



Appeal Decision

Site visit made on 19 October 2009

by **George Mapson** DipTP DipLD MRTPI

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

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Decision date:
8 January 2010

Appeal 1 - Ref: APP/R5510/X/09/2112254

Appeal 2 - Ref: APP/R5510/C/09/2101822

Appeal 3 - Ref: APP/R5510/C/09/2101823

121 Herlwyn Avenue, Ruislip, Middlesex, HA4 6HP¹

- **Appeal 1** is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr K Gilmartin against the decision of the Council of the London Borough of Hillingdon.
- The application Ref No. 65165/APP/2009/1185, dated 3 June 2009², was refused by a notice dated 28 August 2009.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is the proposed erection of a single storey front extension.

- **Appeals 2 and 3** are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Gilmartin and Mrs Gilmartin-Cooper against an enforcement notice issued by the Council of the London Borough of Hillingdon.
- The Council's reference is SV/5989.
- The notice was issued on 25 February 2009.
- The breach of planning control as alleged in the notice is:
"The erection of a single storey side/rear extension to the dwellinghouse without the benefit of planning permission (the "side/rear extension")."
- The requirements of the notice are:
"(i) The demolition of the side/rear extension[.] (ii) The removal from the land of all debris and building material, plant and equipment resulting from compliance with requirement (i) above."
- The period for compliance with the requirements is 3 months.
- **Appeal 2** is proceeding on the grounds (a) and (f) set out in section 174 of the Town and Country Planning Act 1990 as amended.
- **Appeal 3** is proceeding on ground (f) only.

DECISIONS

Appeal 1 - Ref: APP/R5510/X/09/2112254 - The LDC appeal

1. I dismiss the appeal.

¹ The appellant's LDC application refers to 121 Herlwyn Avenue being in Ickenham, whereas the Council's enforcement notice refers to it as being in Ruislip. According to the Royal Mail's Postcode Finder, the correct address is Ruislip.

² The application form is dated 3 June 2009. The Council's decision notice refers to the date of the application being 6 July 2009.

Appeal 2 - Ref: APP/R5510/C/09/2101822 – The Enforcement Notice

2. I dismiss the appeal and uphold the enforcement notice. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal 3 - Ref: APP/R5510/C/09/2101823– The Enforcement Notice

3. I dismiss the appeal and uphold the enforcement notice.
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APPEAL 1 – THE LAWFUL DEVELOPMENT CERTIFICATE

Main issue

4. The main issue is whether the Council's decision to refuse to grant a lawful development certificate was well-founded.

Reasons

The proposed development

5. The appeal building is a detached bungalow that occupies a corner plot at the junction of Herlwyn Avenue and Roxburn Way.
6. The proposed development for which the LDC is sought is the erection of a single storey flat roofed extension on the front of the bungalow.

Permitted development rights – the parties' cases

7. The appellant's case is that the proposal would constitute permitted development within the provisions of Schedule 2, Part 1, Class A of the GPDO³.
8. Class A deals with permitted development that entails "*the enlargement, improvement or other alteration of a dwellinghouse*". Under paragraph A.1, development is not permitted by Class A if, among other things, "*(d) the enlarged part of the dwellinghouse would extend beyond a wall which (i) fronts a highway, and (ii) forms either the principal elevation or a side elevation of the original dwellinghouse*".
9. The Council refused to grant an LDC because the proposed extension would extend beyond a wall which fronts a highway and forms the principal elevation of the dwellinghouse.
10. The appellant argues that the proposed extension would not project beyond the foremost part of the wall that faces Herlwyn Avenue. This elevation is staggered. The wall of the room identified on the plan as "*bedroom 1*", with its bay window, stands forward from the wall of the room identified as "*bedroom 2*" and the existing entrance to the bungalow. The proposal would square off this recessed area. The new front wall of the extension, and the new entrance to the bungalow would project no closer to Herlwyn Avenue than the existing front wall of "*bedroom 1*".
11. In his submission, there can be only one "*principal elevation*" to a dwellinghouse and that should be the existing front wall of "*bedroom 1*". In essence, his argument is that the forward-most part of the Herlwyn Avenue elevation should be regarded as the "*principal elevation*".

³ The GPDO – The Town and Country Planning (General Permitted Development) Order 1995, as amended by the (Amendment) (No.2) England) Order 2008

Interpreting the "principal elevation"

12. There is no definition of "principal elevation" in the GPDO. This is because of the inherent difficulty in arriving at a definition that would provide absolute certainty about what would constitute the "principal elevation" in all circumstances.
13. In most cases the "principal elevation" is clear. Usually it is the part of the house that fronts the highway and which contains the main entrance.
14. Where the "principal elevation" is less clear, the local planning authority has to assess which elevation constitutes it. Where there are two elevations that front the highway both could be covered by any restriction on the "principal elevation".
15. Whether one part of the elevation that fronts onto the highway is set back from another part is immaterial. There can be more than one plane to the "principal elevation".
16. The GPDO makes no reference to the forward-most part of a wall being the "principal elevation", as the appellant asserts, and there is no basis for interpreting it in that way.

