



Appeal Decision

Site visit made on 9 June 2017

by Paul Freer BA (Hons) LLM MRTPI

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

Decision date: 03 July 2017

Appeal Ref: APP/E0345/C/17/3170594

Land and building at 107 Cumberland Road, Reading RG1 3JY

- 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 Mohammed Omer Riaz Mir against an enforcement notice issued by Reading Borough Council.
- The enforcement notice was issued on 19 January 2017.
- The breach of planning control as alleged in the notice is, without planning permission, the erection of single storey side and rear extensions to the dwelling house on the Land in the approximate position shown hatched in black on the Plan marked 'B' attached to the notice.
- The requirements of the notice are:

(1) Take down and remove the unauthorised single storey side and rear extensions

OR

Make alterations to the extensions so that they qualify as permitted development under (f)(i) (*in respect of the side extension*) and (j)(iii) (*in respect of the rear extension*) of Class A, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended).

AND

(2) In either case make good any damage to the Land as a result of the works carried out above and remove from the Land all building and other excess materials associated with the said works.

- The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c) and (d) of the Town and Country Planning Act 1990 as amended.
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Summary Decision: The appeal succeeds in part but otherwise the appeal fails and the enforcement notice is upheld as corrected and varied.

Procedural Matters

1. The breach of planning control as alleged in the notice is, without planning permission, the erection of single storey side and rear extensions to the dwelling house on the Land in the approximate position shown hatched in black on the Plan marked 'B' attached to the notice. The notice refers to the erection of single storey side and rear extensions in the plural but the Plan marked 'B' attached to the notice depicts a single hatched area to the side and rear of the property. Consequently, it is not possible to ascertain from the enforcement

notice itself the extent or location of the side and rear extensions alleged to constitute the breach of planning control. It follows that the appellant could not from the notice itself determine which extensions would need to be removed or altered to comply with the requirements of the notice at paragraph 5 (1).

2. I have, however, also been provided with an annotated version of the Plan marked 'B' attached to the notice on which four separate extensions (identified as extensions A,B,C and D) are shown in various colours of hatching. This plan is titled 'Plan AJT/01' and was produced by the appellant in February 2017 to provide a framework against which to structure his grounds of appeal. As such, it does not form any part of the enforcement notice but, unlike the Plan marked 'B' attached to the notice itself, does have the merit of showing the individual extensions to the property. The Council has subsequently confirmed that the notice refers to the single storey side and rear extensions (four in total) shown on Plan AJT/01.
3. I therefore sought the views of the appellant and the Council as to whether any injustice would be caused by correcting the notice to include Plan AJT/01 and making reference to Plan AJT/01 in the allegation at paragraph 3 of the notice. Both the appellant and the Council indicated that no injustice would be caused by correcting the notice in this way. I am also satisfied that no injustice would be caused by correcting the notice to include reference to Plan AJT/01, and I shall correct the notice accordingly. A copy of Plan AJT/01 is attached to this Decision.
4. The requirements of the notice at paragraph 5(1) include the option of making alterations to the extensions so that they qualify as permitted development under Class A, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (GPDO). However, permitted development rights cannot be gained retrospectively and unlawful development cannot be modified so as become permitted development. In this sense, the use of the term 'qualify as permitted development' is technically not correct. Should the appeal not succeed on grounds (c) or (d), altering the extensions would constitute the modification of unlawful development, such that extensions so modified could not qualify as permitted development.
5. This does not, however, mean that the requirement at paragraph 5(1) is invalid. The underlying principle, to alter the extensions to a size that normally would not require express planning permission, remains valid. Nevertheless, it is necessary to re-word the requirement at paragraph 5(1) to avoid any inference that the extensions would become permitted development when completed. I shall correct the notice with appropriate wording to that effect. I am again satisfied that no party would be prejudiced by correcting the notice in this way.
6. Furthermore, I am not convinced that in this case altering the extensions so that they accord with the limitations and conditions set out in Class A, Part 1, Schedule 2, Article 3 of the GPDO would be a realistic proposition. Each of the extensions to which the notice relates are poorly constructed and built from materials that differ significantly in appearance from the external finish of the main dwelling. The latter is itself in a poor state of repair and shows signs of weathering. It is therefore by no means certain as to what materials the main dwelling was originally finished in, in terms of precise colour and texture.

7. Development is permitted by Class A, Part 1, Schedule 2, Article 3 of the GPDO subject to the condition at Class A.3 that the materials in any exterior work must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse. Even if it is taken that the side and rear elevations of the original dwellinghouse in this case is finished in a render of some description, I have difficulty in reconciling how the extensions subject to the notice could be altered such that they would accord with the condition at Class A.3 of the GPDO without the complete removal or substantial rebuilding of the structure, including the replacement of external materials.
8. Nevertheless, the removal of the alternative requirement in paragraph 5(1) to alter the extensions so that they accord with the limitations and conditions set out in Class A, Part 1, Schedule 2, Article 3 of the GPDO would make the requirements of the notice more onerous. This would cause the appellant injustice. I shall therefore leave this alternative option as part of the notice but with the caveat that, in my opinion, this requirement may not be possible to meet in practice.

