
Appeal Decisions

Site visit made on 27 May 2020

by K Stephens BSc (Hons), MTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 June 2020

Appeal A: APP/C4615/C/20/3247101

Land at 327 Birmingham New Road, Dudley, West Midlands DY1 4SJ

Appeal B: APP/C4615/C/20/3247102

Land at 325 Birmingham New Road, Dudley DY1 4SJ

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Munjit Dulay against enforcement notices issued by Dudley Metropolitan Borough Council.
- The enforcement notices were issued on 23 January 2020.
- The breach of planning control as alleged in both notices is *without planning permission and within the last four years the erection on the original dwellinghouse situate on the Land of a single storey front extension and a single storey rear extension (for the avoidance of doubt the extensions are shown in the photographs attached to the notice).*
- The requirements of both notices are:
 - i. Demolish the single storey front extension and the single storey rear extension to the original dwellinghouse.
 - ii. Make good the frontage and rear of the original dwellinghouse following removal of the single storey front extension and the single storey rear extension, by rendering the replacing brickwork where appropriate to match the original dwellinghouse (as shown on photo 1).
 - iii. Remove all waste materials and debris created as a result of fulfilling the requirements of the notice.
- The period for compliance with the requirements in each notice is 3 months.
- The appeals are proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended (the '1990 Act as amended').

Summary Decision: The appeals are allowed in part and dismissed in part, as set out below in the Formal Decision.

Procedural Matters

1. The two appeal properties are a pair of semi-detached dwellings both owned by the appellant. Separate enforcement notices were served on each property alleging similar breaches of planning control to the front and rear of the properties, although the works to each property appear to have been carried out at different times. As the properties are attached, both within the appellant's ownership, the alleged breaches for each property are the same, and the considerations in both appeals are very similar, I have determined the appeals together, but made separate decisions on each.
2. At the time of my visit, the alleged front and rear extensions to both properties had been substantially completed and No.327 appeared to be occupied.

Appeals A and B on Ground (a) and the Deemed Application

3. The appellant has made appeals on ground (a) – that planning permission ought to be granted for the matters alleged in the notices.

Main Issues

4. The main issues are:
 - The effect of the development on the character and appearance of the area, and
 - The effect of the proposed rear extensions on living conditions of the occupiers of neighbouring properties Nos.323 and 329 New Birmingham Road (Nos. 323 and 329) with particular regard to outlook, light and privacy.

Reasons

Character and appearance

a) Front extensions

5. Both appeal properties form a pair of hipped-roofed semi-detached dwellings in a mid-20th century suburban residential area. They are located within a long stretch of Birmingham New Road, which comprises properties of similar size, type and design, which have a mix of brick and render. Most properties have retained the front door porch design with flat projecting canopies over, as well as the original bay-front windows. These are prevailing characteristics that contribute to the relative uniformity, design and rhythm of the streetscene and to the overall character and appearance of the area. The other side of the road lies outside the Borough, but its dwellings still display a similar uniformity of design that contributes to the overall character and appearance of this stretch of Birmingham New Road as a whole.
6. On my site visit I saw that a front extension has been added to each appeal property. The original bay windows and front porch canopies on both properties have been removed and replaced with a rectangular brick extension that extends across the frontage, with a mono-pitched roof that continues across both front extensions. A brick and pitched-roof porch has also been added around each of the front doors, which projects beyond the front extensions.
7. As a result, the front of each property and consequently the pair of semi-detached properties, has been significantly remodelled and the prevailing design features removed. This disrupts the relative uniformity and design rhythm of the streetscene.
8. Whilst the alterations are symmetrical, a pair of semis has been affected and this extenuates the visual disruption to the streetscene. This is further compounded because the pair of semis is located amongst properties that retain most of their original features and have not been much altered.
9. I also observed that some properties have had front porches of various designs added, or mono-pitched roofs added across the bay window. But none have involved the same degree of development and visual disruption as the appeal proposals.

10. I therefore find the front extensions to each property and the loss of prevailing characteristics, alone and in combination, harm the host properties and the character and appearance of the area. Accordingly, the front extensions are contrary to Policies ENV2 and ENV3 of the Black County Core Strategy (BCCS) and Policy L1 of the Dudley Borough Development Strategy (DBDS). These collectively seek to ensure that development responds positively to its context and character of the surrounding area and is of an appropriate design. The front extensions would also be contrary to the design guidance in the Planning Guidance Note No.17 "House Extension Design Guide" (the 'Design Guide No.17').

b) Rear extensions

11. At the rear, a single storey extension has been erected on each property and a mono-pitch roof extends across both extensions. Hence the extensions combine to extend across the entire width of the pair of semi-detached properties.
12. According to the appellant's submitted Drawing No.2A, each extension projects some 5.5m out from the back of the property, is 2.4m high at its lowest, rising to approximately 3m high. The Council has not disputed these dimensions.
13. Each rear extension is deep and exceeds permitted development¹ allowances for single storey rear extensions. I could see some other rear extensions on nearby properties, but none appeared to project out to the same extent.
14. Nonetheless, the extensions are simple in their design and form and are a typical type of rear extension. Because of this, and the generous garden plots within which they sit, the massing and scale of the single storey extensions are not unduly excessive to the host properties in this particular context. Furthermore, neither rear extension is visible from the road so there is no visual impact on the streetscene.
15. Therefore, I find the rear extensions, alone and in combination, do not significantly harm the character and appearance of either host property or the character and appearance of the area. Accordingly the proposals are not contrary to BCCS Policies ENV2 and ENV3 or DS Policy L1. Nor do they contravene the broad guidance in Design Guide No.17.

