
Appeal Decision

Site visit made on 3 August 2020

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 August 2020

Appeal Ref: APP/P2935/C/19/3227425

98 Millersfield, Acomb, Hexham NE46 4RQ

- 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 John Robinson against an enforcement notice issued by Northumberland County Council.
 - The enforcement notice was issued on 16 April 2019.
 - The breach of planning control as alleged in the notice is, without planning permission, the erection of an unauthorised two storey rear extension.
 - The requirements of the notice are:
 - a) Demolish the two storey rear extension, or;
 - b) Demolish the extension at first floor level in accordance with approved plan 130173-003 Rev E.
 - The period for compliance with the requirements is 12 weeks.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c) and (d) of the Town and Country Planning Act 1990 as amended.
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Summary Decision: the appeal is dismissed and the enforcement notice is upheld with a correction and a variation in the terms set out below in the Formal Decision

Procedural matters

1. The breach of planning control alleged in the notice is, without planning permission, the erection of an *unauthorised* two storey rear extension (my emphasis). The enforcement notice is concerned with a breach of planning control rather than other areas of legislation. In that context, the notice correctly alleges development 'without planning permission' but then makes reference to the extension being 'unauthorised'. The use of the term unauthorised is therefore not only technically incorrect it is also superfluous in this case. I shall correct the notice accordingly. No injustice would arise from correcting the notice in that respect.
2. The requirements of the notice at paragraph 5 include b) to demolish the extension at first floor level in accordance with approved plan 130173-003 Rev E. Helpfully, a copy of that plan is attached to the notice. I am satisfied that the recipient of the notice would be able to understand from that plan what he must do to comply with the notice.
3. Nevertheless, the wording of requirement b) at paragraph 5 could be clearer. In particular, the requirement refers to 'demolish the extension at first floor level'. In practice, it is evident from the plan attached to the notice that the Council was intending that the as-built extension could be altered or modified so that it accorded with the extension shown on that plan as alternative to

demolishing the entire two-storey extension. I shall vary the requirements of the notice to make that clear. I am satisfied that no injustice would arise from varying the notice in that respect.

The appeal on ground (c)

4. The ground of appeal is that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters do not constitute a breach of planning control. An appeal on this ground is one of the 'legal' grounds of appeal, in which the burden of proof is on the appellant to show, on the balance of probability, that the matters alleged in the notice do not constitute a breach of planning control.
5. The appellant's case on this ground of appeal is that he was advised by a Building Inspector from the Council that his plans did not need to be altered to build the extension slightly differently from his original proposal. It is evident from the appellant's description of the sequence of events that he is referring to an application under the Building Regulations in which, as I understand it, approval can be obtained through a series of site visits from a Building Inspector at various stages of the build and with no plans being required.
6. However, the Building Regulations is an entirely separate regime from the Planning Acts. In most cases, consent and/or permission must be obtained under both the Building Regulations and the Planning Acts. This, it would appear, is one of those cases.
7. I gather from the evidence before me that the appellant was professionally represented in the submission of his applications under the Planning Acts. The appellant was initially refused planning permission for a two-storey rear extension in April 2017 (Council Ref: 17/00072/FUL). The appellant was then successful in obtaining a Lawful Development Certificate to confirm that a part single-storey and part two-storey rear extension did not require express planning permission¹ (Council Ref: 17/02274/CLPROP), granted in August 2017. The plan 130173-003 Rev E cited in requirement b) at paragraph 5 of the notice was submitted with that application, and shows the extension found by the Council not to require express planning permission.
8. I can fully understand that the distinction between the need to obtain planning permission and the need to accord with the Building Regulations can cause confusion for those not familiar with these areas of legislation. That said, in this case, the appellant was refused planning permission for a development of essentially the same description as that which he subsequently constructed and which is now subject to the enforcement notice. In my view, this previous refusal of planning permission for a like development ought to have alerted the appellant to the need to obtain planning permission from the Council. At the very least, it should have caused the appellant to query the advice from the Building Inspector with the Council's planning department.
9. The advice received from the Building Inspector cannot override the need for planning permission under the Planning Acts. The appellant has not provided any evidence to show that the extension as constructed benefitted from a deemed planning permission under the GPDO. I therefore conclude, on the

¹ In other words, planning permission was deemed to have been granted for that extension through the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO).

balance of probability, that the matter stated in the notice does constitute a breach of planning control.

10. Accordingly, the appeal on ground (c) fails.

The appeal on ground (d)

11. The appeal on this ground is that, at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by those matters. In order to succeed on this ground, the appellant must show that the two-storey rear extension subject to the notice was substantially complete on the date four years before the notice was issued. The test in this regard is the balance of probability and the burden of proof is on the appellant
12. The appellant explains that he constructed the extension exactly as instructed by the Council's Building Inspector and considers that the situation could have been resolved if the matter had been addressed at the start of the proceedings. I take this to mean before the extension was completed. However, that is not the relevant test under this ground of appeal. I have set out the relevant test above for ease of reference, from which the key date is that on which the development in question is 'substantially completed'. The latter is a matter of fact and degree, but it is settled case law that a building which lacks windows, doors and/or internal fittings can be held not to be substantially complete.
13. It is clear from the photographs submitted with the Council's evidence that the extension was not substantially complete as of 25 January 2018. These photographs show that the extension was only partially glazed, was not rendered and was not fitted out internally. The Council goes on to indicate that construction of the extension commenced on 29 September 2017 which, although not supported with documentary evidence, would be consistent with the stage of works evident in the photographs taken some four months later.
14. I conclude that, on the balance of probability, the two-storey rear extension was not substantially complete four years before the date on which the notice was issued. It follows that enforcement action could be taken against this breach of planning control on that date.
15. Accordingly, the appeal on ground (d) fails.

