
Appeal Decision

Inquiry Held on 22 August 2017

Site visit made on 22 August 2017

by J A Murray LLB (Hons), Dip.Plan Env, DMS, Solicitor

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

Decision date: 29 August 2017

Appeal Ref: APP/W4705/C/17/3171039

Land at 1A Whitefield Place, Bradford, BD8 9JB incorporating 2 Willow Street

- 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 Aziz Ahmed against an enforcement notice issued by City of Bradford Metropolitan District Council.
 - The enforcement notice, numbered 16/00673/ENFUNA, was issued on 24 January 2017.
 - The breach of planning control as alleged in the notice is without planning permission, the siting of a cold store unit on land within the curtilage of the property.
 - The requirement of the notice is to remove the unauthorised cold store unit from the land.
 - The period for compliance with the requirements is one calendar month.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (d) of the Town and Country Planning Act 1990 as amended.
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Decision

1. 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

2. The appeal form was completed by an agent, who sated the appellant's name as Mr Mohammed Aziz. However, the appellant confirmed that his correct name is Aziz Ahmed.
3. All witnesses gave evidence under affirmation. Mr Answer Mehmood was assisted by Mr Babar Raheem, who acted as an interpreter. Mr Raheem also confirmed under affirmation that he would faithfully interpret to the best of his ability. In any event, the appellant was able to understand what Mr Mehmood said and did not at any stage dispute Mr Raheem's interpretation.
4. I conducted an accompanied site visit on 22 August 2017, during which I was able to view the cold store unit from within the rear yard and rear living room of No 4 Willow Street, as well as from the appeal property.

The appeal on ground (d)

5. To succeed on this ground, the appellant must prove on the balance of probability that the setting up of the cold store unit on the land was substantially completed by 24 January 2013.

6. The appellant submitted no proof of evidence, but provided some documents with his short grounds of appeal. He referred to these in oral evidence. He said that he had been the freehold owner of the appeal property since 2009 and he now runs his catering business from there. However, from 2009 until March 2016 he had let the premises to Anser Mehmood. Mr Mehmood had conducted his business, 'Bradford Catering', from the appeal property during that time.
7. The cold store unit the subject of this appeal is located in the yard immediately to the rear of that part of the appeal property which was formerly a separate house, No 2 Willow Street. The ground floor of No 2 is part of the appellant's commercial premises and a door has been created from the main building into the end of the cold store unit. The first floor of No 2 is a separate flat. The cold store unit abuts the boundary wall separating the appeal site from Mr Rasul's rear yard/garden at No 4 Willow Place.
8. The appellant said that the cold store unit was installed in 2011 and produced the following documentary evidence in support of that claim:
 - (i) A 'letter of warranty' from Everest Refridgeration'[sic]. This relates to the "Installation of coldroom to specification 7320" and indicates that the completion date was 25 November 2011. However, none of the details in that document actually identify the cold store unit the subject of this appeal. There is another cold room inside the main building on the site and, aside from the fact that the appellant says this was completed in 2009, there is nothing to indicate that this letter of warranty does not relate to that internal cold room.
 - (ii) An invoice from AT Construction dated 20 October 2011 for "ground works and construction of concrete slab for cold room." However, in answer to my questions, the appellant confirmed that this related to the provision of a slab for the cold room inside the main building. It is therefore difficult to see why this was submitted as proof of the date when the external cold store unit, the subject of this appeal was installed. The appellant accepted that it proves nothing in relation to the external unit. Furthermore, the date of that invoice suggests the internal cold room was provided after October 2011 and not 2009, as stated by the appellant. This is a significant inconsistency in the appellant's evidence. In any event, even if that invoice was related to the external cold store, proof of when the ground works and concrete slab were provided would not indicate when the cold store unit was substantially completed. That is the key event and the ground works could have been undertaken long before substantial completion.
 - (iii) Letters from Sarfraz Saleem, dated 20 November 2016; Mrs Mary Rajendram, dated 3 October 2016; Jaswant Saggu of Jas Builders Ltd, dated 1 November 2016; and Mr Mohammad Yasir, dated 5 October 2016. Those letters indicate that the "cold room" was installed in November 2011 or, in Mr Saggu's case, that he carried out work in the cold room on 19 December 2011. However, there is nothing in the letters to indicate that the cold room referred to is the external cold store unit, rather than the internal cold room. Of the authors of these letters, only Mohammad Yasir, who is a chef for the appellant, was present at the inquiry. However, the appellant did not call him to give evidence, even though I asked him whether he

wanted to present any further evidence in addition to his own oral testimony.

