



Appeal Decision

Site visit made on 9 September 2019

by **A U Ghafoor BSc (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 19 February 2020

Appeal Ref: **APP/C/18/3205715**

Land at 3 Skegness Walk, Corby NN18 9BD

- 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 Dardan Zeka against an enforcement notice issued by Corby Borough Council.
 - The enforcement notice was issued on 15 May 2018.
 - The breach of planning control as alleged in the notice is described in the following terms: *Without planning permission has developed the land to form two separate dwellings, the side extension granted permission under planning approval reference 17/00158/DPA, edged green on the attached plan (Plan 2) has not been constructed in accordance with the approved plans, the rear extension granted permission under planning approval reference 17/00158/DPA, edged blue on the attached plan (Plan 3) has not been built in accordance with the approved plans.*
 - The requirements of the notice are described to: *Develop the land in accordance with the plans approved by planning permission ref 17/00158/DPA (1) Remove the external door from the southern elevation of the side extension at the ground floor level and brick up the resulting aperture with materials to match the main dwelling (2) Remove the staircase from the side extension (3) Provide a doorway link between the side extension and the main dwelling at ground floor level (4) Provide a doorway link between the side extension and the main dwelling at first floor level (5) Remove the partition from the ground floor of the rear extension to create one room (6) Remove the partition from the first floor of the rear extension to create one room.*
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
-

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.

Application for costs

2. An application for costs was made by Mr Zeka against Corby Borough Council as the local planning authority ['LPA']. This application is the subject of a separate Decision.

Ground (a)

3. By way of background information, no. 3 is a two-storey semi-detached dwelling-house located within a mainly residential area. Planning permission was granted for a two-storey side and rear extension in June 2017, which had been amended following a previous round of planning applications to the LPA. This permission is subject to condition 1) specifying development must be

- begun no later than three years. Condition 2) states that the development is carried out in accordance with stipulated plans with drawing references.
4. The description of the alleged breach indicates the carrying out of development not in accordance with the plans stated in condition 2). In comparison, the development, as built, materially differs from what had been permitted in 2017. There are significant differences in terms of the extensions' design, appearance, layout and size. I find the divergence between the approved scheme and the as built extension, which facilitates the subdivision of no. 3 into two separate dwellings, is of such magnitude that considerable building operations would be required to alter the host building and achieve conformity with the previous approved scheme.
 5. The terms of the deemed planning application are directly derived from the allegation – the matters stated in the notice as constituting the breach of planning control. Planning permission may be granted only for those matters. The deemed application under s177(5) is linked to the breach of planning control. This is mirrored by the power to grant planning permission under s177(1), which is limited to the whole or any part of the matters stated in the enforcement notice as constituting the breach. My powers are therefore circumscribed by the allegation of the breach of planning control in the notice. Despite the wide powers of correction there is still no power to grant planning permission for something completely different from that enforced against.
 6. Planning permission is sought to form two separate dwellings and retain the side and rear extensions not in accordance with planning approval ref: 17/00158/DPA, edged in green and blue on Plan 2 and 3. However, Mr Zeka also contemplates an alternative scheme to the development enforced against by further extending the side extension. This would increase the internal floorspace by 3.8 square meters. The new development would result in a dwelling with 58.8 sqm of floorspace. The submitted details¹ also show separation of the amenity space between the two plots. Thus, it is claimed, achieving local and national planning policy expectations. The argument is that the alternative scheme would remedy injury to amenity caused by the breach.
 7. The reality is that the side and rear extension do not match the scheme permitted in June 2017; the differences are stark and significant. The alternative scheme envisages a dwelling created out of the side extension with a substantially altered floorspace and new garden. However, in contrast, the enforced development is something completely different. I am afraid Mr Zeka cannot have it both ways; on the one hand arguing that he wants planning permission for the matters alleged in the notice yet, on the other, advancing a case seeking planning permission for two dwellings with an extended floorspace and two private gardens. I find that the nature of the alternative scheme is something that has not actually been enforced against given the substantial increase in floorspace, the subdivision of the garden combined with different internal and external layout.
 8. To my mind, the development proposed in the alternative scheme would involve significant building operations to create a separate dwelling-house and result in to something other than what has been alleged. Mr Zeka's expectations are misplaced because, in my assessment, a grant of planning permission for the alternative scheme would result in development which is

¹ Appellant's grounds of appeal and bundle of evidence in particular Appendix 5.

not, and is not part of, the alleged breach. Having reviewed all the submissions and the relevant case-law², in my planning judgement, there is no power to consider a grant of planning permission for the advanced alternative. A fresh application for planning permission would need to be submitted so the LPA can properly examine a different scheme on its individual planning merits.³ While the LPA has declined to consider the advanced alternative scheme, the planning agent suggests something could be worked-up and I will return to this matter later. In the context of this ground (a) appeal, planning permission cannot be granted for more than what is alleged and described in the Header above at bullet-point four. I will proceed on this basis.

