



Appeal Decision

Site visit made on 9 June 2020

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 June 2020

Appeal Ref: APP/V4305/C/19/3242154

Land at 69 Fairfield Avenue, Roby, Knowsley L36 4JE

- 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 Antonie Botes against an enforcement notice issued by Knowsley Metropolitan Borough Council.
- The enforcement notice was issued on 25 November 2019.
- The breach of planning control as alleged in the notice is: Without planning permission, the erection of UNAUTHORISED ERECTION OF DETACHED BUILDING, in the approximate position marked with a cross on the attached plan.
- The requirements of the notice are: Either remove the detached building from the Land or reduce its height to not more than 2.5 metres to comply with permitted development rights.
- The period for compliance with the requirements is 30 March 2020.
- The appeal is proceeding on the grounds set out in section 174(2) (a) 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 as amended.

Summary of Decision: the appeal is allowed, the notice corrected and quashed, and planning permission is granted in the terms set out in the Formal Decision.

Enforcement Notice

1. To avoid repetition and in the interests of clarity I shall correct the breach of planning control to "Without planning permission, the erection of detached building, in the approximate position marked with a cross on the attached plan."
2. The time for compliance is given as 30 March 2020. However, an appeal was made before the notice took effect. Taking account of the compliance period, I shall therefore correct the notice by deleting this date and substituting it with "3 Months". I am satisfied that these corrections would not cause injustice to either the local planning authority or the appellant as they do not alter either the purpose or actual requirements of the notice.

Appeal on ground (a), deemed planning application

Main Issues

3. The main issues in this case are the effect on the:
 - Character and appearance of the area; and
 - Living conditions of neighbouring residents, with particular regard to privacy, outlook and daylight/sunlight.

Reasons

Character and appearance

4. The appeal property forms part of a residential street where the properties all have deep rear gardens. From my own observations on my site visit and the evidence before me, many of the rear gardens within the vicinity of the appeal site have outbuildings of various shapes and sizes within their rear garden areas.
5. The building is single storey, and taking account of its base and suspended floor, I would estimate that overall height does not exceed 3.5m. It has been constructed using concrete blocks and the appellant states his intention is to finish it in cedar wood cladding. The building has a substantial flat overhanging roof and a pair of patio style doors within its front elevation.
6. The building is not visible from the street or to public views. Its overall design and appearance is of a garden building and consequently it does not appear incongruous within the private rear garden of this residential property. Furthermore, cedar wood would not be an uncharacteristic material for the cladding of a garden building. Considering the size of the existing garden, the scale and mass of the building is not disproportionate in this generous residential plot.
7. I conclude that the building does not have a harmful effect on the character and appearance of the area. I find no conflict with the development plan and in particular with the design and amenity aims of saved Policy H8 of the Knowsley Replacement Unitary Development Plan (UDP) and Policies CS2 and CS19 of Knowsley Local Plan Core Strategy, 2016 (CS) which seek to ensure, amongst other things, that local character is respected in terms of form, scale, mass and materials.

Living conditions

8. The building is situated at the bottom of the property's rear garden. In this location there are views from the building towards the rear of the adjoining property, No 67 Fairfield Avenue and its rear porch/conservatory. However, those views are not close views and they are also oblique. In addition, the existing common boundary fence provides some screening. Moreover, there is already some mutual overlooking between the garden areas and rear of the neighbouring properties in this location. No.67's decked seating area is similarly located at the bottom of their garden and adjacent to the outbuilding. Therefore, it too has views over the appeal property. Considering the size of the respective gardens and limited extent of overlooking, the building does not have a harmful effect on the privacy of neighbouring residents.
9. I appreciate that the roof of the building is imposing, and that it is located adjacent to an area of the neighbour's garden where they like to sit out. However, the building is single storey in height and its flank wall only extends along a very small stretch of the neighbour's rear garden. It does not therefore have a significant enclosing or oppressive impact on the garden area. Whilst there may be some resultant shading of the neighbour's decked area during the late afternoon, this is limited, and only affects a very small proportion of the rear garden as a whole. There would be no loss of daylight or

sunlight to the majority of No 67's garden nor to their living accommodation which retains an open aspect.

10. I conclude that the building does not have a harmful effect on the living conditions of neighbouring residents, with particular regard to privacy, outlook and daylight/sunlight. I find no conflict with the development plan, and in particular with saved Policy H8 of the UDP and Policy CS19 of the CS which seek to ensure, amongst other criteria, that proposals do not adversely affect the amenity or privacy of occupiers of adjacent dwellings. I also find no conflict with the Council's Householder Development Supplementary Planning Document which advises that garden structures should not have an unacceptable impact on neighbours in terms of loss of privacy or noise and disturbance.

Conditions

11. The purpose of condition 1 below is to require the appellant to comply with a strict timetable for finishing the external faces of the building which needs to be addressed in order to make the development acceptable. The condition is drafted in this form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matter because the development has already taken place. The condition therefore provides for the loss of the effective benefit of the grant of planning permission where the detailed matters in question are not submitted for approval during the time set by the condition, approved (either by the local planning authority ("LPA") or by the Secretary of State on appeal), and then implemented in accordance with an approved timetable. Should the requirements of the condition not be met in line with the strict timetable, then development would have to be removed.
12. The planning permission granted is for a building within the residential curtilage of the dwellinghouse. The use of the building is therefore already restricted to purposes incidental to the residential use of that dwelling and the suggested condition to restrict the building to that use is not therefore necessary.
13. The Council has suggested a condition to restrict the height of the building to four metres. However, the building the subject of the beach of planning control specified in the notice, and for which I have granted planning permission, has a roof on it and is below four metres in height. A condition to restrict its height is not therefore necessary.

Conclusion

14. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the erection of a detached building, in the approximate position marked with a cross on the attached plan and as described in the notice.

Formal Decision

15. It is directed that the enforcement notice be corrected:

- By deleting the wording of the breach in paragraph 3 and substituting it with: "Without planning permission, the erection of detached building, in the approximate position marked with a cross on the attached plan."
- By deleting the wording "30th March 2020" in paragraph 6 and substituting it with "3 Months"
- Subject to the corrections above, the appeal is allowed, the enforcement notice is quashed 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 development already carried out, namely the erection of a detached building in the approximate position marked with a cross on the attached plan and on Land at 69 Fairfield Avenue, Roby, Knowsley referred to in the notice, subject to the following conditions:
 - 1) The building hereby permitted shall be demolished to ground level and all materials resulting from the demolition shall be removed within 180 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within one month of the date of this decision details of the proposed facing materials for the building shall have been submitted for the written approval of the local planning authority and the details shall include a timetable for its implementation.
 - ii) If within two months of the date of this decision the local planning authority refuse to approve the details or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved details shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved details specified in this condition, those materials shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Elizabeth Pleasant

INSPECTOR