9. Contrary to the appellant's case, Mr Mehmood said that, with the appellant's consent, he commissioned the installation of the external cold store, and it was completed in October 2013. Mr Mehmood had explained this in a letter to the Council dated 19 July 2016 concerning the appellant's March 2016 planning application Ref 16/05007/FUL for a single storey extension. This is supported by an invoice from NG Refrigeration which states the date of the order as 27 October 2013 and the date of shipment as 31 October 2013. The description of the "coldroom shell box" on that invoice, including the dimensions given, match the unit the subject of this appeal. The appellant suggested that this is not a genuine invoice, but Mr Mehmood confirmed that it is and I have seen nothing to seriously cast doubt on its authenticity.
10. Mr Mehmood's account was confirmed by the next door neighbour, Mr Rasul. Indeed, on 17 July 2016, some 5 months before the enforcement notice was issued, Mr Rasul sent an email¹ to the Council complaining about the structure. He said it "towers above the dividing wall" and had been in place for over 2 years. This is consistent with completion in October 2013, rather than 2011.
11. Mr Rasul and Mr Mehmood explained that the cold store unit had been a source of contention because, although Mr Mehmood had spoken to Mr Rasul before installing the unit, it turned out to be much bigger than Mr Rasul had anticipated. Mr Rasul raised this in conversation with Mr Mehmood over a lengthy period and eventually, Mr Mehmood had agreed to remove the unit. He did not do so before vacating the premises, but said he had been assured by the appellant, as his landlord, that he would deal with it.
12. In connection with the appellant's March 2016 planning application, the Council also received representations from Mr Rasul and from Mr Shazad Bashir. In objecting to the proposal, Mr Rasul made reference to the existing cold room being completed in October 2013. Whilst Mr Bashir neither opposed nor supported the application, he explained that he was chairman of the Fairbank United Football Club, which trained on the playing field opposite the appeal property almost every Saturday. He wrote that the white building to the rear of the appeal property was built in late 2013. The appellant fairly questioned why Mr Bashir, who he said was a friend of Mr Rasul's son, would recall this and, as Mr Bashir was not present for his evidence to be tested, I can only attach limited weight to his letter. Nevertheless, it is consistent with the evidence of Mr Mehmood and Mr Rasul who have very good reason to recall the details.
13. The Council also produced business rating records² showing that the internal cold room was valued for rating purposes with effect from January 2012. However, though it is much larger, the external cold store unit was not valued at that point. Whilst not conclusive, this casts further doubt on the appellant's claim that the unit was installed in 2011.
14. The appellant suggested that Mr Mehmood was not telling the truth because their businesses are in competition. Mr Mehmood said he did not consider them to be in competition but, in any event, this suggestion of bias does not apply to Mr Rasul. Indeed, Mr Rasul said he and the appellant had been friends for

¹ Inquiry document 2.

² Inquiry document 1.

many years, which the appellant confirmed, and he was very disappointed with the appellant for not telling the truth.

15. The appellant's evidence is not corroborated by documentary evidence, other than a letter of warranty and letters from third parties. These do not clearly identify the external cold store unit and none of the third parties gave evidence at the inquiry. That documentation could easily relate to the internal cold room. Furthermore, the appellant's evidence was inconsistent, in so far as he said the 2011 AT Construction invoice related to the internal cold room, which he otherwise claimed had been completed in 2009. By contrast, the evidence of Mr Mehmood and Mr Rasul was clear, straightforward and consistent. It indicates that the cold store unit was completed in October 2013 and is corroborated by: the NG Refrigeration invoice; an email and planning application comment made by Mr Rasul, before the enforcement notice was issued; a representation made by Mr Bashir, albeit that this carries limited weight; and to some degree by the business rating records.

Conclusion on ground (d)

16. For all the reasons given, I conclude that the appellant has not proved on the balance of probability that the setting up of the cold store unit on the land was substantially completed by 24 January 2013.

The appeal on ground (a)/the deemed application for planning permission

Main Issues

- The main issues are the effect of the development on: (a) the living conditions of the occupiers of No 4 Willow Street, in terms of visual impact and loss of outlook and light; and (b) the character and appearance of the area.

