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## Appeal Decisions

Site visit made on 27 May 2020

**by Felicity Thompson BA(Hons) MCD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 17 June 2020**

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**Appeal A Ref: APP/Z4718/C/19/3242820**

**Appeal B Ref: APP/Z4718/C/19/3243068**

**Appeal C Ref: APP/Z4718/C/19/3243069**

**9 Weymouth Avenue, Oakes, Huddersfield, West Yorkshire HD3 4JY**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mr Lee Mellor, Appeal B by Miss Joanne Mallinson and Appeal C by Mr Jake Kevan Mallinson against an enforcement notice issued by Kirklees Metropolitan Council.
- The enforcement notice was issued on 1 November 2019.
- The breach of planning control as alleged in the notice is without planning permission the erection of a detached building forming annex accommodation.
- The requirements of the notice are to demolish the detached building forming annex accommodation.
- The period for compliance with the requirements is five months.
- Appeal A is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended.
- Appeal B is proceeding on the grounds set out in section 174(2) (f) of the Town and Country Planning Act 1990 as amended.
- Appeal C is proceeding on the grounds set out in section 174(2) (f) of the Town and Country Planning Act 1990 as amended.

**Summary of decision: The appeals are dismissed, and the enforcement notice is upheld with a correction in the terms set out below in the Formal Decision.**

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**Appeal D Ref: APP/Z4718/W/19/3239754**

**9 Weymouth Avenue, Oakes, Huddersfield HD3 4YJ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Mellor against the decision by Kirklees Metropolitan Council.
  - The application Ref 2019/62/91494/W, dated 1 June 2019, was refused by notice dated 27 August 2019.
  - The development proposed is described as 'retrospective planning for unauthorised erection of annexe accommodation.'
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### FORMAL DECISION

1. It is directed that the enforcement notice is corrected by:
  - (1) The deletion from the postcode of 4JY and replacement with 4YJ.
2. Subject to this correction, Appeals A, B and C are 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.

3. Appeal D is dismissed.

### **The Notice**

4. The postcode given in the enforcement notice is not the same as that on the planning application and appeal forms. That given on the enforcement notice appears to be incorrect. However, there is no confusion about to which property the enforcement notice relates and consequently, I shall correct the enforcement notice and consider there is no prejudice caused to either party by me so doing.

### **Appeal A on ground (a) the deemed planning application and Appeal D**

5. Ground (a) is that planning permission should be granted for the matters stated in the notice. At my site visit I observed that there was a storage area at the rear of the building which is not shown on the plans submitted with the planning application. However, since the development applied for and that enforced against are not materially different and as the considerations in Appeal A are the same as for Appeal D I have considered the appeals together.

### *Main Issues*

6. The main issues are the effect of the detached building forming annex accommodation on (i) the character and appearance of the house and area generally and (ii) the living conditions of the occupiers of 91 Burfitts Road with particular regard to outlook.

### *Reasons*

#### *Character and appearance*

7. The annex building is situated in the rear garden of an end of terrace dwelling which is located in a predominantly residential area consisting of relatively modern housing stock of straightforward appearance. The rear garden is bordered by the gardens of neighbouring and surrounding houses, in a fairly compact layout, separated by modest boundary treatments.
8. The building is located at the end of the garden close to the side and rear shared boundaries. It is constructed from timber which is commonly used in the construction of domestic outbuildings and although it occupies a large area of the garden, I noted that there remains reasonable outside amenity space surrounding the house. However, as a result of its substantial height and the stark colour of the timber, the building appears as a dominant structure, unusually large in relation to the house and modest residential area with which it is associated.
9. I noted during my site visit a number of typical garden buildings in the vicinity of the appeal site. However, with the exception of the neighbouring garage, which is similarly long and relatively wide, for which the Council have no record of permission being granted, none appeared to represent a parallel to the appeal proposal in terms of scale and use.
10. The appellant submits that there were no complaints during the construction or on completion and that the building is widely accepted by the local community. However, the National Planning Policy Framework (the Framework) sets out that the creation of high-quality buildings and places is fundamental to what

the planning and development process should achieve. Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area.

11. Whilst there are only limited wider public views of the building, including glimpses from Weymouth Avenue and Burfitts Road, it is clearly visible from a number of neighbouring houses and their gardens. As such whilst reasonably localised in its extent, the effect is to unacceptably harm the character and appearance of the house and the surrounding area. The development therefore does not accord with Policy LP24 of Kirklees Local Plan Kirklees Local Plan Strategy and Policies Adopted 27 February 2019 (the Local Plan) which requires that the form, scale, layout and details of all development respects and enhances the character of the townscape. It also conflicts with the design aims of the Framework.

