
Appeal Decision

Site visit made on 8 August 2017

by C Sherratt DipURP MRTPI

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

Decision date: 30 August 2017

Appeal Ref: APP/Q4625/C/16/3160903

Land and property known as 127 Wyckham Road, Castle Bromwich, Solihull B36 0HU

- 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 Zafar against an enforcement notice issued by Solihull Metropolitan Borough Council.
 - The enforcement notice was issued on 9 September 2016.
 - The breach of planning control as alleged in the notice is without planning permission the erection of a rear dormer with hip to gable construction (yet to be completed) to the effect that the permitted development rights for the Property have been exceeded.
 - The requirements of the notice are to:
 - (1) Dismantle, demolish and take down all the rear dormer construction work as shown edged and hatched red on Plan No 2 attached to the notice.
 - The period for compliance with the requirements is three months for Step (1).
 - The appeal is proceeding on the grounds set out in section 174(2) (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
 - Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Decision

1. The appeal is allowed on ground (g), and it is directed that the enforcement notice be varied by the deletion of 3 months and the substitution of 6 months as the period for compliance. Subject to these variations the enforcement notice is upheld.

Procedural Matters

2. The original notice contained two requirements. However no period for compliance was specified in respect of requirement (2). Accordingly the Council withdrew requirement (2) of the notice in its entirety by formal notice dated 18th January 2017.
3. Much of the appellant's case relates to the impact of the development on the surrounding area and comparisons to other extensions in the area. However these are matters that go to the planning merits of the development and whether planning permission should be granted. Such considerations can only be considered through an appeal on ground (a) – that planning permission should be granted. No appeal has been made on this ground and so I am unable to consider the planning merits of the development.

Reasons

Ground (b)

4. There is no dispute between the parties that the rear dormer with hip to gable construction referred to in the notice exists as a matter of fact and did so at the time that the notice was issued. Accordingly the development has occurred. Ground (b) must therefore fail.

Ground (c)

5. For the appeal to succeed on ground (c), the onus is on the appellant to demonstrate that the rear dormer with hip to gable construction (i.e. the development alleged) is either not development or it is development for which planning permission is not required. Planning permission was secured for a single storey side and rear extension and a double storey side and rear extension retrospectively on appeal (reference APP/Q4625/D/16/3150901) on 22 August 2016. Although the Inspector noted that the rear dormer and hip to gable extension existed at the time of his visit in July 2016 it was not referred to in the proposed description of development on the application form and the appellant confirmed that he had not applied for the rear dormer or hip to gable extension as part of that proposal believing it to be permitted development. It did not therefore form part of the proposal before that Inspector in that appeal.
6. The appellant maintains that the rear dormer was permitted development meeting the conditions and limitations of Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) Order (GPDO) which permits the enlargement of a dwelling house consisting of an addition or alteration to its roof. The appellant argues it was substantially complete before other works commenced thus enabling him to use his GPDO allowance.
7. The question to be answered is whether, from the start of the development for which reliance on the provisions of the GPDO is claimed until the time at which it has been substantially completed, the host dwelling had been enlarged, improved or altered by more than the permitted allowances. The enlargement of the property has clearly been complex with various aspects of work having to be demolished, the involvement of three builders and development not being carried out in accordance with approved plans.
8. In July 2015 the Council investigated complaints about on-going work on site. At this stage the whole roof had been removed and a single storey extension had commenced. By September 2015 the side extension had been demolished, a new roof installed and the rear dormer constructed although incomplete as confirmed by the photos provided by the Council (dated 7 September 2015). The photographs show the walls of the dormer incorporating hip-to-gable were complete and the roof supports were in place, approximately half of which had been cut to coincide with the eaves with the remaining overhanging. A tarpaulin covered the roof area over the wood beams. It could not, in my view be regarded as substantially complete at this stage.
9. By October and November 2015 the Council's photographs are evidence that the side extensions are underway. The appellant provides no substantive evidence to demonstrate that the dormer extension was substantially complete by this stage. In photographs provided by the Council dated December 2015 a tarpaulin appears still to be in place over the roof to the rear dormer. Even in January 2016 when the side and rear extensions side have been completed to the roof level and are fully tiled, the roof to the rear dormer appears to be incomplete. The appellant provides no evidence to demonstrate otherwise.

10. As stated previously the onus is on the appellant to demonstrate, on the balance of probability, his case that the development benefits from permitted development. However no substantive evidence is provided by the appellant to support his case that the rear dormer was substantially complete before other work commenced. Furthermore, the photographic evidence from the Council demonstrates that the rear dormer was not substantially complete prior to other work commencing on site and being well underway, if not complete. I am not persuaded that on the balance of probability, that the works to the roof were completed as a separate building operation or substantially completed in time to be benefit from permitted development granted under Class B of Part 1 of Schedule 2 of the GPDO. The appeal made under ground (c) fails.
11. The appellant points out that the resultant development is no different to what can be achieved if the entire property was demolished and re-built, or through the use of permitted development rights and implementing the planning permission in any event. However ground (c) is simply a question of what is or is not development requiring planning permission. Comparisons of what could or might occur if the notice is upheld can have no bearing on my consideration of ground (c).

Ground (f)

12. The appellant argues that the requirements of the notice are excessive. He suggests it would be sufficient to overcome the Council's concerns to permanently obscure the dormer windows, finish the exterior with matching tiles and re-attach the eaves. In the reasons for issuing the notice, the Council say that the rear dormer with hip-to-gable extension by virtue of its proportions, size, design and positioning has led to an overbearing and intrusive structure when viewed from the neighbouring garden. In the absence of a ground (a) appeal it is not for me to determine otherwise. However, obscure glazing and use of appropriate materials would not overcome planning concerns derived from the fundamental proportion, size, design and positioning of the rear dormer. No lesser steps short of removing the rear dormer would remedy the breach of planning control that has occurred.

Ground (g)

13. The notice requires the rear dormer to be taken down within 3 months. The appellant does not say what might be a reasonable period of time should the appeal fail. I acknowledge that structurally compliance with the notice may not be simple due to the way in which the steelwork has been tied in to the other parts of the property. In light of the structural complications I consider 3 months is too short and a period of 6 months would be a proportionate response, particularly as it may be necessary for the family to make alternative accommodation arrangements during the works. Ground (g) succeeds to this limited extent. I shall vary the notice accordingly.

Claire Sherratt

INSPECTOR