The appeal on ground (c)

9. The ground of appeal is that, in respect of any breach of planning control that may be constituted by the matter stated in the notice, those matters do not constitute a breach of planning control. This ground of appeal is made only in relation to extension C as shown on Plan AJT/01. This is a compact flat-roofed structure constructed from timber panels and attached to the original building.
10. My difficulty with this ground of appeal is that I have been provided with no evidence to show when extension C was constructed or completed. No appeal has been made on ground (d) in relation to this structure, from which I deduce that the appellant accepts that extension C was constructed less than four years prior to the date the enforcement notice was issued. However, the current version of the General Permitted Development Order came into force in March 2015, mid-way through that four year period. Prior to that date, the version of the General Permitted Development Order in force was the Town and Country (General Permitted Development) Order 1995 (as amended). Consequently, without knowing the date on which extension C was constructed or completed, I am unable to determine against which version of the General Permitted Development Order the extension should be assessed.
11. Moreover, whilst the appellant considers that this extension would on its own constitute permitted development, I have been provided with no detailed analysis against any version of the General Permitted Development Order to substantiate that view. Similarly, the Council has not undertaken a detailed assessment against the limitations and conditions of any version of the General Permitted Development Order, and comments only that the extension cannot be permitted development because it is constructed from materials that do not match the existing dwellinghouse.
12. As indicated above, development is permitted by Class A, Part 1, Schedule 2, Article 3 of the GPDO subject to the condition that the materials in any exterior work must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse. Similarly, the enlargement, improvement or alteration of a dwellinghouse was permitted by the equivalent provision of the Town and Country (General Permitted Development) Order 1995 (as amended) subject to the same condition relating to external finish.

13. Extension C is constructed from white-painted timber panels. These materials are not of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse. For that reason alone, extension C does not accord with the condition at Class A.3 of the GPDO or the equivalent provision in the Town and Country (General Permitted Development) Order 1995 (as amended). Consequently, irrespective of the exact date within the period of four years prior to the date on which the notice was issued that it was completed, extension C is not permitted development.
14. Accordingly, the appeal on ground (c) fails.

The appeal on ground (d)

15. The appeal on this ground is that, at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by those matters. In order to succeed on this ground, the appellant must show that the extension(s) has been substantially complete for a period of four years beginning with the date on which the notice was issued. The test in this regard is the balance of probability and the burden of proof is on the appellant.
16. This ground of appeal is made in relation to extensions B and D as shown on Plan AJT/01. The former is a timber shed-like structure that is attached to extension A. The appellant explains that this extension covered a larger area when he first occupied the building but that it was subsequently reduced in size when construction started on extension A. Extension D is a timber-framed, part plastic clad structure that extends along the full length of the flank elevation of the main house.
17. In relation to this ground of appeal, the appellant indicates that he took up occupation of the appeal property in March 2005 and has remained in continuous occupation until the present day. The appellant has made a sworn affidavit to that effect.
18. The affidavit submitted by the appellant is supported by a total of 13 declarations from other individuals that have knowledge of the appeal site over a period of more than four years. Some of these declarations refer to both extensions B and D, but most are in relation to extension D only. However, unlike the sworn affidavit submitted by the appellant, these declarations are not made under oath and therefore do not attract the same weight as the appellant's own affidavit. Moreover, the declarations made by these other individuals are consistently lacking in detail in terms of precise dates on which the extensions were constructed and the circumstances through which the writer is familiar with the appeal site.
19. The Council accepts that aerial photographs show the extensions in place by August 2013, but questions whether the works were 'materially' complete by 19 January 2013 i.e, four years before the enforcement notice was issued. The reference to 'materially' complete is not technically correct: the correct test is 'substantially complete'. But the Council's response does highlight a problem with the appellant's appeal on this ground: namely, that the extensions are of such poor quality in terms of their construction and the materials used that it is not possible to conclude with any degree of certainty whether the extensions are substantially complete.

20. In this context, there are no drawings to show the extensions in their complete form. The appellant's own affidavit does not explicitly state that the extensions were substantially complete on the date four years prior to the date on which the enforcement notice was issued, although it is reasonable to accept that this is what the appellant meant in making that affidavit. Moreover, the appellant's own description of the circumstances surrounding the alteration of extension B show that this structure evolved organically over time, and the subsequent introduction of extension C shows the same pattern of piecemeal accumulation of structures.
21. I am, however, mindful that the test in this ground of appeal is the balance of probability. Having regard to all the evidence before me, and adopting a holistic approach to the development intended, I conclude that it is more likely than not that extensions B and D are substantially complete or at least, in the absence of evidence to the contrary, must be regarded as being so. In this respect, the Council has not produced evidence of its own to counter that provided by the appellant, or to make the appellant's version of events less than probable. On that basis, I am satisfied that on the balance of probability extensions B and D have been substantially complete for a period of at least four years prior to the date on which the notice was issued and that no enforcement action can now be taken in respect of them.
22. Accordingly, the appeal on ground (d) succeeds to the limited extent on which it is made.