Reasons

9. Against that background, the **main issue** is the effect of the development on the living conditions of existing and future occupants having regard to space standards and private amenity space.
10. Policy 8 of the North Northamptonshire Joint Core Strategy 2016 (CS) relates to place shaping. Policy 30 seeks a mix of housing. These local policies are broadly consistent with the National Planning Policy Framework's aims and objectives of good design and achieving sustainable communities. Mr Zeka also refers to saved Policy of the Corby Local Plan 1997, but it relates to proposals for new dwellings on plots formed from parts of gardens of existing dwellings in built-up areas and is irrelevant given the nature of the unauthorised development. Also relevant is the Government's space standard (NDSS), which contain minimum internal space requirements for dwellings.
11. I undertook a comprehensive accompanied site visit and carried out a full internal inspection to see for myself the arrangement of the side and rear extension, and to gain an impression of the standard of accommodation⁴ and appreciate the surrounding area. Mr Zeka maintains that the as-built side extension provides floorspace of 55 sqm. The minimum requirement set by the NDSS is 58 Sqm for a two-storey one-bedroom dwelling for two persons. The submission is that the difference is marginal. Be that as it may, in practice, the design and shape as well as the layout of the dwelling significantly reduce the amount of useable floorspace. For example, the circulation space is very restricted, and the kitchen is tight because of the configuration and available floorspace. In terms of quality the unauthorised development results in a dwelling that is perceived as being overly contrived and cramped, because domestic furniture and storage space further reduce the amount of space available for free circulation and movement. There is inadequate space to store possessions or undertake normal activities such as socialising. Potentially, the lack of adequate useable floor space could have knock-on effects on the health and wellbeing of future occupants.
12. Given the plot's orientation, no. 3 benefits from a large side and rear garden, which could be physically subdivided. This would afford existing and future occupants of the new dwelling private amenity space. Having said that, the

² The line of legal authorities from *Tapecrow Ltd v FSS & Vale of White Horse DC* [2006] EWCA Civ 1744 *Arnold v Secretary of State for Communities and Local Government* [2017] EWCA Civ 231 (*Arnold*), and *Ioannou v SSCLG* [2014] EWCA Civ 1432.

³ The LPA's statement indicates an application for new 1 bed dwelling including garage and parking was submitted on 3 December 2018, but it declined to consider that application. In an e-mail communication from Mr Zeka's agent, a further scheme would be pursued.

⁴ Measurements were taken at the site visit. The results were agreed with the appeal parties.

extensions have significantly reduced the amount of available space. The layout and configuration do not indicate to me that the resultant space is likely to be useable given the subdivision of the garden. In addition, reducing the garden by increasing the side extension as envisaged in the alternative scheme is likely to further reduce the amount of useable amenity space.

13. Even if I am to take the advanced alternative scheme into account, the evidence presented does not clearly and sufficiently show that the layout and configuration would produce an acceptable living environment. This is because the design of the side extension does not suggest to me adequate circulation space would be provided given furniture and storage space reduce available and useable floorspace. It is unclear if the subdivision of the existing amenity space would produce useable private amenity space for future occupants. On the available evidence, I am not persuaded by the argument that an extended side extension to no. 3 would address and overcome the planning difficulties or satisfy the aims and objectives of local and national planning policy.
14. Whilst there is merit in making the efficient and effective use of land and an additional dwelling would add to local housing stock, this should not come at any cost. The development represents substandard accommodation as the design and layout fails to provide a healthy living environment. I am not persuaded by the argument that the identified deficiencies should be put aside in favour of this particular scheme just because the provision and delivery of a mixed housing stock is high on the Government's agenda.
15. Although Mr Zeka does not provide evidence of tenancy, I take at face value his assertion that the dwelling is occupied by a family. At the time of my site visit both dwellings appeared occupied for residential purposes. I am mindful of the convention rights⁵ and the refusal of planning permission could result in the occupiers being evicted. Interference with their home, private and family life is therefore serious, but must be balanced against the wider public interest in pursuing the legitimate aims stated in Article 8. The nature of the development represents a grave planning objection given the harm caused to existing and future occupiers' living conditions. There is a need for planning policies to be applied to such developments and this restriction is an appropriate proportional response to that need.
16. Drawing all of the above points together, the lack of adequate and reasonable living space and outdoor private garden area does not ensure a safe and healthy environment. Contrary to Mr Zeka's submissions, in my planning judgement the development results in unacceptable living standards and these objections cannot be addressed by imposing conditions on a grant of planning permission.

