

Appeal Decision

Site visit made on 23 August 2016

by Chris Preston BA (Hons) BPI MRTPI

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

Decision date: 10 October 2016

Appeal Ref: APP/P4605/C/16/3151106

32 Tottenham Crescent, Birmingham B44 0TA

- 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 Ms Hana Begum against an enforcement notice issued by Birmingham City Council.
 - The Council's reference is 2016/0123/ENF.
 - The notice was issued on 25 April 2016.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a roof enlargement in the approximate position marked in blue on the attached plan and a single storey rear extension in the approximate position marked in on the attached plan.
 - The requirements of the notice are: Demolish the roof enlargement and the single storey rear extension and remove the demolished materials from the property and restore it to its original condition.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Correction to the Enforcement Notice

1. It is apparent that there is a typographical error in section 3 of the enforcement notice, the word "green" having been omitted with regard to the location of the single storey rear extension. The latter part of the sentence should read "single storey extension in the approximate position marked in *green* on the attached plan". I shall correct the notice accordingly in the interests of clarity.

Decision

2. The enforcement notice is corrected by the insertion of the word 'green' following the words 'in the approximate position marked in' at section 3 and varied by the deletion of the words '3 months' as the time period for compliance at section 6 and the substitution with the words '6 months'. The appeal is allowed insofar as it relates to the single storey rear extension in the approximate position shown in green on the plan attached to the enforcement notice 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 single storey rear extension at 32 Tottenham Crescent, Birmingham B44 0TA.
 3. The appeal is dismissed and the enforcement notice is upheld, as corrected, insofar as it relates to the roof enlargement in the approximate position marked in blue on the plan attached to the enforcement notice, and planning
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permission is refused in respect of the roof enlargement at 32 Tottenham Crescent, Birmingham B44 0TA on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

The Appeal on Ground (a)

4. The main issues in relation to the appeal on ground (a) are the effect of the roof enlargements on the character and appearance of the dwelling and the surrounding area and the effect of the single storey rear extension on the character and appearance of the area and the living conditions of neighbouring residents, particularly those at Nos. 30 and 34 Tottenham Crescent.

The Roof Enlargement

5. The appeal relates to a semi-detached dwelling at 32 Tottenham Crescent, the end property in a row of four, which forms part of an early twentieth century local authority housing estate. The original design of the estate is still apparent within the immediately surrounding area and there is an interesting mix of house types, with semi-detached dwellings interspersed with blocks of four. There is subtle variety in the design of individual blocks and the roof forms are particularly noticeable due to the way the estate curves upwards around the crescent to reflect the local topography. All of the dwellings have hipped roofs and I noted that there have been relatively few alterations to the roof form of dwellings within the immediately surrounding area. As such, Tottenham Crescent appears as a well-preserved and attractive estate and, in my view, the hipped roofs of the dwellings add significantly to the established character.
6. In contrast to that original roof form, the dormer window that has been erected at the appeal site has a bulky and unsympathetic appearance. It wraps around three sides of the roof, extending to the front, side and rear. The top of the flat roof appears to extend above the ridgeline of the original dwelling and the overall scale of the dormer is substantial. As a result of the design and scale, very little of the original hipped roof form remains visible and the box-like proportions pay no regard to the sweeping roof form of the original dwelling or the prevailing pattern of the surrounding estate. The result, in my view, is an extremely unsympathetic addition that has caused significant harm to the character and appearance of the dwelling and the surrounding area.
7. The impact of the dormer is relatively localised, being visible from the street and neighbouring properties in the immediate vicinity. However, most domestic extensions will only be visible from a relatively confined area and I am not satisfied that forms justification for unsympathetic and harmful design. Whilst limited in geographical extent the harm remains significant.
8. That harm derives from the scale, design and box-like proportions of the structure and could not be mitigated through changes to external materials or the painting of the white barge boards. Consequently, the roof alteration represents poor design that has caused harm to the character and appearance of the dwelling and the surrounding area. In those respects, the alterations are contrary to the aims of securing good design, as set out at section 7 of the National Planning Policy Framework, and paragraphs 3.8, 3.10 and 3.14C-D of the Birmingham Unitary Development Plan (2005) (the UDP).