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

23. The ground of appeal is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The Council has stated one substantive reason for issuing the enforcement notice, from which the main issue raised is the effect of the extensions on the character of the host building and the amenities of the occupiers of the neighbouring properties. The appeal on ground (a) is made by the appellant solely in respect of extension A as shown on Plan AJT/01 but the power under Section 177(1) of the 1990 Act is to grant planning permission for the whole or part of the matters that are subject to the enforcement notice. The deemed planning application therefore also relates to those parts of the matters alleged in the notice that have been found to require planning permission but found not to be lawful through the preceding grounds of appeal. I shall therefore consider both extension A and C under this ground of appeal.
24. Extension A is constructed from breeze-blocks with a shallow mono-pitched (essentially flat) roof covered in a felt-like material. These materials are of very poor quality, and the overall appearance of the extension is not enhanced by the poor quality of its construction. As a consequence, the overall appearance of extension A is one of very poor quality, such that it is significantly harmful to the appearance of the host property. For the same reasons, extension A is harmful to the amenities of the occupiers of the neighbouring properties in relation to their outlook.
25. The appellant suggests that, with the imposition of a suitably worded condition to require its completion with materials to match the main dwelling, there is no cogent reason why the planning permission should not be granted for extension A. I am not convinced that this is the case. In the first instance, the main dwelling is in itself in a poor state of repair. Although it is evident that the side

and rear elevations are finished in a render of some description, and I am by no means certain as to what materials the dwelling was originally finished in (in terms of colour and texture). The rear elevation, in particular, is showing signs of weathering and distress. Finding materials to match the building as it currently exists would be problematic and, if a genuine match to the existing finish was found, I am far from convinced that this would result in an acceptable appearance to the extension.

26. Moreover, the extension is of such poor construction that I am not confident that the mere application of an external render would be sufficient to give the extension an acceptable appearance. In particular, finding a roofing material to match the existing dwelling would be problematic, given the shallow pitch of the roof. For these reasons, I consider that in practice the imposition of a condition to finish the extension in matching materials would not make the extension acceptable in planning terms. Furthermore, given the likely difficulty in finding materials that match the existing finish, any such condition would not accord with the tests set out in the Planning Practice Guidance in relation to precision, reasonableness and enforceability.
27. As described above, extension C is a compact flat-roofed structure constructed from white painted timber panels. Notwithstanding the poor state of repair of the main dwelling, it is possible to ascertain that the rear and side elevations of the main dwelling were originally finished in a render of some description. Extension C therefore does not match the main dwelling in terms of external finish. It is also poorly constructed, such that it has somewhat of a ramshackle appearance. Consequently, I consider that extension C is harmful to the appearance of the host property but, because it is not clearly visible from outside of the site, it is not significantly harmful to the amenities of the occupiers of the neighbouring properties in terms of the outlook from their properties.
28. I conclude that extension A and extension C both unacceptably harm the character of the host building and, in relation to extension A only, the amenities of the occupiers of the neighbouring properties. I therefore conclude that these extensions are contrary to Policy CS7 of the Reading Borough Local Development Framework Core Strategy (Core Strategy), as well as Policy DM9 of Reading Borough Local Development Framework Sites and Detailed Policy Document. These policies require, amongst other things, that all development must be of a high design quality and that extensions respect the character of the house in terms of design. The extensions also fail to accord with the Council's Supplementary Planning Document: A Design Guide to House extensions, which indicates that external materials should be in keeping with the appearance of the original dwelling and that materials which are unrelated to the style of the original house should generally be avoided.
29. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise. I have found that extension A and extension C conflict with the development plan. However, I have not been advised of any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.

Conclusion

30. For the reasons given above, I conclude that the appeal should succeed in part only. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the other part.

Formal Decision

31. It is directed that the enforcement notice be corrected by:

- inserting the words 'and as shown on Plan AJT/01 attached to the notice' at paragraph 3 of the notice.
- deleting the words "Make alterations to the extensions so that they qualify as permitted development under (f)(i) (*in respect of the side extension*) and (j)(iii) (*in respect of the rear extension*) of Class A, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)" in paragraph 5(1) of the notice and replacing them with the words "Alter extensions shown on Plan AJT/01 so that they accord with the limitations and conditions set out in Class A, Part 1, Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015".

32. It is directed that the notice be varied by:

- deleting the words "Take down and remove the unauthorised single storey side and rear extensions" in paragraph 5(1) of the notice and substituting the words "Take down and remove the extensions identified as extension A and extension C on Plan AJT/01 attached to this notice", and by
- deleting the word 'Alter extensions shown on Plan AJT/01 so that they accord with the limitations and conditions set out in Class A, Part 1, Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015' at paragraph 5(1) of the notice as corrected and substituting the words 'Alter extension A and C shown on Plan AJT/01 so that they accord with the limitations and conditions set out in Class A, Part 1, Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015'.

33. Subject to those corrections and variations, the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Paul Freer

INSPECTOR



Plan

This is the plan referred to in my decision dated: 03 July 2017

by **Paul Freer BA (Hons) LLM MRTPI**

Land and building at: 107 Cumberland Road, Reading RG1 3JY

Reference: APP/E0345/C/17/3170594

Scale: Not to Scale

