
Appeal Decision

Site visit made on 25 April 2017

by Elizabeth Jones BSc (Hons) MCTP MRTPI

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

Decision date: 12 May 2017

Appeal Ref: APP/P4605/C/16/3164174

129 Bushmore Road, Hall Green, Birmingham B28 9QY

- 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 Aamer Nawaz against an enforcement notice issued by Birmingham City Council.
- The enforcement notice, numbered 2015/0458/ENF, was issued on 31 October 2016.
- The breach of planning control as alleged in the notice is without planning permission the construction of a dormer enlargement to the side and rear of the roof of the property and the creation of a gable roof in the approximate position marked in green on the attached plan.
- The requirements of the notice are:
Demolish the dormer enlargement and roof alterations in their entirety, remove all associated rubble and materials from the site, and restore the property to its condition prior to the breach taking place,
Or
Carry out remedial works to the roof of the property so that any dormer enlargement and roof alterations strictly accord with what was approved under planning permission 2013/09115/PA and the conditions attached thereto.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld.

The Site and its Planning History

1. The appeal site is a hipped roof semi-detached property located within a residential street of similar styled properties. Whilst a number of the dwellings on Bushmore Road have been the subject of alterations or extensions the majority are similar in general style.
 2. Planning permission was granted Ref: 2013/09115/PA for the "*erection of two storey side and rear, and single storey front and rear extensions*" dated 28 January 2014. Building works subsequently undertaken differ from the plans approved under this planning permission namely - the two storey side extension has a gable roof which is not set back from the front wall of the dwelling or set down from the ridge of the main roof, the rear dormer is larger and the depth of the single storey rear extension is greater.
 3. Planning permission Ref: 2015/07860/PA for a double storey side and rear extension and single storey rear extension and a single storey front extension
-

and a side and rear dormer was refused on 20 January 2016. A subsequent appeal against this refusal was dismissed in June 2016¹. I have had regard to the previous Inspector's decision in my determination of this appeal.

The appeal on ground (c)

4. The appeal on this ground is that the matters alleged in the notice do not constitute a breach of planning control. The onus of proof on matters of fact is on the appellant.
5. The Council have drawn my attention to Schedule 2, Part 1, Class B.1 (d) of the Town and Country Planning (General Permitted Development) (England)(Order) 2015 (2015 Order). The Council's submissions² indicate that the construction of the development began prior to 27 April 2015. The 2015 Order came into force on 15 April 2015. Section 56 of the Act states that for the purposes of the Act development of land shall be taken to be initiated if the development consists of the carrying out of operations, at the time when those operations began. Although the evidence does not make it clear on what date the works began, having regard to the Council's evidence, I consider it likely that the works began prior to 15 April 2015. My view in this matter is supported by the appellant's submissions relating to the mental stress caused to him and his family arising from the works. Thus, the relevant legislation is the Town and Country Planning (General Permitted Development) Order 1995 (GPDO). However, the provisions of the 2015 Order are similar to those in the 1995 GPDO insofar as they relate to the relevant criteria in Class B concerning the enlargement of a dwellinghouse consisting of an addition or alteration to its roof.
6. The appellant's case is that the development was constructed in two phases – firstly, the large rear dormer extension was constructed under permitted development and then, afterwards the extensions as per planning permission Ref: 2013/09115/PA were constructed.
7. The Council considers that these two phases were in fact constructed as a composite development, comprising both the smaller developments as one operation and that the resultant roof space exceeds 50 cubic metres and thus is not permitted development. The Council's position is based on its own investigations including a number of site visits and a letter³ in which the Council confirmed to the appellant that it considered the works to the roof together with the two storey side extension were implemented in one operation.
8. Having regard to the Council's evidence I consider that the appellant has not demonstrated that the rear dormer extension was constructed independent of the two storey side and rear and single storey front and rear extensions. There is no evidence to support the appellant's claim and so on balance I conclude that the development was built as a whole comprising both of the above elements. Thus, contrary to the appellant's submissions it is only appropriate to consider the development as a whole given that it was constructed as one operation and not to separate out its constituent parts. Thus the development

¹ APP/P4605/D/16/3148351.

² Paragraph 3.2 of the Council's statement.

³ Letter dated 23 July 2015 Appendix D of the Council's statement.

as a whole either benefits from planning permission granted by the GPDO or it does not.

9. Class B of Part 1 of Schedule 2 of the GPDO authorises the enlargement of a dwellinghouse consisting of an addition or alteration to its roof, subject to certain conditions and limitations. Paragraph B.1 (c) (ii) states that development is not permitted by Class B if the cubic content of the resulting roof space would exceed the cubic content of the original roof space by more than 50 cubic metres.
10. It is evident that the cubic content of the resultant roof space exceeds the cubic content of the original roof space by more than 50 cubic metres and thus is not permitted by the GPDO. The use of features and elements from other properties in Bushmore Road has no bearing on whether or not planning permission is required under an appeal on ground (c).
11. No planning permission has been granted for the development as built either expressly or by way of a development order. Thus, there has been a breach of planning control as alleged and the appeal on ground (c) fails.