Living conditions

16. Occupiers of adjacent properties, Nos.323 and 329, are likely to see similar views of the extension closest to them from their properties and gardens, but this does not necessarily mean that outlook or light would be adversely affected.
17. The '45 degree code' is a method that can be used to assess the impact of new development on a neighbour's daylight and outlook. In its Statement, the Council says that the extensions are "likely" to be in breach of the 45 degree code. The code is explained and shown diagrammatically in Design Guide No.17. However, I have not been provided with any evidence or plans that demonstrate the rear extensions would actually breach the 45 degree code.
18. Loss of outlook occurs where development is in close proximity to the boundaries of a property and would have an adverse overbearing effect that

¹ The Town and Country Planning (General Permitted Development Order) (England) 2015

would result in an unduly oppressive living environment for existing and future occupiers.

19. Both extensions are set away from the shared boundaries, as indeed are the adjacent properties. Furthermore, there are tall timber fences along both shared boundaries. No.329 also has a conifer hedge along part of its boundary closest to the extension. The extensions are also mono-pitched so the profile and visibility of the extensions reduces. I have not been advised of any neighbouring habitable rooms that would be affected, and it did not appear from my visit that there were main habitable rooms immediately adjacent to the boundaries. In the absence of any evidence of a breach of the 45 degree code, I am satisfied that these factors combine to ensure that each extension does not have an unduly dominant or overbearing effect that would create an unsatisfactory outlook to existing occupiers of Nos.323 or 329.
20. With regards the effect on light, the occupiers of No.329, as already mentioned above, have a conifer hedge almost as tall as the extension alongside part of the tall boundary timber fence. In my view, the extension would not worsen light levels to the property or the rear garden. Both the appeal property (No.327) and No.329 have tall trees elsewhere in their gardens which already affect light and sunlight and cast shadows more than the extension.
21. For similar reasons, the separation distance and the timber boundary fence between the extension and No.323 will not significantly worsen light levels or cause overshadowing.
22. Privacy is not stated as a reason for issuing the enforcement notices, but the Council mention it in their Statements of Case in relation to the 45 Degree code. The Design Guide No.17 clearly sets out that the aim of the 45 Degree code is to ensure extensions do not seriously affect a neighbour's "outlook or daylighting". Therefore any breach of the 45 Degree code is irrelevant in terms of privacy.
23. Notwithstanding this, I observed that both rear extensions had not been built exactly as per the appellant's Drawing No.2A, as both extensions each have a side-facing window installed that looks towards the rear gardens of the adjacent properties. However the existing intervening tall timber boundary fencing means there is no direct overlooking to affect the privacy of existing occupiers of Nos.323 and 329. Therefore, what has been built is acceptable and I shall disregard drawing No.2A.
24. As both of the appeal properties, which form a pair of semis, have had the same design and size of rear extension, future occupiers of either appeal property would not be adversely affected by the rear extension on the other appeal property in terms of outlook, light or privacy.
25. To conclude on these matters, I am satisfied that there is no harm to the living conditions of occupiers of Nos.323 and 329. Accordingly the rear extensions are not contrary to DS Policy L1, which seek to ensure that development is appropriate for its locality and not cause unacceptable harm to the amenities of the occupiers of neighbouring dwellings including harm arising from outlook and sunlight. BCCS Policies ENV2 and ENV3 refer to local distinctiveness and design quality and therefore are not directly relevant to the main issue of living conditions.

Other Matters

26. I note the comments from third parties, including concerns about noise and disturbance during construction. Some noise and disturbance is often inevitable with any building works. I realise that the construction works are now largely completed, but I sympathise with residents that this was an issue that became particularly acute during the Covid-19 lockdown restrictions. However, the issues in this appeal relate to the extensions themselves and not to construction work nor are the appellant's intentions relevant to my consideration of these appeals.

Conclusion

27. I have the powers² to issue a split decision should I find parts of the appeal schemes to be acceptable and others unacceptable. Both front extensions are clearly severable, both physically and functionally, from both rear extensions. Therefore in my view a split decision on each appeal is possible and appropriate in this instance.
28. Accordingly, for the reasons given above, and having had regard to all other matters raised, I conclude that both appeals should succeed in part only. I will grant planning permission for one part of the matter the subject of each enforcement notice (the rear extensions), but otherwise I will uphold the notices and refuse to grant planning permission on the other part (the front extensions).
29. Section 180 of the 1990 Act as amended provides that where, after the service of an enforcement notice, planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as it is inconsistent with that permission. In this case, the appeal on ground (a) will be allowed in part for the rear extensions without conditions. If the requirements of the notice were varied to exclude that part of the development for which planning permission is being granted, then this could give rise to two inconsistent permissions, one being granted under s173(11) of the Act as amended, as a variation of cutting down the requirements. To avoid this possibility the requirements of the notice will not be varied in this way and reliance will be placed on s180 to mitigate the effect of the notice in so far as it is inconsistent with the permission.

Formal Decision

Appeal A

30. It is directed that the appeal is allowed insofar as it relates to the rear single storey extension and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the rear single storey extension.
31. The appeal is dismissed and the enforcement notice is upheld and planning permission is refused in respect of the single storey front extension on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

² s79(1)(b) of the 1990 Act

Appeal B

32. It is directed that the appeal is allowed insofar as it relates to the rear single storey extension and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the rear single storey extension.
33. The appeal is dismissed and the enforcement notice is upheld and planning permission is refused in respect of the single storey front extension on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

K. Stephens
INSPECTOR