9. I have noted that plans had previously been submitted to the Council relating to a proposed roof alteration and that those plans had been withdrawn on the understanding that the works would have constituted 'permitted development' under the terms of the Town and Country Planning (General Permitted Development) Order 1995; the Order that was in force at that time¹. The roof alteration proposed in those plans was substantially different to the alterations that have been carried out. The proposed dormer windows in that case had hipped roof profiles that were consistent with the design of the dwelling, the dormers would not have projected above the ridgeline of the original house, and the overall scale of the alterations was much less substantial than the large roof extension that has been constructed. Consequently, the scale and visual impact of the 'as built' scheme is considerably greater and more harmful than that proposed previously and consideration of those drawings does not alter my conclusions on the merits of the development.
10. The appellant contends that she was not aware that the roof alteration, as constructed, required planning permission and is aggrieved that officers inspecting the work under the building regulations regime did not notify her of the need for planning permission. I appreciate that the difference between the planning and building regulations regimes may not be readily apparent for those with no prior knowledge of the building industry. However, the two regimes operate independently. It is clear that the development is substantially different to the drawings that were submitted to the Council and accepted as 'permitted development'. The onus for checking whether planning permission is required for development rests with those undertaking the work and, whilst I am mindful of the appellant's submissions in that regard, it does not alter my conclusions on the planning merits of the roof alteration.
11. The appellant has supplied a number of photographs of other roof alterations within the local area. None of those schemes are visible within the immediate context of the site. For the reasons given, the prevailing roof form of dwellings within the immediate context is an important factor in reaching my decision. The fact that other roof alterations may have been permitted in the wider area does not alter my conclusion on the specific local impact of the development in this case. Furthermore, paragraph 9 of the Framework identifies that pursuing sustainable development involves seeking positive improvements in the quality of the built environment including, amongst other things, replacing poor design with better design. Thus, even if some of the examples cited may be of poor design, I am not satisfied that would represent a reason to allow a harmful development in the current instance.
12. A petition in support of the appeal has been submitted by the appellant, signed by a number of residents in the local area. I have taken account of that support but, nonetheless, I am required to determine the application in line with the policies of the development plan, unless material considerations indicate otherwise. In this case, the roof alterations would cause harm to the character of the area and represent poor design, being contrary to relevant policies in the development plan. Whilst a number of people have expressed support I am not satisfied that represents a material consideration of sufficient weight to over-ride general planning considerations and the need to achieve good design.

¹ Plan number HGD13-94.5.1 submitted at Appendix B of the Council's statement

The Rear Extension

13. The rear of the property is fully enclosed and not visible from within the public realm. The design of the extension is simple, with a shallow lean-to roof attached to the rear wall, just below the cill level of first floor windows. It is apparent that the windows have been reduced marginally in size to allow the roof to be accommodated on the rear elevation. However, that alteration is of a minor nature and I am satisfied that the appearance of the extension respects the character of the dwelling due to its simple rectangular form, modest scale, use of the lean-to roof and the fact that the brickwork forms a reasonable match with the original dwelling. The design of the extension is typical of what is commonly encountered to the rear of domestic properties and accords with good design principles.
14. Due to the local topography there is a change in level between the rear of the appeal site and the neighbouring dwellings at Nos. 30 and 34. No. 30 is set at a lower level, with No. 34 being on higher ground. Given that the rear of No. 34 is on higher ground I am satisfied that the impact of the flank wall is not unduly oppressive. In addition, the extension is situated on the northern side of the property and will not result in any excessive overshadowing or loss of direct sunlight as a result.
15. The Council's 'Extending Your Home' Supplementary Planning Guidance (2006) (the SPG) recommends that a single storey extension should not project beyond a 45 degree angle, when drawn from the middle of the nearest ground floor habitable room window. The closest ground floor window at No. 34 is a small window fitted with obscured glazing that appears to serve a utility room or kitchen. Due to its depth, the extension would project beyond the 45 degree angle when measured from that window. However, as a result of the limited size of the window, and the nature of the glass, the effect of the extension when viewed from that window is not unacceptable. The other ground floor window serves the rear kitchen.
16. The Council have not provided precise measurements but it is possible that the extension may marginally project beyond a 45 degree line measured from the centre of that window. However, given the orientation of the extension and the difference in land levels I am satisfied that it does not have an overbearing effect and that it does not have an undue impact in terms of loss of outlook or light.
17. The rear extension is separated from the rear of No. 30 by the respective passageways which serve each of the dwellings. Thus, unlike the relationship with No. 34 where the flank wall is directly on the boundary, there is a degree of separation between the extension and the neighbouring house. Moreover, the closest window within No. 30 is set in from the side of the house, with a doorway being closest to the boundary with No. 32. The Council have not provided any drawings or calculations to demonstrate that the extension breaches the 45 degree code when measured from the closest window at No. 30. However, in any event, the SPG is intended as a guide to development and is not a definitive rule. The fact that an extension may extend beyond the 45 degree line does not, of itself, dictate that planning permission should be refused. In this case, given the degree of separation from the neighbouring dwelling, and the orientation and scale of the development, I am satisfied that the effect on the living conditions of those residing at No. 30 is acceptable and

that the structure does not result in an overbearing impact, or an undue loss of outlook or light.

