



Appeal Decision

Site visit made on 16 June 2020

by Simon Hand MA

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

Decision date: 26 June 2020

Appeal Ref: APP/C4615/C/19/3244007

Land at 68 St Kenelms Avenue, Hayley Green, Halesowen, West Midlands, B63 1DN

- 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 Aaron Harlow against an enforcement notice issued by Dudley Metropolitan Borough Council.
 - The enforcement notice was issued on 27 November 2019.
 - The breach of planning control as alleged in the notice is on 5 March 2019, planning permission was granted, subject to conditions in respect of a two storey side extension and loft conversion with rear dormer. One of those conditions (condition 2) required that development be built in accordance with approved plans [referenced A.01.4, A.01.5, A.01.6, A.01.8]. It appears to the Council that the condition has not been complied with, for the following reasons: 1) The roof of the two storey side extension has not been set down by 0.2m, but instead had been constructed level with the ridge of the main dwelling. 2) The eaves of the extension have increased in height by approximately 0.7m and the eaves do not line through with the eaves of the original dwelling as was approved. 3) The rear dormer is positioned at a height by 0.2m higher than approved resulting in its height being similar to that of the main ridge. 4) The depth of the rear dormer has been increased by 0.4m.
 - The requirements of the notice are i) Undertake the necessary remedial works to the two storey side extension and rear dormer in order that the development accords full with the plans referenced A.01.4, A.01.5, A.01.6, A.01.8 and approved under application P19/0016, granted by the Authority on 5 March 2019.
OR ii) To fully demolish and remove the two storey side extension and rear dormer constructed to the dwelling, AND
iii) Remove any debris or other waste from the land arising from the demolition works and arising from compliance with step ii.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended.
 - An identical appeal (APP/C4615/C/19/3244008) without the ground (a) has been made by Mrs Ruth Harlow
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Decisions on both appeals

1. The appeals are allowed on ground (f), and it is directed that the enforcement notice be varied: by the addition of a requirement "OR (iia) retain the extension as built on 16 June 2020". Subject to this variation 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.

Background to the Appeals

2. In early 2019 planning permission was granted by the Council for a 2 storey side extension to No68. The original proposal had been rejected but was amended to include a set back of the extension and a lower ridge height in order to ensure the extension was subservient. However, it seems what was then built was similar to the original proposal. An appeal was made to regularise this and was refused. The Council then issued an enforcement notice requiring the extension to either be demolished or constructed in accordance with the plans that received planning permission.
3. Three further proposals have been put before me to consider, each one slightly different from the other, but, as I saw on site, the building has again been altered, so that it seems similar to proposal 'C', but with a small front porch.

The Appeal on Ground (a)

4. The previous Inspector¹ found some regularity in the streetscene, with some repetition of building styles, positioning of upper floor windows directly below the eaves and a horizontal emphasis. I have no reason to disagree with this. There is no dispute that a 2 storey extension is acceptable in this location, it is purely the design that is at issue. The key problems for the Council and the Inspector were that the extension should be subservient to the main dwelling and the expanse of blockwork above the window in the extension looked out of place.
5. There is some dispute about the meaning of the Council's SPG on extensions², which requires extensions to be set back, but does not specifically seem to require the ridge line to be set down (although this is implied in the drawings accompanying the text). Nevertheless, the as-built extension has been set back and down. The ridge height has been lowered and the roof plane is now clearly set in from the main roof of the house. Originally, as the roof slopes of the extension and the main dwelling were the same, but the wall of the extension was set back, in order for the windows to be on the same level, the one in the extension was much lower compared to the eaves than on the main dwelling. This has now been remedied by the set back of the roof slope and an increase in the depth of the eaves. The result is the eaves are clearly set back from the main dwelling, but still sit directly above the window. This compromise seems to resolve many of the problems of the original building. Thanks to the change in ridgeline, roof plane and eaves, the extension is now clearly subservient to the main dwelling.
6. The whole building, including the front porch, now has a high quality finish and the extension no longer seems to dominate the dwelling as identified by the previous Inspector. The rear dormer is hardly visible from the street, and the Council accept that as long as it is not visible above the ridge, which it isn't, it is not a concern. Therefore in my view, the house as built seems to be the best of the many options that have been tried or suggested and is now in accordance with Council policy on extensions.
7. The Council have commented on the as-built version and still find it harmful because the deeper eaves form an overhanging canopy that masks the subservience of the extension. I disagree with that, it was obvious on my site

¹ APP/C4615/D/19/3240684

² Planning Guidance Note 17

visit that the additional structure is simply a subservient extension, the deeper eaves element has no effect on the appearance of subservience.

The Appeal on Ground (f)

8. In my view the extension as built complies with the Council's policies and should be allowed. However, the ground (a) appeal is for the development described in the allegation. In this case that is the development which was the subject of the original application, not the extension as built. Therefore I cannot allow the ground (a) as that would not result in permission for the extension as built.
9. I shall therefore dismiss the appeal on ground (a) but use the ground (f) to vary the requirements to add in a further option to retain the extension as built. The notice will thus be complied with by doing nothing and the extension will become lawful as a result.

Simon Hand

Inspector