

Appeal Decision

Site visit made on 18 January 2017

by John Whalley

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

Decision date: 23 January 2017

Appeal ref: APP/Z4310/C/16/3153957

138 Queens Drive, Walton, Liverpool L4 6XD

- The appeal was made by Mr William Pearson under Section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by Liverpool City Council.
- The notice was issued on 1 June 2016.
- The breach of planning control alleged in the notice was: Without planning permission, the erection of a 6.5m long single-storey rear extension.
- The requirements of the notice are to:
 1. Demolish the single storey rear extension, indicated on the plan attached to the notice.
 2. Reconstruct the end wall of the main property in materials to match the main house.
 3. Clear the site of rubble and debris associated with the demolition works detailed in (1) and (2) above.
- The period for compliance with the requirements is six months.
- The appeal was made on grounds (a), (f) and (g).

Summary of Decision: The enforcement notice is varied and upheld.

Appeal development

1. The appeal property is an end of terrace house, No. 138, fronting onto the south side of the A5058, Queens Drive, Liverpool. The enforcement notice was served against a single storey rear extension to the house that has provided a new kitchen, dining area and a utility/shower/w.c room. The extension runs alongside the shared boundary with No. 140 next door to a depth of some 6.5m outwards from the rear wall of the original 2 storey rear outshoot of the house up to the rear boundary of the property.

The appeal on ground (a)

2. The appeal on ground (a) asks that planning permission be granted for the rear extension at No. 138.
3. The Council said that the single story rear extension, by reason of its height and projection along the shared boundary with No. 140 Queens Drive, had resulted in an unacceptable level of the overbearing and overshadowing to the rear yard of No. 140. That was to the detriment of residential and visual amenities of the occupiers of No. 140, contrary to the Council's Supplementary Planning

Guidance Note SPG1 (House Extensions) and saved policy H8 of the Liverpool Unitary Development Plan. The extension had an overall height of 3.3m and was within 1m of a habitable room window of No. 140. The design of the roof of the extension was such that the steepest pitch was closest to No. 140. The Council said that exacerbated the impact on the neighbouring property.

4. An appeal made against the Council's refusal to grant planning permission under s.73A of the Act to retain the rear extension at No. 138 was dismissed by an Inspector's decision dated 2 April 2015, (ref: APP/Z4310/D/14/2221543). I am not bound by that decision. But unless there have been material changes in the intervening period, a rehearsal of similar considerations that led to that appeal failing is unlikely to lead to a different decision. In this instance, it was not shown that there had been any significant change in circumstances since the earlier appeal was determined. Although this appeal does not follow from a s.73A application for planning permission, it may be noted that a local planning authority may decline, under s.70A of the Act, to consider such an application if made within 2 years of a previous determination.
5. The previous Inspector agreed with the Council's assessment that the large rear extension at No. 138 had an unacceptably detrimental effect on the amenities enjoyed by those next door at No. 140, although the occupiers of that property raised no objection. The Council said the extension was overbearing, causing a reduction in light and sunlight in the afternoon in the rear yard and garden next door. That assessed harm caused was contrary to saved policy H8 that seeks to ensure that house extensions preserve levels of amenity for neighbours. I broadly agree with those conclusions, although a comparison of the present situation with a lawfully built 2m high boundary wall could show similar effects, albeit to a lesser harmful extent for a 2m wall.
6. The appeal on ground (a) fails. Planning permission is not granted on the application deemed to have been made to retain the rear extension as built to the house at No. 138 Queens Drive, Liverpool.

The appeal on ground (f)

7. An appeal on ground (f) says that the requirements of the enforcement notice are too onerous and that something less would be appropriate. Mr Pearson said the steps exceeded what was necessary to remedy the breach of planning control. The extension could be modified. It should not have to be removed.
8. The Town and Country Planning (General Permitted Development) (England) Order 2015, (the Order), allows for the enlargement of a dwelling, at Class A to Schedule 2, Part 1 to Article 3 of the Order, (Class A – the enlargement, improvement or other alteration of a dwellinghouse). That would have permitted, subject to compliance with other dimensional limitations and conditions, a single storey rear extension 3m deep from the original rear wall of the house.
9. As built, the rear extension is 6.5m deep, well in excess of the permitted limit for a terrace house. In the event, the appeal extension also failed to comply with Schedule 2, Part 1 to Article 3 of the Order at Class A.1(k)(iv) – because part of the original roof was altered by the merger of the extension's pitched roof into the original offshoot roof. It also failed the test of Condition A.3(a) in that the materials used in the exterior works were not of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse.

10. The Council's SPG1 says that to ensure that extensions do not have an overbearing effect on neighbouring properties, planning permission will not normally be granted on extensions more than 3m deep from the original rear wall of the dwelling. That seems little more than a reflection of the limitation set out at Class A.1(f)(i) of the Order. However, the Council said: "*It is noted that the extension could be reduced to permitted development but the facing materials that the extension is constructed of do not match that of existing dwelling house and therefore if reduced in length and height would still have a significant adverse impact on the visual amenity of the application site and the surrounding area contrary to save policy H8 ...*". They saw no acceptable remedy in the form of cladding or painting the brickwork. The Council did not, however, say that a 3m deep extension would be overbearing or oppressive. The Inspector in the earlier case also said that a similarly reduced depth extension would have "a much reduced impact". But she did not share the Council's view on the use of external materials. She suggested that the extension's walling could be rendered to match the existing dwelling.
11. In the absence of those at No. 140 building a rear extension to match that at No. 138, a less onerous and fitting requirement to that requiring demolition of the entire rear extension at No. 138 would be to require its reduction in depth to no more than 3m out from the end of the rear wall of the original offshoot to the dwelling. I add that as an alternative requirement to that requiring the removal of the entire rear extension at No. 138. I am less concerned about a need to alter the existing yellow brick finish, especially as the rear walls of Nos. 136 and 138 have been rendered with a rough sandy coloured finish. All the walls to No. 140 have been painted black. Much of the brickwork to No. 138 and to houses nearby has therefore lost its originality. The appeal on ground (f) succeeds to the extent that an alternative to the demolition of the extension is added.

The appeal on ground (g)

12. Mr Pearson asked he be given 18 months to find a contractor and to raise funds for modification works. That would be tantamount to granting an inappropriately lengthy temporary planning permission. However, to assist Mr Pearson in overcoming the difficulties he has found himself in, having seemingly left the design and administrative matters with others because he was regularly out of the country, I increase the period for compliance to 12 months.

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13. The enforcement notice is varied by the addition of the words: "alternatively, reduce the depth of the single storey rear extension such that no part of it extends more than 3m outwards to the rear from the rear wall of the original outshoot of the dwelling." after the word "plan" at the end of para. 5.1. on page 1 of the notice. The enforcement notice is also varied by the deletion of the words "6 months" in the second line of para. 6 on page 2 of the notice and the substitution therefor of the words "12 months". Subject to those variations, the enforcement notice is upheld.

John Whalley

INSPECTOR