The appeal on ground (a) and the deemed planning application

16. The ground of appeal is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted.
17. The Council has stated one substantive reason for issuing the enforcement notice, stated as being that the development detracts from the character and appearance of the land and the surrounding landscape. To my mind, these words connote an open rural setting. However, the appeal property is a mid-terrace house located within a residential estate. For that reason, the use of the words 'land' and 'landscape' in the reason for issuing the notice appear somewhat incongruous and not directly relevant. I shall therefore approach this main issue as being the effect of the two-storey rear extension on the character and appearance of the surrounding area, based primarily upon my own assessment at the site visit.

18. As indicated above, the character of the area surrounding the appeal site is that of a residential estate. The estate is comprised of mostly two-storey terraced houses. The houses are typically finished with a rendered first floor above a brick ground floor, with the gabled elevations also being finished in a combination of brick and render. Whilst there are detail differences in the design and appearance between individual houses, the scale and appearance of the houses in each group tends to be relatively uniform. This uniformity in scale and appearance gives this residential estate a degree of cohesiveness and a distinctive character.
19. The degree of cohesiveness and distinctive character also includes the rear elevations of the houses, particularly insofar as visible from the public domain. Rear extensions in general are not a characteristic of this residential estate, and even less so two-storey rear extensions. For that reason, the two-storey rear extension to the appeal property is, by reason of its size, height and bulk, an incongruous feature in the locality. This is exacerbated by the fact that the rear extension is clearly visible from the public domain in views from Millersfield across the side garden to the end property in the terrace. As a consequence, the incongruity of the two-storey rear extension is very obvious from the public domain, and detracts from the otherwise cohesive and distinctive character of this residential estate.
20. At the time of my site visit, the two-storey extension did not have a render finish applied and the external surfaces were bare breeze-block. I recognise that this adds to the apparent bulk of the structure. Nonetheless, I am not convinced that applying a render finish would reduce the visual impact of the extension to an acceptable degree. For that reason, I am not persuaded that a condition requiring that the extension be rendered in a suitable colour would overcome the harm that I have identified above. Neither am I satisfied that any other planning conditions could overcome that harm.
21. I conclude that the two-storey rear extension subject to the notice unacceptably harms the character and appearance of the area. I therefore conclude that this breach of planning control is contrary to Policy BE1 of the Tynedale LDF Core Strategy, and Policies GD2 and H33 of the Tynedale Local Plan. These policies indicate, amongst other things, that extensions to existing dwellings will be approved providing that they respect the character of the existing building and the surrounding area.

Other considerations

22. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise. I have found that the two-storey rear extension subject to the notice fails to accord with the development plan. It is therefore necessary for me to consider whether there are any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan
23. The only consideration raised by the appellant is again that he was advised by a Building Inspector from the Council that his plans did not need to be altered to build the extension slightly differently from his original proposal. As indicated above, this advice appears to be in relation to the Building

Regulations and the not the Planning Acts. In any event, whilst I have absolutely no doubt that the appellant acted on that advice in good faith, informal advice from a Council officer cannot bind the Council and/or negate the enforcement notice. I therefore attach very little weight to this consideration.

24. Although not cited as reason for issuing the enforcement notice, the Council refers in its evidence to the impact of the extension on the living conditions of the occupiers of the adjoining residential properties. As part of my site visit, I was able to view the rear elevation of the adjoining house to the north (No 100 Millersfield) from the rear garden of the appeal property. I noted that this elevation contained a door and a window at ground floor level, although I was not able to discern which room(s) they served. Similarly, I was able to view the rear elevation of No 96 Millersfield from the public highway but again could not identify which room(s) the windows in that elevation served.
25. Nevertheless, the two-storey rear extension to the appeal property projects from the rear elevation in close proximity to the boundary with the houses on either side. By reason of its height and depth, as well as the dark colour of the external finish, the rear extension dominates the outlook from both adjoining properties and in my judgment would be overbearing when viewed from within those dwellings. For the same reasons, the two-storey rear extension dominates the outlook from the rear gardens of both adjoining properties and significantly detracts from the enjoyment of those amenity spaces.
26. Whilst I acknowledge that the occupiers of neither adjoining property have made representations against the extension, that does not alter my own view that the two-storey rear extension to the appeal property unacceptably harms the living conditions previously enjoyed by the occupiers of those dwellings. That is a consideration to which I attach significant weight.

Conclusion on the ground (a) appeal

27. I have concluded above that the breach of planning control alleged in the notice is contrary to the development plan. I have not been advised of any material considerations of sufficient weight, either taken individually or cumulatively, to indicate that determination should be made otherwise than in accordance with the development plan. Indeed, overall the material considerations weigh against the breach of planning control that has occurred and only add to the force of the development plan.
28. Accordingly, I conclude that planning permission ought not be granted.

Conclusion

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

Formal Decision

30. It is directed that the notice be corrected by:
- deleting the word 'unauthorised' in paragraph 3 of the notice.

31. It is directed that the notice be varied by:

- deleting requirement b) at paragraph 5 of the notice and replacing it with:
'Modifying the extension as constructed at first floor level in such a way that it accords in all respects with the extension shown on Drawing No. 130173-003 Rev E attached to the notice'.

32. Subject to the correction and variation, the appeal is 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.

Paul Freer
INSPECTOR