#### *Living conditions*

12. The rear garden at 91 Burfitts Road adjoins the rear garden at No.9 in a back to back arrangement and is situated at a lower ground level. Consequently, although part of the building is set away from the boundary which limits its impact to some degree, the storage area is located in close proximity to the boundary and results in the building having an adverse overbearing impact on the outlook from the garden at No.91.
13. In terms of daylight/sunlight matters, the building is located broadly north west of the garden at No.91 and consequently there is no harm as a result of loss of daylight or overshadowing.
14. In respect of privacy, the appellant stated that the small window in the rear of the building has been obscurely glazed but I was unable to determine that at my site visit. In any event, as the Council noted if the appeals were allowed, and permission granted, a condition could be imposed requiring the window to be obscure glazed. Consequently, there would be no harm as a result of loss of privacy.
15. Additionally, I find there would be no material harm as a result of light spillage considering the small size of the window in the rear elevation facing No.91 and its distance from the rear elevation of No.91.
16. There is little substantive evidence to suggest that the use of the annex has resulted in an increase in noise and disturbance to an unacceptable level. Furthermore, there is no evidence that the building has led to an increased flood or fire risk and I note that it is connected to the main sewer. I note the Council identified no harm in respect of these matters.
17. For the reasons given above, the development is contrary to Policy LP24 of the Local Plan which requires that development provides a high standard of amenity for future and neighbouring occupiers. It also conflicts with the Framework which seeks a high standard of amenity for existing and future users.

#### **Other Matters**

18. I have had due regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010 and to the evidence regarding Miss

Mallinson's family circumstances and the reasons for requiring the annex. Notwithstanding these important considerations, it does not follow from the PSED that the appeal should succeed, and in this instance Miss Mallinson's circumstances do not outweigh the harm I have found. Dismissing the appeal would mean that Miss Mallinson may have to consider other options for meeting her family's living needs. However, there is no evidence before me to demonstrate the appeal development is the only means by which such needs may be met. Accordingly, dismissing the appeal would be a proportionate response given the identified harm.

19. Class E Schedule 2 Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) grants permission for the provision within the curtilage of a dwellinghouse of any building, enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such subject to certain conditions and limitations. I acknowledge that the appellant attempted to construct the annex in accordance with these permitted development rights.
20. However, in order to comprise permitted development, the proposed building must be required to be incidental to the enjoyment of the dwelling. A bedroom constitutes primary residential accommodation, which is not an incidental use, and would therefore not fall within Class E even if it met all the other conditions and limitations.
21. The appellant stated that the annex does not necessarily need to be permanent. However, no substantive justification has been provided to support the temporary nature of the building, and whilst this could be controlled by a planning condition this is not the proposal before me.
22. The removal of the hedge between No.9 and No.91 is a private matter and has no bearing on the planning merits of the appeal scheme.
23. For the reasons given above, the appeal on ground (a) fails.

### **Appeals A, B & C on Ground (f)**

24. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. The purposes of an enforcement notice are set out in Section 173 of the Act and are to remedy the breach of planning control (s173(4)(a) or to remedy injury to amenity (s173(4)(b)). As the enforcement notice requires the building and all resulting materials to be removed from the land, I consider the purpose is to remedy the breach of planning control.
25. The appellants have suggested that they could lower the height of the building to comply with permitted development requirements, that the storage area at the rear could be removed and the building could be clad.
26. However, in pleading ground (f), the onus is on the appellants to state the precise details of any lesser steps at the time of their appeal. If I were to allow the appeal on ground (f) then I would need to vary the requirements of the notice in such a way that unambiguously sets out what needs to be done, precise requirements are essential.
27. For the reasons given in respect of Appeals A and D, I consider that the building has a harmful effect on the character and appearance of the house and

area generally and the living conditions of the occupants of 91 Burfitts Road, as a result of its height, colour of materials and the proximity of part of the building to the shared boundary. I have no details before me to show how the building could be altered to overcome those objections. Furthermore, it seems to me that such alterations, if realistically possible, would involve reasonably significant building operations and significant re-writing of the requirements. I consider that I cannot define, with the necessary precision, words to form the basis for variations of the notice.

28. Consequently, since I am not able to specify with the necessary precision by way of variations to the notice, alterations that would need to be made to the building in order to overcome the identified harm, I conclude that the appeal on ground (f) must fail.
29. It is open to the appellants to submit a revised planning application to the Council and it seems to me that the compliance period is long enough for an alternative to be submitted and if approved implemented.

### **Conclusion**

30. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*Felicity Thompson*

INSPECTOR