The Planning Inspectorate

Appeal Decision

Site visit made on 6 February 2017

by Andrew R Hammond MSc MA CEng MIET MRTPI

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

Decision date: 13 February 2017

Appeal Ref: APP/C4615/C/16/3155289
48 Garland Crescent, Halesowen B62 9NJ

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 Keith Lilley against an enforcement notice issued by Dudley Metropolitan Borough Council.
The enforcement notice, numbered G/012/04/02/N, was issued on 23 June 2016.
The breach of planning control as alleged in the notice is without planning permission and within the last 4 years, the erection of a first floor side extension.
The requirements of the notice are;-

i. Demolish the first floor side extension elevation of the property;
ii. Remove all waste material and debris as a result of fulfilling the requirements of the notice.

The period for compliance with the requirements is six months from the date on which the notice takes effect.
The appeal is proceeding on the grounds set out in section 174(2)(a)&(f) of the Town and Country Planning Act 1990 as amended.

Decision

1. The enforcement notice is corrected: by the deletion of the word "elevation" in requirement i. of the notice. Subject to this correction the appeal is allowed and the enforcement notice is quashed. 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 erection of a first floor side extension at 48 Garland Crescent, Halesowen B62 9NJ subject to the following condition:

   1) The materials to be used in the approved development shall match in appearance, colour and texture those of the existing building unless otherwise agreed in writing with the Local Planning Authority.

The Enforcement Notice

2. Requirement i. of the enforcement notice reads "Demolish the first floor side extension elevation of the property". It is clear that the notice requires the demolition of the first floor extension in its entirety. No injustice would be caused by the deletion of the word "elevation".

Main Issues – Ground (a)

3. The main issues in the ground (a) appeal are the effect of the development on the character and appearance of the streetscene of Garland Crescent and the

effect on the living conditions of the occupiers of 46 Garland Crescent with particular regard to outlook.

Reasons – Ground (a)

4. Properties in Garland Crescent are predominantly semi-detached dwellings, a number of which have been extended to the side, where space permits, or at first floor level over garages. These side extensions have a variety of design with no particular consistency of approach, although most are seen as subservient to the host dwelling.

5. Planning permission Ref. P/03/1061, dated 14 August 2003, was granted for a first floor side extension to 48 Garland Crescent. Subsequently, and after that permission had expired, the Council granted planning permission for a side extension to the neighbouring property, No. 46 in 2008 (Ref. P/08/0590).

6. A further planning permission for a side extension (Ref. P/13/0339) for a side extension to No. 48 was granted by the Council following the construction of the extension to No. 46.

7. However, the extension to the appeal premises, No. 48 was built other than in accordance with the approve plans. The roof to the rear slopes down to single storey height and does not incorporate a substantial rear facing 'dormer' structure.

8. The Council also suggest that the canopy roof over the garage doors is sited higher than approved and hence the set back of the first floor elevation is in the wrong position, and that the fenestration does not appear to match that of the approved drawing. However, the height of the canopy roof is not defined on the approved drawing and it is not possible to assess an accurate height. Nevertheless the roof is taken off the pre-existing parapet wall and hence the eaves level matches the approved drawings. The window in the front elevation has been replaced with one more closely matching that shown and fully in keeping with other fenestration in the dwelling.

9. In combination with the side extension with No. 46, the extension does introduce a significant terracing effect but the extension, as viewed from the street, is substantially similar to that approved in 2013, albeit that that permission was not lawfully implemented and has expired. It is clearly subservient to the host dwelling as is that to No. 46.

10. The rear facing part of the extension is substantially different in form consisting of the rear face of the hipped roof and a lower monopitch roof and a further sloping roof over a previously existing extension across the rear of the house. Whilst this roof is perhaps unusual in form it is less bulky than would have been the approved scheme with its flat roof dormer extending from the hipped roof section. As a result the as built extension has a lesser effect on occupiers of neighbouring properties than would have been the case with the approved scheme.

11. The first floor elevation of the extension to No.46 is set substantially back from that of No. 48 such that the outlook from the window in No. 46 will be restricted. However, the first floor elevation of No. 48 is approximately 750mm set back from the main front wall of the dwelling, as shown on the drawings approved under permission P/13/0339. Had the extension to No.46 been

constructed as shown on the approved drawings for that development the two elevations would have been approximately aligned.

12. Therefore, the effect on the streetscene and the effect on the living conditions resulting from the extension to No. 48 as existing at the time the enforcement notice was issued are directly comparable to what would have resulted had the planning permission P/13/0339 been implemented. Whilst it is noted that that permission was not lawfully implemented and has expired, it was granted by the Council following the construction of the extension to No. 46 and the Council presumably considered that the effect on both the streetscene and the living conditions of the occupiers of No.46, with particular regard to outlook, not to be unacceptable.

13. Therefore, the extension as built and enforced against does not form an incongruous addition to the host dwelling nor is it detrimental to the character and appearance of Garland Crescent. Whilst there is some impact on the residents of No. 46 in terms of outlook, this is no different to what was considered acceptable by the Council when considering application P/13/0339. Therefore it is concluded that the appeal should succeed on ground (a) and planning permission should be granted. There is, therefore, no need to further consider the ground (f) appeal.

Conditions

14. Whilst the development is substantially complete, a condition requiring materials to match those of the host dwelling is necessary to ensure a satisfactory appearance is maintained.

Overall Conclusion

15. For the reasons given above, and taking account of all material considerations raised, I conclude that the appeal should succeed on ground (a) and planning permission will be granted. The appeal on grounds (f) does not therefore need to be considered.

Andrew Hammond

Inspector