitable space. This point was given as a reason for refusal of the planning application in Appeal B, but is not mentioned in the enforcement notice. Nonetheless, it is a pertinent point in both appeals when considering whether a condition could be imposed to address the harm to neighbouring privacy.
28. Bedroom 3 within the extended property has one window and it faces towards the boundary with No 3 Copse Wood Way. The Council refers to this window being partially obscure glazed windows through the application of plastic film. At the time of my site visit the window was clear glazed. The Council considers that it would be unreasonable to impose a condition to require the sole bedroom window to have obscured glazing. It might seem unusual and is not ideal, but there is no requirement for a bedroom to have clear glazed windows. It is not uncommon for bedrooms to have skylights, for instance, without an outlook. Also, light will still penetrate through obscured glazing and given the size of the window, there would be enough to light the room.
29. That position would also offer a preferable solution to the impact on privacy that could arise if the appellant modified the development to accord with the approved scheme. That is an alternative option to demolition under the enforcement notice and is therefore a very realistic possibility. As no condition was imposed previously, compliance would be achieved without obscured glazing. The plans identify the room as a bathroom, but it could be changed to a bedroom. The window would be smaller, but issues over privacy would still arise if used without obscured glazing.
30. By controlling the type of window in the development as built, the privacy for neighbouring occupiers would be safeguarded in a way that is not secured under the previous scheme. At the same time, living conditions for use of the room as a bedroom would not be so unsatisfactory to be reason for refusal. The homeowner also has the choice not to use this room as a bedroom, but for storage, a bathroom as originally intended, or some other use.
31. It seems to me that a condition for obscured glazing and limited window openings would address the harm arising to neighbouring privacy if also imposed in relation to the roof dormers for the bedroom identified as 'bedroom 5' on the plans. I note that only one of these windows served a bathroom under the approved scheme and that no condition was imposed to ensure it was

⁹ Appeal ref: APP/R5510/W/16/3162225 dated 31 January 2017

obscured glazed. Nevertheless, both windows are at a height, orientation and proximity to the shared boundary so as to cause an unreasonable interference with privacy if not obscured glazed and with restricted openings.

32. As before, whilst it is by no means ideal for a bedroom to have such limitations, in this case bedroom 5 also has a front facing clear glazed window providing another light source and outlook for habitants of the room and so any restriction to the rear facing windows would not be unreasonable. Similarly, with such a restriction the development would be favourable to the scheme approved in terms of impact on privacy.

Conclusion on living conditions

33. To sum up, subject to the imposition of an appropriate condition, there would be no harm to the living conditions of neighbouring occupiers with reference to privacy. No material harm arises to the living conditions of existing and future occupants of 'bedroom 3' in terms of daylight and outlook. Nor does harm arise to the outlook for neighbouring occupiers of No 3.
34. As such and with those conditions, the development accords with UDP Policies BE21 and BE24 which seek to protect residential amenity and privacy, respectively. I also find no conflict with UDP Policy BE20 and its aim for adequate daylight to existing houses or the provisions of the SPD. There is also no conflict with Paragraph 17 of the Framework which seeks a good standard of amenity for all existing and future occupants of land and buildings.

Other Matters

35. A number of other matters have been raised by or on behalf of neighbouring occupiers. I can appreciate why the occupier of No 3 Copse Wood Way would wish the property to be returned to its size as originally built. However, there is extant planning permission for an extended dwelling and this is a consideration when weighing up the planning merits of the development as built. That permission exists and has relevance regardless of whether Council officers had recommended the scheme for refusal. Subject to the imposition of conditions, I have found no conflict with the Council's development plan.
36. Whether or not any part of the extended property encroaches on neighbouring land is a private law matter between neighbours. It does not influence my consideration of the ground (a) and section 78 appeals which must be decided on the planning merits.
37. The position and orientation of the extended property prevents any unreasonable level of overlooking of the private garden of No 4 Linksway. With obscured glazed windows closest to this boundary any question of overlooking will be removed altogether.

Conclusion on Appeal A ground (a), the deemed planning application and Appeal B

38. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal on ground (a) and the section 78 appeal should succeed and planning permission will be granted in both appeals.
39. The appeal on grounds (f) and (g) in Appeal A do not therefore need to be considered.

Conditions

40. In this eventuality, the Council has suggested only one condition for the approval of external materials. As the development is complete, there is no need for such a condition. Applying the tests for conditions found in Paragraph 206 of the Framework and the national Planning Practice Guidance, it is necessary for a condition to require the installation of obscured glazed windows to the nearest upper floor windows with restricted openings in the interests of privacy. For the same reason, a condition removing permitted development rights that would otherwise allow additional windows, doors or other openings in the elevation facing No 3 Copse Wood Way is necessary and appropriate as was imposed for the earlier approved scheme.
41. The purpose of condition (1) is to require the appellant to comply with a strict timetable for dealing with the replacement windows which needs to be addressed in order to make the development acceptable. The condition is drafted in this form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matter because the development has already taken place. The purpose and effect of the condition is therefore to ensure that the development authorised by the grant of planning permission is only allowed if the appellant complies with each one of a series of requirements.

Formal Decisions

Appeal A

42. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the substantial enlargement of a dwellinghouse, to include a material increase in height, width and depth at 2 Linksway, Northwood HA6 2XB referred to in the notice, subject to the conditions set out in the Schedule below.

Appeal B

43. The appeal is allowed and planning permission is granted for part two storey, part first floor side extension, single storey rear extension, conversion of double garage to habitable use, installation of canopy to front and raising of roof to allow conversion of roof space to habitable use to include 3 rear dormers, 1 front dormer and 2 new gable end windows to front at 2 Linksway, Northwood HA6 2XB in accordance with the terms of the application, Ref: 36910/APP/2016/4594, dated 21 December 2016, and the plans submitted with it, subject to the conditions set out in the Schedule below.

KR Seward

INSPECTOR

Schedule of 3 Conditions attached to the planning permission granted in respect of Appeal A and Appeal B

- (1) The development hereby permitted shall be returned to its former height, depth, width and design as shown in drawing No P202 (titled 'existing plans and photographs') and all resultant debris removed within 3 months of the date of failure to meet any one of the requirements set out in (i) to (iv) below:-
 - (i) within 3 months of the date of this decision, a scheme for the replacement of the upper floor windows identified as bedrooms 3 and 5 (including the en-suite for bedroom 3) on drawing No A203 Revision C with obscure-glazed windows to be fixed shut to an internal height of 1.7m, shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - (ii) within 11 months of the date of this decision, if the local planning authority refuses to approve the scheme or fail to give a decision within the prescribed period an appeal shall have been made to, and accepted as valid by, the Secretary of State.
 - (iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - (iv) the approved scheme shall have been carried out and completed in accordance with the approved timetable.
- (2) The windows fitted in accordance with condition 1 shall be retained as approved thereafter.
- (3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development)(England) Order 2015, (or any Order revoking, re-enacting or modifying that Order), no additional windows, doors or openings shall be formed in the walls or roof slopes of the development hereby approved on any elevation facing No 3 Copse Wood Way.

-END-