
Appeal Decision

Site Inspection on 9 March 2020

by Graham Self MA MSc FRTPI

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

Decision date: 16th March 2020

Appeal Reference: APP/T0355/C/19/3234923

Site at: 45 Summerleaze Road, Maidenhead, Berkshire SL6 8EW

- The appeal is made by Mr M Khan under section 174 of the Town and Country Planning Act 1990 as amended against an enforcement notice issued by the Royal Borough of Windsor and Maidenhead.
- The council's reference is 18/50263/ENF.
- The notice is dated 5 July 2018.
- The breach of planning control alleged in the notice is: "Without planning permission, the erection of a two storey rear extension".
- The requirements of the notice are:
 - i. Demolish the two storey rear extension
OR
 - ii. Carry out remedial works to accord with planning permission
18/00746/FULL
AND
 - iii. Remove all associated materials from the land following compliance with either step (i) or step (ii).
- The period for compliance is four calendar months.
- The appeal is proceeding on grounds (a) and (f) as set out in section 174(2) 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 does not succeed.

Ground (a)

1. Under this ground of appeal, planning permission is sought for the development enforced against.
2. The council served the enforcement notice following the refusal of an application for retrospective planning permission for the two-storey extension. An appeal was made against this refusal. The appeal was dismissed on 1 May 2019.
3. The main issue affecting this case remains much the same as was identified by the inspector who determined the 2019 appeal - that is, the effect of the development on the residential amenity or living conditions of neighbouring occupiers, particularly in respect of daylight and outlook.
4. Because of the "staggered" setting of the two properties at numbers 43 and 45 Summerleaze Road, the house at number 45 stands well to the rear of number

43. Because of its height, rearward extent and closeness to the site boundary, the enlarged house at the appeal site with its unauthorised first floor extension creates an enclosing, "blinking" effect on the outlook from the nearby ground and first floor windows at number 43, and reduces the incidence of natural light to parts of that property which appear to be habitable rooms. The fact that the rear of these dwellings faces north means that their living environment will be particularly sensitive to loss of light and outlook, and the more confined outlook which has been caused by the two-storey extension at number 45 will have made number 43 a less pleasant place to live.

5. The extension to the appeal property authorised by planning permission 18/0046/FULL would have had that effect to a degree, but if the house had been enlarged in accordance with that permission, its first floor would have had a lesser, more acceptable, impact on the neighbouring property.
6. In support of the appeal, the appellant says that the planning authority's objections are "contradicting the original dwelling", since the original dwelling at number 45 was built far back from the adjacent property, and all the houses on the same side of the street were built at different depths. It is true that several of the houses along Summerleaze Road are sited at different set-back distances, causing some adverse effects on outlook and amenity - but this means that care has to be taken when designing extensions to allow for the impact on neighbours; it does not justify making the situation worse.
7. The council's case is supported by policies in the local plan for this area (the Royal Borough of Windsor and Maidenhead Local Plan), and in a more recent new draft plan. The aim of these policies is to safeguard the amenities of adjacent properties when house extensions are built.
8. I conclude that planning permission should not be granted; so the appeal on ground (a) does not succeed.

Ground (f)

9. This ground of appeal is a claim that the requirements of the enforcement notice are excessive and go beyond what is necessary to remedy the breach of planning control. Mr Khan states that he will be looking to submit a revised application and discussing with the council what would be acceptable before submitting amended plans. I do not know what amended plans may have been put to the council or are in the process of being submitted and I have no jurisdiction over the revised application mentioned by Mr Khan, so I cannot comment on that matter.
10. As for the argument that the requirements of the enforcement notice are "unsafe and not required", clearly the steps specified in the notice would have to be carried out by a competent contractor with normal safety standards applied. Such details do not have to be set out in an enforcement notice. The "not required" claim seems to be merely a repeat in ground (f) of the argument under ground (a) that planning permission should be granted. It also seems to me that after the refusal of planning permission and dismissal of the related appeal, it would have been inconsistent of the council not to have pursued the enforcement action.
11. The appeal property is evidently a family home and enforcement proceedings are obviously likely to cause disruption. It is unfortunate that the appellant apparently did not consider this aspect before the unauthorised development was carried out. The fact remains that the development was unauthorised, and the

steps specified as requirements in the enforcement notice (which allows two alternatives) are not excessive. Lesser steps would not put right what has been done wrong. Therefore ground (f) of the appeal fails.

Costs

12. In case they become involved in any future planning appeals, Mr Khan and his apparent adviser Mr Johnson should take note of the government's published advice about awards of costs. One example of situations where appellants are at risk of costs being awarded against them for unreasonable pursuit of a planning appeal is if the appeal follows a recent appeal in respect of the same or very similar development on the same site, the previous appeal was dismissed, and circumstances have not materially changed in the intervening period.
13. With regard to the planning permission arguments under ground (a), there has not been any material change of circumstances since the previous appeal decision, and no good reason has been put forward for me to reach a finding inconsistent with the finding of the previous inspector. On ground (f), no specific substitute steps or alternative requirements have been suggested as a way of remedying the breach of planning control. In these circumstances Mr Khan can count himself fortunate that the council has not applied for an award of costs against him, and that I have decided on balance not to instigate a costs award.

Formal Decision

14. For the above reasons I dismiss the appeal, refuse to grant planning permission on the application deemed to have been made under Section 177(5) of the 1990 Act, and uphold the enforcement notice.

G F Self

Inspector