



Appeal Decision

Site visit made on 2 July 2019

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 August 2019

Appeal Ref: APP/V4630/C/18/3210775
14 Durham Road, Walsall WS2 9TF

- 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 Sajjad Hussain against an enforcement notice issued by Walsall Metropolitan Borough Council.
- The enforcement notice was issued on 7 August 2018.
- The breach of planning control as alleged in the notice is:
 1. The erection of:
 - i. a two storey side and rear extension
 - ii. a single storey rear extensionotherwise than in accordance with the approved plans of planning permission 14/1883/FL.
 2. The erection of:
 - i. a porch and front canopy
 - ii. a garden terracewithout the benefit of planning permission.
- The requirements of the notice are:
 1. Reduce the depth of the single storey rear extension to 1.6 metres to comply with the 45 degree policy.
 2. Reduce the width of the single storey rear extension by 2.3 metres from number 16 Durham Road and to not extend beyond the side wall of the original house.
 3. Demolish that part of the single storey side extension comprising of the bathroom, lobby and part of the kitchen which extends past the rear and side walls of the original dwelling house.
 4. Reduce the side extension in height to a maximum of 4 metres.
 5. Remove the front canopy and pillars.
 6. Remove the raised terrace and reinstate the ground level.
 7. Following demolition works, remove all waste materials to a site licenced to accept them.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(c), (a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld with a correction and variation in the terms set out below in the Formal Decision.

Application for costs

1. An application for costs was made by Mr Sajjad Hussain against Walsall Metropolitan Borough Council. This application is the subject of a separate Decision.

The Notice

2. Section 173(10) of the 1990 Act states that a notice shall specify such additional matters as may be prescribed. The additional matters are prescribed in the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 (the ENAR). Regulation 4(a) of the ENAR states that a notice shall specify the reason why the Local Planning Authority considers it expedient to issue the notice.
3. The notice subject of this appeal sets out at paragraph 4 the reasons the Council considers it expedient to issue the notice. Reasons are given for the two-storey side and rear extension, the single storey rear extension and the garden terrace. However, the only reason given for the porch and canopy is that it has been erected without the benefit of planning permission. A notice, in order to meet the requirements of ENAR4(a) should do more than recite that there has been a breach of planning control since that is an additional prerequisite under section 172(1)(a) of the 1990 Act and does not go to expediency.
4. Thus, the notice completely omits reasons for taking enforcement action against the porch and canopy. In such circumstances, complete omission of reasons would lead to the notice being a nullity. However, in this instance the reasons are only absent for one part of the development. To that end, I consider that the failure to specify reasons for the porch and canopy does not infect the notice as a whole. If I were to correct the notice to remove the porch and canopy, the notice as corrected would meet the requirements of ENAR 4(a).
5. As a result, I shall correct the notice to remove the porch and front canopy from the breach of planning control and vary it to remove the requirement to remove the canopy. I can do so without prejudice to the appellant or the local planning authority.
6. The appellant argues that the requirements of the notice are imprecise, because they do not specify the type of roof to be created in the reduced scheme nor what the finished building should look like in terms of materials. Such arguments essentially question the validity of the notice.
7. However, just because the requirements are not so detailed as to prescribe such specifics, does not mean in my view that they are vague or imprecise. The test is whether the requirements tell the recipient fairly what they have done and how to rectify it. As such, it seems to me that on a fair reading of it, the notice specifies with sufficient clarity what the appellant needs to do to remedy the injury to amenity resulting from the breach of planning control. Thus, I do not accept the appellant's argument regarding the validity of the notice.

Background

8. Planning permission was granted for a two-storey side and rear extension and a single storey rear extension at the appeal property in February 2015¹. The permission included a condition requiring development to be carried in accordance with two plans². The plans show the extension would infill the area

¹ LPA Ref: 14/1883/FUL

² Existing Plans – 2014_161/Rev A and Proposed Plans (2014_161/Rev A)

to the side of the house and the shared boundary with 16 Durham Road. It would be set back from the front wall of the property with the two-storey element ending in line with the original rear wall. At ground floor part of the extension would extend beyond the rear wall of the house, solely beyond the rear of the two-storey addition.