The appeal on ground (a)

12. The main issue is the effect of the development on the character and appearance of the appeal property and the surrounding area.

Reasons

13. The Council's Supplementary Planning Document *Extending your home* (2007) (SPD) advises that the pitch of the new roof should match those on the existing property and the ridge line should generally be lower than that of the main roof so that it does not dominate the appearance of the house.
14. The two storey side extension has been constructed with a gable roof design and is neither set back from the front elevation of the property nor set down from the ridge of the main roof. As a result of its design and scale the resultant roof structure is not subordinate to the appeal property and has a dominating impact on it.
15. Moreover, the rear dormer extends across almost the entire width of the property. Due to its large size and close proximity to the existing ridge line of the dwelling the rear dormer appears as an incongruous addition to the existing roof form. Whilst I have not been given the full details of the previous appeal⁴, my findings are consistent with those of the previous Inspector who found that the new roof relates awkwardly to the simple roof form of the appeal property and the new dormer a discordant element in the local area.
16. I conclude that the appeal development causes unacceptable harm to the character and appearance of the appeal property and the surrounding area. Thus, there is conflict with Paragraphs 3.8, 3.10 and 3.14 C-D of the Birmingham Unitary Development Plan (2005) (UDP) and the Council's SPD which state that proposals which have an adverse effect on the quality of the built environment will not normally be allowed. The paragraphs in the UDP are broadly consistent with the National Planning Policy Framework relating to high quality design. In their statement the Council refer to Policy PG3 of the

⁴ APP/P4605/D/16/3148351.

Birmingham Development Plan adopted in January 2017. Policy PG3 states that all new development will be expected to demonstrate high design quality, contributing to a strong sense of place. Given my findings above the development is contrary to this policy.

Other matters

17. The appellant has made reference to a number of other developments in Bushmore Road, Lulworth Road and the surrounding area. I looked at a number of these at my site visit and I accept that some have similar features to the appeal development. I have not been provided with any details concerning these extensions. Thus, I am unaware of the full circumstances and do not know if they are directly comparable to the particular set of circumstances at the appeal site. In any event, each case falls to be considered on its own merits and existing developments elsewhere do not justify the development at the appeal site. My findings concur with the previous Inspector who found that other extensions in Bushmore Road are not directly comparable with the appeal property.
18. Local residents have raised concerns regarding the effect of the development on their living conditions with regard to outlook and privacy. At my site visit I observed the development from the rear garden and first floor rear bedroom of 755 Shirley Road. Due to its position and the separation distance between this property and the appeal property I consider that the development does not adversely affect the living conditions of occupiers of No 755 or those of the occupiers of neighbouring properties in Shirley Road in terms of outlook or privacy. In coming to this view I have taken into account the level of privacy which currently exists between neighbouring properties.

Conclusion

19. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal on ground (a) and the application for deemed planning permission fails.

The appeal on ground (f)

20. The ground of appeal is that the steps required by the notice to be taken or the activities required by the notice to cease, exceed what is necessary to achieve the purpose. The purposes of an enforcement notice are set out in section 173(4) of the Act and in this case it is to remedy the breach of planning control. Section 173(4) (a) says this can be achieved by making any development comply with the terms of any planning permission (including conditions and limitations) which has been granted in respect of the land or by restoring the land to its condition before the breach took place.
21. The appellant argues that as the rear dormer is permitted development any remedial works necessary should only relate to the two storey side and rear and single storey front and rear extensions. In dealing with ground (c) above I have found that the rear dormer extension is not permitted by the GPDO.
22. The breach of planning control would be remedied by either of the two options as outlined in the requirement. I therefore conclude that the steps are not excessive to remedy the breach of planning control and the appeal on ground (f) fails.

The appeal on ground (g)

23. The ground of appeal is that the time given to comply with the requirements of the enforcement notice is too short. Given the date of this decision the argument put forward that the period for compliance coincides with the Christmas holidays is no longer relevant.
24. The appellant indicates his intention to carry out the remedial works necessary so that the development accords with planning permission Ref: 2013/09115/PA. Although the appellant considers that a 3 month compliance period is too short he does not indicate what he considers to be a reasonable timescale in which to carry out the required works.
25. In my view, I consider that 3 months would be reasonable to instruct an architect and builder and for the builder to timetable the works. This timescale would also provide the appellant the opportunity to explore alternative proposals with the Council. The appeal on ground (g) fails accordingly.

Formal Decision

26. 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.

Elizabeth Jones

INSPECTOR