Conclusion on ground (a)

17. Refusal of planning permission is likely to have a disproportionate effect on the occupiers, but there is no evidence to indicate alternative accommodation would not be suitable or available. In addition, there is little benefit to the supply of housing in the area due to the creation of this substandard dwelling. I attach limited weight to these matters. In addition, moderately some weight is given to the argument that an alternative scheme would produce suitable residential accommodation in the form of two dwellings. I find that the

⁵ Human Rights Act 1998 (as amended).

development alleged has a materially harmful effect upon the living conditions of existing and future occupants. Accordingly, the development conflicts with CS Policies 8 and 30 and national planning policy.

Ground (f)

18. In pursuing appealing on this ground, Mr Zeka needs to show that the steps specified in the notice exceed what is required to remedy the breach of planning control or, as the case may be, any injury to amenity caused by the breach – s173(4). But s173(5) gives power to require the alteration or removal of buildings or works, or the carrying out of building or other operations, for the purposes of remedying the breach.
19. The notice requires the recipient to carry out development in accordance with the 2017 permission. Clearly, the remedy sought is to make the development comply with the terms of the 2017 permission, which firmly falls within s173(4)(a). I disagree with the proposition that the purpose seeks to remedy injury to amenity given the steps required and the reasons for issuing the notice.
20. In my assessment, that can only be achieved by full compliance with the notice's terms and I do not find steps (5) and (6) excessive. Mr Zeka's observation that the notice does not expressly require cessation of the unauthorised use of the side extension is correct. But compliance with the plans approved by the 2017 permission will, ultimately, result in the cessation of the unauthorised use as two separate dwellings. I am not persuaded the steps required are vague.
21. Much is made of a scheme that is advanced as an obvious alternative. I have already considered this scheme elsewhere and come to a finding it does not fall within the scope of the ground (a) appeal and would not address my objections. In my judgement the alternative scheme cannot be permitted pursuant to ground (f). Doing so would, in effect, under-enforce and, via the backdoor, result in the creation of two self-contained dwellings through development that is not in accordance with the terms of the 2017 permission and which is not, and is not part of, the alleged breach. For all of the above reasons, I consider the agent's reliance on *Arnold* is misplaced.
22. Even if an alternative view prevails, Mr Zeka does not show how the requirements could be varied to give effect to the alternative scheme thereby overcoming the harm caused by the development. The required building work necessary to bring about an extended dwelling as advanced would be substantial. In my opinion, the terms of the notice would need to be fundamentally changed and rewritten; there is significant risk of introducing imprecision in the steps required by the notice. Given the potential criminal liability that comes with a failure to comply with an enforcement notice, this outcome is unacceptable.
23. While enforcement action is not punitive, on the particular facts and circumstances of this case, I find that nothing short of full compliance would achieve the purpose behind the notice. The steps required by the notice are not excessive. Ground (f) therefore fails.

Ground (g)

24. It is necessary to consider whether the compliance period, six months, is reasonable.
25. The breach of planning control should not be allowed to continue more than absolutely necessary given the identified planning harm. I was unable to grant planning permission for the alternative proposal since the advanced option did not fall within the scope of the deemed application. Although Mr Zeka suffered a recent setback, as the LPA has declined to determine an application for planning permission pursuant to the alternative scheme, he feels a further scheme could be worked-up. I think that is a real possibility given his desire to retain the development as-built. If there is an air of co-operation an extended period of compliance might assist in overcoming the planning difficulties at less cost and disruption subject, of course, to an assessment of the merits by the decision-maker. Much is made of the property being occupied by family who would need to be evicted, but the evidence presented is incomplete as there is no tenancy agreement which should include a break clause.
26. While the case on ground (g) has been forcefully made, I am not persuaded that an extended period of nine months is reasonable. In my planning judgement, six months from the date of this decision is a reasonable period. It affords enough time to arrange and execute the required building operations because of the type, extent and nature of the work. It provides sufficient time to find alternative accommodation for the tenants. This is a proportionate response. This period would strike a fair balance between the competing interests of the wider public and individuals involved in this case. I am content that there would be no violation of the rights of Mr Zeka and occupiers under Article 8 of the Human Rights Act. Therefore, ground (g) fails.

Overall conclusion

27. For the reasons given above and having regard to all other matters, I conclude that the appeal should not succeed. I have upheld the enforcement notice and refused to grant planning permission on the deemed application.

A U Ghafoor

Inspector