

Appeal Decision

Site visit made on 31 January 2017

by George Mapson DipTP DipLD MRTPI

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

Decision date: 10 March 2017

Appeal Ref: APP/W4705/C/16/3155865
8 & 10 Farlea Drive, Bradford, West Yorkshire, BD2 3RJ

- 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 Mohammed Ibrar Hussain against an enforcement notice issued by the City of Bradford Metropolitan District Council.
- The Council's reference is 16/00117/APPENF.
- The notice was issued on 10 May 2016.
- The breach of planning control as alleged in the notice is: *"The unauthorised construction of an in-fill extension with front dormer window between the two properties on the land which does not accord with the terms of the planning permission: 14/01536/HOU and the approved drawing: 7783/2 granted on 14th January 2015 as shown on the attached photograph"*.
- The requirements of the notice are: *"Either i. Demolish and remove the unauthorised front dormer window Or ii. Construct two dormer windows to the front roof plane of the in-fill extension to accord strictly with the planning permission number 14/01536/HOU and approved drawing number 7783/2 granted on 14th January 2015"*.
- The period for compliance with the requirements is two calendar 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. The application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.

Decision

1. The enforcement notice is corrected:
 - 1) by deleting from Section 3 *"The unauthorised construction of an in-fill"* and substituting *"Without planning permission, the construction of an infill"*; and
 - 2) deleting from Section 3 *"14th January 2015"* and substituting *"6 June 2014"*.
2. The enforcement notice is varied:
 - 1) by deleting from Section 5 requirement ii in its entirety and substituting *"ii. Make the two dormer windows on the front roof plane of the infill extension development comply with the terms (including conditions and limitations) of the planning permission Ref. 14/01536/HOU and approved drawing No. 7783/2 granted on 6 June 2014 (Plan A annexed to this decision)"*.
3. Subject to these corrections and this variation the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural matters

Matters relating to the notice

4. Before I address the grounds of appeal, it is necessary consider whether the enforcement notice is in good order. It is important to get the notice right because legal culpability arises from a failure to comply with its requirements.
5. Although the wording of the notice is not defective, I propose to make the following corrections to Section 3 and a variation of requirement ii in Section 5. I am satisfied that none of these matters would cause injustice to any party.

Planning permission 14/01536/HOU

6. Two decision notices with this reference were issued; one on 6 June 2014, the other on 14 January 2015. The officer's report and the authority to issue the planning permission decision notice are dated 6 June 2014, whereas the enforcement notice refers to the permission being granted on 14 January 2015.
7. This anomaly has been raised with the Council. In an email response of 9 February 2017, the Council confirmed that an error had occurred and that the correct date of the planning permission is 6 June 2014. The Council has asked for Sections 3 and 5 of the notice to be corrected by deleting "14th January 2015" and substituting "6 June 2014". I have also substituted "infill" for "in-fill".

Section 3 - "The matters which appear to constitute the breach of planning control"

8. A breach of planning control is defined in section 171A of the 1990 Act as the carrying out of development without the required planning permission; or failing to comply with any condition or limitation subject to which planning permission has been granted.
9. The DCLG website 'Planning Practice Guidance' contains an 'Example enforcement notice – operational development' in which the alleged breach of planning control is expressed as "Without planning permission, the erection of ...". The enforcement notice, the subject of this appeal, expresses the alleged breach of planning control as "The unauthorised construction of an in-fill development ... which does not accord with the terms of the planning permission: 14/01536/HOU...".
10. Where buildings (or extensions to buildings) have been erected which differ materially from approved plans, the alleged breach of planning control is development "without planning permission" and the requirements should be to make the development comply with the terms (including conditions and limitations) of the permission which has been granted, even if they also relate to putting right the offending details.
11. Were the requirement to relate simply to putting right the offending details it could lead to an unconditional planning permission being given under section 173(11) once those offending details had been put right, thus removing the effect of any conditions or limitations on the original permission.

Section 5 - "What you are required to do"

12. It follows that in cases such as this, where alternative courses of action are set out in order to remedy the breach of planning control that has occurred, the 2nd requirement of the notice should be expressed along the lines of "Make the development comply with the terms (including conditions and limitations) of the planning permission Ref. 14/01536/HOU and approved drawing No. 7783/2 granted on 6 June 2014 (Plan A annexed to this decision)".
13. However, the notice requires the recipient to do no more than "Construct two dormer windows to the front roof plane of the in-fill extension to accord strictly with the planning permission number 14/01536/HOU ...". It makes no reference to the ground

floor of the extension and the failures there to comply with the details shown on the approved plan. In other words, there is an element of under-enforcement.

14. The requirements of a notice should match the matters alleged unless under-enforcement is intended. The Council will be aware that where there is under-enforcement, section 173(11) of the Act will come into play to grant a deemed planning permission for the development when and so long as the remaining requirements are fully met.
15. The non-inclusion of the ground floor changes to the approved scheme might have been deliberate, or it might have been an oversight on the Council's part. Whatever the reason, the 2nd requirement cannot be varied to include a reference to the ground floor, because to do so would make the new requirement more onerous than the original one. In the interests of natural justice, an appellant should not be placed in a more onerous position as a result of making an appeal than would have been the case had he or she simply complied with the notice as issued. As such, the 2nd requirement is varied as set out at paragraph 2(1) above.