9. Although not referenced on the enforcement notice, a single storey extension was granted planning permission under Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) for development permitted under Class A.1(ea) of Part 1 of Schedule 2 of the GPDO, following the decision of the Council on 9 March 2015 that its prior approval was not required. This extension projected from the original rear wall of the house, covering the full width and extending 6m in depth. It would have been 4m in height and 3m to the eaves. Work had not begun at that stage on the two-storey side and rear extension and single storey extension approved in February 2015.
10. In April 2018, a planning application³ was made seeking permission for a two-storey side extension, single storey rear extension, porch and front canopy and garden terrace. The application sought consent retrospectively with the development having already been completed. Planning permission was refused on 30 May 2018. The notice subject of this appeal was thereafter issued on 7 August 2018. I saw from my site visit that the development subject of the notice largely reflected that contained within the April 2018 application.
11. Subsequently, the appellant sought to address some of the Council's concerns with a further application⁴, submitted in September 2018. The Council declined to determine the application, citing their powers under section 70C of the 1990 Act. Following discussions with the Council regarding a way forward, a further application⁵ for a revised scheme was submitted in March 2019. The Council indicated that, because the scheme did not fully address the issues in its view, it was declining to determine the application.

The appeal on ground (c)

12. In an appeal on ground (c), the onus is on the appellant to demonstrate, on the balance of probabilities, that the matters stated in the notice which give rise to the alleged breach of planning control did not constitute a breach of planning control. There is no dispute that what has occurred amounts to development for the purposes of section 55 of the 1990 Act.
13. The appellant accepts in his initial grounds of appeal and latterly in his statement that the development which has been carried out is not in accordance with the approved plans under the February 2015 permission or March 2015 prior approval. I see no reason to disagree. There is no evidence before me that planning permission has been granted for the development as constructed, either expressly or by virtue of Article 3 of the GPDO. Consequently, what has occurred amounts to development without planning permission and is therefore a breach of planning control.
14. The appeal on ground (c) consequently fails.

³ 18/0430

⁴ LPA Ref: 18/1236

⁵ LPA Ref: 19/0352.1

The appeal on ground (a)

Main Issue

15. The main issue is the effect of the development on the living conditions of the occupiers of 12 and 16 Durham Road with particular regard to light, privacy and outlook.

Reasons

16. The development subject of the notice as corrected comprises a two-storey extension to the side and rear, a single storey extension to the rear and a raised terrace in the rear garden.
17. The single storey extension covers the full width of the property, including that of the two-storey extension to the side. As such, it projects along the shared boundaries with both No 12 and No 16. The two-storey extension is to the side of the property, facing the flank wall of No 12 and extending the full depth of the original house with a set back at first floor level to the front.
18. The rear wall of No 12 is set forward of the rear wall of the appeal property by around 3m. The rear elevation of No 12 contains a window serving a kitchen closest to the appeal boundary. Whilst there is a gap between the two properties, the extension sits hard up against the shared boundary. In addition, two storey extension projects around 4m beyond the rear wall of No 16, with a further projection of around 2.1m from the single storey extension. This results in a combined projection of unrelieved built form of around 6.1m beyond the rear elevation of No 12. In addition, the ground floor level of the extension sits around 1.6m higher than that of No 12. Overall the development would fail to adhere to the 45-degree code set out in Appendix D of the Designing Walsall Supplementary Planning Document (2008, Revised July 2013). As a result, in my view both the rear and side extensions will appear as an obtrusive, dominant and overbearing feature in the outlook of No 12.
19. No 16 has a large window in the rear elevation at ground floor level which appears to serve a habitable room. Whilst the occupants of No 16 will maintain a direct outlook down the garden of the property, the single storey rear extension will feature strongly in that outlook. Measuring around 3.9m in depth, it will appear as a large expanse of largely unrelieved built form in close proximity. As such, it will appear as a dominant and overbearing feature in the outlook of No 16.
20. The raised terraced extends across the whole width of the house. It also extends beyond the rear extension along the shared boundary with No 16. I saw from my site visit that the terraced is raised at a higher level than ground level of the adjacent property. From the terrace, the entirety of the rear garden of No 16 was clearly visible at close quarters, and views were readily obtainable into the ground floor rear windows of the property. Whilst views of the garden and rear windows of No 12 were not readily available due to boundary treatments, the raised terrace will nevertheless result in a harmful sense of overlooking for occupants of No 16.
21. I note the Council's concerns regarding the potential loss of light for the occupiers of both No 12 and No 16 resulting from the development. However, due to the orientation of the side extension in respect of No 12 and the height

and roof design of the single storey extension in respect of No 16, I am satisfied that the development will not have a harmful effect on the living conditions of the neighbouring occupiers in terms of light.