Conclusions on Appeal 1

17. For these reasons, I find that the proposed erection of a single storey flat roofed extension on the front of the bungalow would not constitute permitted development within the provisions of Schedule 2, Part 1, Class A of the GPDO.
18. I conclude that the Council's refusal to grant a certificate of lawful use or development was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

APPEALS 2 AND 3 – THE ENFORCEMENT NOTICE

Appeal 2 - Ground (a) and the deemed application

19. An appeal on ground (a) is that planning permission should be granted for what is alleged in the notice.

The general approach to enforcement

20. National planning guidance on enforcing planning control is provided by PPG18⁴. Whilst not condoning wilful breaches of planning law, it explains that it is not an offence to carry out development without first obtaining any planning permission required for it. S.73A of the 1990 Act specifically provides that a grant of planning permission may relate to development carried out before the date of the application.
21. From this it follows that the fact that a person has carried out works before obtaining planning permission is not held against him or her when assessing the planning merits of a development, at the application stage or at appeal.
22. Equally, where the breach of control unacceptably affects public amenity or the existing use of land and buildings meriting protection in the public interest, the fact that the development already exists is not a factor that weighs in favour of its retention.

⁴ Planning Policy Guidance Note 18: Enforcing planning control (paragraphs 5 and 6)

Local opposition to the development

23. I acknowledge the concerns raised by the appellant that some residents have been particularly vociferous in their objections. In this regard I am mindful that CABE⁵ advises wariness of paying the most attention to those who are most vocal, arguing they are not always representative of the majority. Although I have carefully considered the residents' concerns, I have treated this development on its planning merits having regard to the development plan all material considerations.
24. I have noted that some objectors have speculated that the appeal property may be put to a use other than that as a single dwellinghouse, one suggestion being use as a 'massage parlour'. There is absolutely no evidential basis for these assertions and I have determined the appeal on the understanding, confirmed by the appellant, that the building would remain a single dwellinghouse.

Planning policy

25. The development plan policies of most relevance to these appeals are Policies BE13, BE15 and BE19 of the Hillingdon Unitary Development Plan [UDP] (Saved Policies, September 2007). The broad thrust of these policies is that new development should be of a high standard and harmonise with the scale, form, architectural composition and proportions of the original building and the existing street scene.
26. The Council also refers to sections 3 and 4 of its Supplementary Planning Document *HDAS: Residential Extensions*, which offer advice on the approach to be taken to rear and side extensions.
27. The objectives of these policies and this supplementary guidance reflect the Government advice in PPS1⁶ (paragraph 3.4), which states that design which is inappropriate in its context, or which fails to take the opportunities available for improving the character and quality of an area and the way it functions, should not be accepted.

Main issue

28. The main issue is the effect of the development on the character and appearance of the original bungalow and the streetscene.

Reasons

29. The character and appearance of this estate is derived mainly from the fairly regular arrangement of hipped roofed, modestly sized bungalows. Although several have been altered or enlarged over time, most have retained their distinctive architectural style and proportions.
30. The bungalow at No. 121 Herlwyn Avenue is an exception, in the sense that it has undergone several unsympathetic additions, alterations and enlargements, including a prominent dormer extension. Collectively, the changes to its shape and size have resulted in the erosion of the character and appearance, not only of the bungalow itself but also of the surrounding area.
31. The massing and proportions of the unauthorised extensions, with their extensive areas of flat roof, are out of scale with the original building and thus compound the harm. Being prominently located on a corner plot, they appear discordant, overly dominant and intrusive in the streetscene. Consequently, the development conflicts with the

⁵ CABE - The Commission for Architecture and the Built Environment, the government's advisor on architecture, urban design and public space. *Actions for housing growth - Creating a legacy of great places* (2007)

⁶ Planning Policy Statement 1: *Delivering sustainable development*

objectives of the UDP, the Council's supplementary guidance and national planning guidance.

32. For these reasons, the appeal on ground (a) fails.

Appeals 2 and 3 - Ground (f)

33. An appeal on ground (f) is that the steps required by the notice are excessive and that lesser steps would overcome the objections.

34. The appellant argues that it would be possible to reduce the size of the extension through negotiations with the Council. However, no alternative scheme is proposed.

35. I share the Council's view that the extensions are wholly unacceptable in planning terms and that the harm caused to the character and appearance of the bungalow and its surroundings could only be overcome by their complete removal. Accordingly, the appeals on ground (f) fail.

Overall Conclusions

36. I have taken account of the matters raised in the written representations, including those made by Nick Hurd MP, individual members of the Council, and local residents.

37. For the reasons given above I conclude that the appeals should not succeed. I shall refuse to grant an LDC in respect of Appeal 1, and I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application in respect of Appeals 2 and 3.

George Mapson

INSPECTOR