Background

The appeal site and surroundings

16. Nos. 6 & 8 and Nos. 10 & 12 Farlea Road are two pairs of semi-detached houses that form part of a small housing estate. The appeal development is an extension that occupies the former drives of Nos. 8 and 10 and links the two properties at ground and 1st floor levels.
17. The front and rear walls of these two pairs of semi-detached houses do not share the same building line. Consequently, the footprint of the infill extension is asymmetrically-shaped, in the sense that the front and rear walls are not perpendicular to the side walls of the houses.

Recent planning history

18. The Council's records show that since 2014 six planning applications have been made to erect an infill extension between these two properties. Of these, planning application Ref No. 14/01536/HO is the only one for which planning permission has been granted. The works have not been carried out in accordance with the details shown on the approved drawing No. 7783/2, which formed part of the planning permission and which is annexed to my decision as Plan A.

The approved drawing No. 7783/2

19. Drawing No. 7783/2 shows that the footprint of the extension would be divided almost equally between the two host buildings. At ground floor level a large room, running the full depth of the extension, would be provided for each house. For No. 8, this room would be a 'kitchen/dining area'; for No. 10 it would be a 'family room'. At 1st floor level, the extension would provide each house with two additional bedrooms and, in the case on No. 8, an en-suite bathroom for one of the existing bedrooms.
20. The plan shows that the extension's front elevation would contain two ground floor windows of equal proportions, each window containing three panes. Within the front roof slope there would be a pair of matching but separate flat-roofed dormer windows, each containing matching five-pane windows. Roof tiles would fill the sloping space between the two dormers.

The extension as built

21. The extension as built differs materially from the approved scheme and the front elevation lacks the symmetry of the original design. At ground floor level, the part of

the front elevation associated with No. 10 has a five-pane window, whereas the part associated with No. 8 has a white painted garage door instead of a window.

22. At 1st floor level, within the front roof slope, a single flat-roofed dormer window which fills the full width of the roof as been constructed instead of separate dormers. It contains two non-matching windows. The part associated with No. 10 has two separate two-pane windows, whereas the part associated with No. 8 has a single five-pane window.
23. Above the windows and below the eaves of the dormer, the structure is clad in white uPVC weatherboarding. This material has also been used for the sides of the dormer. There is a vertical stone (or artificial stone) insert between the two sets of windows.

The appeal on ground (a) and the deemed planning application

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

The general approach to enforcement

25. Although wilful breaches of planning law are not condoned, it is not an offence to carry out development without first obtaining the required planning permission for it¹. The fact that the developer has carried out works that do not comply with a planning permission is not held against him or her. Equally, the fact that the development already exists is not a factor that weighs in favour of its retention.

Planning policy

26. No special policies, controls or designations have been cited as applying to the appeal site or the surrounding area. The development plan policies to which my attention is drawn are general policies; 'saved' policies UR3 and D1 of the Replacement Unitary Development Plan for the Bradford District [UDP]. Their broad objectives are to ensure a high quality of design in all development proposals.
27. The National Planning Policy Framework [NPPF], paragraph 60, states that planning policies and decisions should not attempt to impose architectural styles or particular tastes and they should not stifle innovation, originality or initiative through unsubstantiated requirements to conform to certain development forms or styles. It is, however, proper to seek to promote or reinforce local distinctiveness. Paragraph 64 states that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.
28. The Council's 'Householder Supplementary Planning Document' [SPD] forms part of the Local Development Framework for Bradford. Its purpose is to provide clear and practical design guidance to supplement the Council's development plan. One of the key aims is to give homeowners and designers a clear basis for developing proposals, with some certainty that the final result is likely to be acceptable to the Council. Another aim is to ensure that proposals are well designed and complement or enhance the character of the original property and the wider area.
29. Section 6 of the SPD deals with dormer windows and roof extensions. It states that when designing a dormer window, the starting point is to look at the street and wider area for good examples of existing dormer windows. The size, position on the roof, and detailing should reflect others in the street to retain some kind of uniform appearance and minimise the visual intrusion that dormer windows can often cause.

¹ Any breach of planning control is unlawful, unless and until it becomes lawful in accordance with sections 191(2)-(3) of the 1990 Act. It is not however illegal, even if permission has been applied for and refused, and an appeal has been dismissed. Only when an enforcement notice has taken effect, after all the appeal procedures have been exhausted, and the requirements have not been complied with at the expiry of the period specified, is any criminal offence committed.