22. Nevertheless, I conclude that the development will have a harmful effect on the living conditions of the occupiers of 12 and 16 Durham Road with particular regard to outlook and privacy. That is the prevailing consideration. Consequently, the development conflicts with Policies CSP4, ENV2 and ENV3 of the Black Country Core Strategy (2011) which place importance on high quality urban design and preserve local character and sense of place. It would also conflict with Saved Policies GP2 and ENV32 of the Walsall Unitary Development Plan (2005) which state loss of privacy on nearby properties will be taken into account in new development as will the visual relationship between development. Finally there would be conflict with the National Planning Policy Framework in terms of seeking to achieve a high standard of amenity for existing and future users.

Alternative Scheme

23. The appellant's submissions on ground (a) are largely predicated on the basis of an alternative scheme which has been put forward. This scheme would comprise:
- the removal of the ground floor toilet and lobby area and making good the kitchen wall;
 - the removal of the corner of the single storey rear extension adjacent to No 16 by 396mm;
 - the reduction in width of the terrace allowing a 1.5m gap between the terrace and the neighbouring properties with landscaping in this area;
 - the relocation of the steps to the terrace to a central position;
 - the installation of 1800mm obscure screens at each end of the terrace; and,
 - the installation of a 1.8m close board fence on the boundary with No 16 and No 12.
24. I can only grant permission for the whole or part of the matters as stated in the notice. The alternative scheme would require the construction of new external walls, the construction of new steps, the installation of screens and a new fence. All of these elements amount to building operations which do not form part of the development as enforced against. Consequently, it is not open to me to consider granting planning permission for the alternative scheme under the ground (a) appeal.

Conclusion on the ground (a) appeal

25. For the reasons given above, I conclude that the appeal on ground (a) should not succeed and planning permission on the deemed application should be refused.

The appeal on ground (f)

26. An appeal on ground (f) is made on the basis that the requirements of the notice exceed what is necessary. Section 173(4) of the 1990 Act sets out the purposes which an enforcement notice may seek to achieve. They are either (a) remedying of the breach of planning control or (b) remedying any injury to amenity which has been caused by the breach.
27. The notice is not explicit about which of the two purposes it seeks to achieve. Nevertheless, the requirements of the notice seek to reduce the size of the extensions to a level which is considered would not result in the harm to neighbouring residents which presently exists. To that end, I am satisfied that the purpose of the notice falls within section 173(4)(b) to remedy any injury to amenity caused by the breach.
28. The appellant argues that the requirements are excessive because the injury to amenity can be rectified by requiring compliance with the alternative scheme he has advanced under the appeal on ground (a). However, as I have set out above it is not open to me to consider the merits of the alternative under the ground (a) appeal because it does not form part of the matters as enforced against. Therefore, I cannot consider whether or not requiring compliance with those plans under the ground (f) would acceptably remedy the injury to amenity. Nor is it open to me to consider an alternative requirement suggested by the parties for the rear extension to be reduced to 3.5m in depth for the same reasons.
29. In the absence of any other alternatives before me, I must conclude that the requirements do not go beyond what is necessary to remedy the injury to amenity.
30. It is incumbent on me to consider any clear and obvious alternatives to the requirements which may result in less disruption. To that end, it would be open to me to vary the requirements of the notice to require compliance with the 2015 permission and prior approval. However, there is no evidence before me whether those permissions remain capable of implementation in accordance with the conditions imposed on them. Nor would requiring compliance with the previous permissions necessarily result in less cost or disruption for the appellant. In those circumstances, such a variation is not open to me here.
31. The appeal on ground (f) therefore fails.

The appeal on ground (g)

32. For an appeal on ground (g) to succeed, it is to be demonstrated that the period specified in the notice for compliance in accordance with section 173(9) of the 1990 Act falls short of what should reasonably be allowed.
33. The appellant argues that a period of 18 months is the minimum required to undertake the requirements because the family will need to vacate the dwelling whilst the work is carried out. It is also said that the necessary works will be structurally difficult and would require a specialist operation supervised by a structural engineer.
34. However, little evidence has been provided to demonstrate that would be the case. It seems to me that the works required by notice would be within the capabilities of a competent person within the building trade. Moreover, a

period of 18 months would be akin to a temporary planning permission and would not suitably remedy the injury to amenity resulting from the breach with the necessary expediency. As such, I am satisfied that the 3 month period for compliance is reasonable.

35. The appeal on ground (g) therefore fails.

Formal Decision

36. It is directed that the enforcement notice is corrected by:

- deleting the words "i) a porch and front canopy" from section 3 of the notice;

37. and varied by:

- deleting the words "5.5 remove the front canopy and pillars" from section 5 of the notice.

38. Subject to the correction and variation, the appeal is dismissed, 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.

J Whitfield

INSPECTOR