18. Accordingly, I conclude that the single storey rear extension is acceptable in terms of its design and the effect on the living conditions of neighbouring residents. That aspect of the breach complies with the aims of section 7 of the Framework with regard to design and with the core principle, set out at paragraph 17, that planning should seek to secure a good standard of amenity for all existing and future occupiers of land and buildings. It would also conform to the aims of paragraphs 3.8, 3.10, 3.14C of the UDP. Whilst the extension may not comply with the 45 degree code, as required by paragraphs 8.39-8.43 of the UDP, I am satisfied that the impact on neighbouring amenity is acceptable for the reasons set out such that planning permission should be granted for that part of the development.

Conclusion in relation to Ground (a)

19. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for one part of the matter the subject of the notice, but otherwise I will uphold the notice with corrections and refuse to grant planning permission on the other part. The requirements of the upheld notice will cease to have effect so far as they are inconsistent with the permission that I shall grant by virtue of the terms section 180 of the 1990 Act.

The Appeal on Ground (f)

20. An appeal on ground (f) is made on the basis that the steps required by the notice are excessive and that lesser steps would overcome the objections. For the reasons given above, I have concluded that planning permission should be granted for the single storey rear extension.
21. With regard to the roof alteration, the appellant's submissions in relation to ground (f) are that the fascia boards could be painted in a different colour to enable the dormer to blend into the general appearance of the house. In effect, that suggestion was related to the appeal on ground (a) in as much as it would require the proposal to be modified in its appearance. As set out above, I have concluded that planning permission should not be granted for the roof alterations and that the use of a planning condition to secure painting or alternative materials would not be sufficient to mitigate against the harmful visual impact.
22. In requiring the complete removal of the roof alterations it is clear that the Council is seeking to remedy the breach of planning control and not simply the injury to amenity. In the absence of a grant of planning permission under ground (a), no other alternatives have been put forward under ground (f) that would remedy the breach of planning control. The alterations are substantially different to the scheme which was submitted and considered by the Council to represent 'permitted development'. Given the substantial differences, I am not satisfied that it would be possible to alter the current structure to make it comply with an alternative proposal that would be 'permitted development'. Certainly, no drawings have been presented to demonstrate how that could be achieved and, in the absence of any suggested alternative, it is not clear that such an alternative would be possible.

23. Therefore, no lesser steps have been put forward that would remedy the breach of planning control and, as such, the appeal on ground (f) must fail.

The Appeal on Ground (g)

24. The appellant has requested that the time period for compliance be extended to at least 12 months from the date the notice takes effect, as opposed to three months which is specified in the notice. That suggestion is made on three main grounds; that the appellant will need time to secure money to finance the development; that a shorter period will have an unacceptable effect on family life; and that the three month period is insufficient to allow discussions with the Council as to whether an amended scheme can be agreed.
25. I am mindful of the financial implications that the work would place on the appellant but must balance that against a need to ensure effective enforcement of the planning system. No information has been presented and it is difficult to ascertain how an extended period of 12 months would alter the financial situation of the appellant. There is no indication that her circumstances would be any different in 12 months time.
26. Whilst building work to remove the roof alteration may be intrusive, the work would take place predominantly at roof level or within the roof space. In my experience, it is not uncommon that such work can be undertaken without the need for residents to move out of their home altogether. No information has been presented to suggest that the accommodation at ground and first floor level would be significantly disrupted to a degree that would necessitate moving out of the home. The work may entail sharing of bedrooms and/or other internal space but there is nothing unusual in such arrangements and the information before me does not indicate that the family or children would have to move from their home. Moreover, once a builder was engaged, the work to remove the dormer and restore the roof would not be an overly complex or lengthy operation and the period of disruption would be relatively short.
27. In terms of an alternative scheme, the Council consider that any amended or alternative proposal would require planning permission on the basis that the original roof and eaves have been removed, thus rendering it impossible to comply with the terms of the conditions at section B2(b) of Part 1, Schedule 2 of the GPDO. Thus, it is not clear whether the current structure could be altered in a way that would enable it to fall within the limits of what may be erected as permitted development. Notwithstanding that point, it may be that an amended scheme could be submitted that would be acceptable to the Council and a period of 3 months is a short space of time for any drawings to be submitted to and considered. In my view, it is reasonable to allow a period for consideration of an amended scheme to avoid the need for duplication of work on the roof. In other words, to avoid a need to reinstate the original roof form, as required by the notice, only to alter it again to provide a revised scheme.
28. It would be reasonable, in my view, to extend the period for compliance to a period of six months, to allow for such discussions to take place and, if necessary, any application to be considered. If an alternative scheme was agreed but further time was required to implement that scheme it would be open to the Council, under section 173A(1)(b) of the Town and Country Planning Act 1990 (the Act) to vary the notice to extend the period for compliance, if they deemed such a course of action was appropriate.

29. Therefore, I consider that the appeal on ground (g) should succeed to that extent and I shall vary the terms of the notice to allow a compliance period of six months from the date the notice takes effect.

Chris Preston

INSPECTOR