Reasons

17. The roughly rectangular yard to the rear of No 4 Willow Street is just over 8m in depth and a little narrower than that. The common boundary with the appeal property is marked by a stone wall some 2m high. The opposite side boundary is marked by a wall and the gable end of a 1 ½ storey building. The cold store unit immediately abuts the common boundary wall and, at about 7.95m long, it runs almost the full length of that wall. At some 2.8m high, it projects significantly above the boundary wall.
18. The Council draws attention to its Householder Supplementary Planning Document (SPD). To avoid an over-dominating impact, loss of outlook and loss of daylight, the SPD advises that single-storey extensions to terraced and semi-detached houses should not normally exceed 3m in depth. The SPD is not strictly applicable, because the development is not an extension to a house. Nevertheless, this development effectively extends a building which is next to a house in the same terrace and is more than 2 ½ times the depth deemed acceptable for a house extension in this context. In any event, this development markedly increases the sense of enclosure experienced in the rear yard of No 4 Willow Street and reduces the outlook from the living room which faces onto the yard.
19. In addition to its height and depth, the white external finish of the unit exacerbates its dominant and overbearing appearance. The appellant himself

- described the unit as “an eyesore” and from my observations, it does appear as an oppressive and alien feature in the back garden/yard environment.
20. Given its location to the east of No 4 Willow Street, the cold store unit is only likely to have a small impact on direct sunlight in the early mornings. However, this, together with some detrimental impact on general daylight exacerbates the overbearing visual impact and loss of outlook.
21. I conclude that the development has an unacceptably detrimental impact on the living conditions of the occupiers of No 4 Willow Street, in terms of visual impact and loss of outlook and light. As a result, it conflicts with Policy DS5 of the Core Strategy for Bradford (CS), adopted 18 July 2017. Among other things, this requires development proposals to make a positive contribution to people’s lives through high quality inclusive design, which does not harm the amenity of existing residents. This is entirely consistent with the National Planning Policy Framework (the Framework).
22. The appellant suggested the cold store unit secures greater privacy for the occupiers of No 4 Willow Street. However, as there is already a 2m high wall in place, this is not a significant benefit in comparison to the harm identified.
23. Turning to the second main issue, the character of the area is defined by commercial as well as residential development and indeed there is large modern health centre to the north. However, the immediate context is traditional stone buildings and walls. The white finish and utilitarian box construction is incongruous in this setting.
24. As indicated, the appellant himself described the cold store unit as an “eyesore”. He also said that what he would really like to do is take it down and replace it with a structure that fits with the surrounding buildings. However, I can only grant planning permission in these proceedings for the matters enforced against or part of them. I cannot therefore grant permission for a replacement structure.
25. As an alternative, the appellant suggested that a condition could be imposed requiring him to paint the structure to match surrounding brickwork. Even if this could be satisfactorily achieved, which is doubtful, this would not overcome the harm to neighbours’ living conditions, by virtue of the size and location of the structure. Indeed, Mr Rasul commented that this could exacerbate the loss of light because at least the existing white finish reflects light.
26. I conclude on this issue that the development causes unacceptable harm to the character and appearance of the area. It therefore conflicts with CS Policies DS1 and DS3 which, in line with the Framework, require good design and encourage the creation of a strong sense of place and a distinctive identity.

Conclusion on ground (a)/the deemed application for planning permission

27. I am not persuaded that any reasonable conditions could overcome the harm identified in my conclusions on the main issues. Ground (a) must therefore fail and planning permission should be refused.

J A Murray

INSPECTOR

APPEARANCES

FOR THE APPELLANT: The appellant represented himself and gave evidence. He called no other witnesses.

FOR THE LOCAL PLANNING AUTHORITY: Matthew Aveyard MA, Planning Officer, gave evidence for and represented the Council. Alison West-Lay, Planning Enforcement Officer, assisted with cross examination, but did not give evidence.

INTERESTED PERSONS:

Ghulam Rasul, occupier of 4 Willow Street

Anser Mehmood, former tenant of the appeal property

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Business Rates valuation referred to at paragraph 5.4 of Mr Aveyard's proof of evidence
- 2 Mr Rasul's email dated 17 July 2017 to Mohammed Yousuf of the Council