30. Some of the key points are that dormer windows should be positioned below the ridge, set back from the front wall and away from the common boundary or outside wall. The materials used for the sides of the dormer should match or be sympathetic to the original roofing material. Wooden or uPVC cladding should be avoided unless these materials are a feature of the original building. When cladding is needed it should be restricted to the sides of the dormer only. On box type dormers, large white fascia boards should be avoided as they will increase the visual prominence of the structure. A matching colour to that of the existing roof should be used. Smaller boards can reduce the visual impact.

Main issue

31. Having regard to objectives of the development plan and local and national planning guidance, the main issue is the effect of the infill extension, particularly the dormer window, on the character and appearance of the existing houses and the streetscene of Farlea Drive.

Reasons and conclusions on the ground (a) appeal

The effect on character and appearance

32. Dealing first with the character and appearance of the existing houses and the streetscene of Farlea Drive, I saw that in this enclave of development repetition in the design, scale, proportions and layout of the buildings has created a sense of unity. With such uniformity, even small changes to the shapes of houses or the spaces between them can disrupt that sense of unity.
33. The Council's SPD explains that in the past the introduction of large and inappropriate box style dormers has damaged the character and appearance of many neighbourhoods. These effects are apparent not only with box dormers but also with other unsympathetic alterations to houses in the vicinity of the appeal site.
34. Turning next to the approved scheme, it seems to me that care was taken in the design of the extension to ensure that it would blend with its surroundings. The front wall is set back from those of Nos. 8 and 10, and the ridgeline is lower than existing buildings, giving the extension a subordinate appearance.
35. However, some crucial aspects of the approved design were the scale and proportions of the two separate dormer windows in relation to the existing houses; the setting in of those dormers from the side walls of the houses; the lack of oversized fascias; and the careful alignment of the outer edges of the dormer window frames with those of the ground floor windows. There was a symmetry and order to the design which complemented the existing houses and the street scene and retained the sense of unity.
36. As regards the extension that has been built, it is immediately evident that the shape and size of the dormer window and other aspects of the front elevation differ markedly from the approved design and that the development fails to follow the advice in the Council's SPD.
37. For example, the dormer window spans the full width of the extension; it is not set away from the outside walls of the houses. The materials used for the sides of the dormer do not match the original roofing material and are not sympathetic to the houses. The SPD makes specific reference to avoiding the use of uPVC cladding and the use of large white fascia boards, which would increase the visual prominence of the structure. This advice has been ignored. As a result, the adverse effect on the existing houses and the street scene is that which the SPD seeks to avoid.
38. I note the appellant's assertion that he has looked at good examples of dormer windows in the street and the wider area and that the extension accords with those examples. In that respect he has complied with the SPD. Furthermore, he claims that

the requirement of the notice to construct two separate dormers instead of one conflicts with '*Figure 41. Acceptable box type dormer*' of the SPD.

39. I am not persuaded by the appellant's assertions, or by the many examples of unsympathetic and poorly designed extensions that he has presented in support of his case. I am unaware of the planning status of those developments, but none of them provides a strong case for permitting an unsightly development at the appeal site which would further erode the character and appearance of the area.
40. For the reasons given, I find that the appeal development harms the character and appearance of the existing houses and the streetscene of Farlea Drive and it therefore unacceptable. It is of a poor design and it fails to take the opportunity to improve the character and quality of the area. As such it conflicts with the objectives of the development plan, the NPPF and the Council's SPD. The objections to the development would not be overcome by any planning conditions, including that suggested by the appellant. Accordingly, the appeal on ground (a) fails.

The appeal on ground (f)

41. An appeal on ground (f) is that the requirements of the notice are excessive and lesser steps would overcome the objections. The appellant has suggested that hung tiles to match the roof of the extension could be used to clad the dormer window in place of the uPVC weatherboarding.
42. I share the Council's view that such measures would be inadequate to remedy the breach of planning control that has occurred. No lesser steps than the complete removal of the dormer window or its replacement by two dormer windows - constructed in accordance with planning permission Ref. 14/01536/HOU - would give full effect to the enforcement notice. Accordingly, the appeal on ground (f) fails.

The appeal on ground (g)

43. The appellant asserts that two months provides insufficient time to carry out the requirements of the notice. An alternative compliance period of four months has been suggested.

Reasons and conclusions on the ground (g) appeal

44. No specific reasons, supported by evidence, have been put forward to indicate that a longer period would be needed to carry out the required works. In the absence of such evidence, I find that two months provides adequate time to implement these works. Accordingly, the appeal on ground (g) fails.

Conclusions

45. I have taken account of my observations at the site and surrounding area, and all the matters raised in the written representations, including the letters of support and objection to the scheme. For the reasons given I conclude that the appeal should be dismissed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

George Mapson

INSPECTOR



Plan A

This is the plan referred to in my decision dated: 10 March 2017

by **George Mapson DipTP DipLD MRTPI**

Land at: 8 & 10 Farlea Drive, Bradford, West Yorkshire, BD2 3RJ

Reference: APP/W4705/C/16/3155865

Scale: NTS



Drawing No. 7783/2 which forms part of planning permission Ref. 14/01536/HOU, granted on 6 June 2014.

George Mapson

INSPECTOR