



Appeal Decisions

Site visit made on 2 February 2021

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 7 May 2021

Appeal A - Ref: APP/W4515/C/20/3258454

2 West Lane, Killingworth, Tyne and Wear, NE12 7BD

- 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 Aneesa Mukhtar against an enforcement notice issued by North Tyneside Metropolitan Borough Council.
- The enforcement notice is dated 31 July 2020.
- The breach of planning control as alleged in the notice is: It is considered that the development has not been built in accordance with approved plans reference 17/00629/FULH which was for the following description: "Two storey front and side extension, front porch extension and 2 no dormer windows to the front elevation. Single storey rear extension and velux rooflights to rear main roof slope. Conversion existing outbuilding within rear garden to sunroom/gym (Revised description/amended plan received 7.6.17)". Two further applications were received in 2019. One application (19/01634/FULH) proposed "Front and side extensions, front porch extension, new dormer window to front, new side window to north gable side at roof level, replacement single storey rear extension with new roof and new 1 metre canopy overhang projection, 2 x velux rooflights to rear main roof slope, with ground raising of part of rear garden area to enable level access and replacement boundary treatments to front and rear garden (a revised submission regularising works undertaken as part of commencement of planning permission reference 17/00629/FULH). The other application (19/01636/FULH), which was also submitted on the same day, proposed "Demolition of rear garden shed structure, with extension and remodelling of existing rear garage to form sunroom, with ground raising of part of rear garden area to enable level access replacement boundary treatments to front and rear garden (a revised submission regularising works undertaken as part of commencement of planning permission reference 17/00629/FULH). The other application (19/01636/FULH), which was also submitted on the same day, proposed "Demolition of rear garden shed, with extension and remodelling of existing rear garage to form sunroom, with ground raising of part of rear garden area to enable level access and replacement boundary treatments to front and rear garden (a revised submission regularising works undertaken as part of commencement of NTMBC planning permission reference 17/00629/FULH) (Amended plans received 26.01.2020). This Notice only deals with the application relating to proposed "Front and side extensions, front porch extension, new dormer window to front, new side window to north gable side at roof level, replacement single storey rear extension with new roof and new 1 metre canopy overhand projection, 2 x velux rooflights to rear main roof slope, with ground raising of part of rear garden area to enable level access and replacement boundary treatments to front and rear garden (a revised submission regularising works undertaken as part of commencement of planning permissions reference 17/00629/FULH).
- The requirements of the notice are: 1. Reduce projection of rear extension to 4.6 metres from original house wall. 2. Removal of the canopy on rear extension. 3. Height of rear extension must be 3m from original ground level. 4. Reduce ground level by 0.42m to original ground level as identified in red on the plan attached to the enforcement notice this includes all internal floor areas within the rear extension.

- The period for compliance with the requirements is 16 weeks.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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Appeal B - Ref: APP/W4515/C/20/3258474
2 West Lane, Killingworth, Tyne and Wear, NE12 7BD

- 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 Aneesa Mukhtar against an enforcement notice issued by North Tyneside Metropolitan Borough Council.
 - The enforcement notice is dated 31 July 2020.
 - The breach of planning control as alleged in the notice is: It is considered that the developments has not been built in accordance with approved plans reference 17/00629/FULH which was for the following description: "Two storey front and side extension, front porch extension and 2 no dormer windows to the front elevation. Single storey rear extension and velux rooflights to rear main roof slope. Conversion existing outbuilding within rear garden to sunroom/gym (Revised description/amended plan received 7.6.17)". Two further applications were received in 2019. One application (19/01634/FULH) proposed "Front and side extensions, front porch extension, new dormer window to front, new side window to north gable side at roof level, replacement single storey rear extension with new roof and new 1 metre canopy overhang projection, 2x velux rooflights to tear main roof slope, with ground raising of part of rear garden area to enable level access and replacement boundary treatments to front and rear garden (a revised submission regularising works undertaken as part of commencement of planning permission reference 17/00629/FULH)". The other application (19/01636/FULH), which was also submitted on the same day, proposed "Demolition of rear garden shed structure, with extension and remodelling of existing rear garage to form sunroom, with ground raising of part of rear garden area to enable level access and replacement boundary treatments to front and rear garden (a revised submission regularising works undertaken as part of commencement of planning permission reference 17/00629/FULH)" (Amended plans received 26.01.2020). This Notice only deals with the application relating to proposed "Demolition of rear garden shed structure, with extension and remodelling of existing rear garage to form sunroom, with ground raising of part of rear garden area to enable level access and replacement boundary treatments to front and rear garden (a revised submission regularising works undertaken as part of commencement of NTMBC planning permission reference 17/00629/FULH (Amended plans received 26.01.2020)).
 - The requirements of the notice are: 1. Reduce the footprint of external building (out building) to that approved under application reference 17/00629/FULH. 2. Reduce the height of the external building (out building) to that approved under application reference 17/00629/FULH as measured 3.2m from the original ground level. 3. No door or window to be present to the north elevation in accordance with that approved under application reference 17/00629/FULH. 4. Remove the canopy on external building. 5. Reduce the ground level by 0.42m to original ground level as identified in red on the plan attached this includes all internal floor areas within the external building (out building).
 - The period for compliance with the requirements is 16 weeks.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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Decisions

1. Appeal A: it is directed that the enforcement notice be amended by:
 - a) The deletion of the text '4. Reduce ground level by 0.42m to original ground level as identified in red on the plan attached to the enforcement notice this includes all internal floor areas within the rear extension.' and the substitution of it by the following text:

'4. Restore the land to its condition before the breach took place by lowering it to its previous level.

5. Reduce the internal floor level of the extension to that approved under application reference 17/00629/FULH.'
 - b) The deletion of all the text in the period for compliance and the substitution of it by the following text:

'The period for compliance with the requirements is 6 months.'
2. Subject to these amendments, Appeal A is dismissed, the enforcement notice is upheld, and the deemed planning application is refused.
3. Appeal B: it is directed that the enforcement notice be amended by:
 - a) The deletion of the text '5. Reduce the ground level by 0.42m to original ground level as identified in red on the plan attached this includes all internal floor areas within the external building (out building).' and the substitution of it by the following text:

'5. Restore the land to its condition before the breach took place by lowering it to its previous level.

6. Reduce the internal floor level of the external building (out building) to that approved under application reference 17/00629/FULH.'
 - b) The deletion of all the text in the period for compliance and the substitution of it by the following text:

'The period for compliance with the requirements is 6 months.'
5. Subject to these amendments, Appeal B is dismissed, the enforcement notice is upheld, and the deemed planning application is refused.

Background

6. The appeal site is a detached two-storey dwelling in a predominantly residential location. Previously, the Council approved a planning application (17/00629/FULH, the 2017 scheme) for a number of alterations to the appeal site. Although works commenced, the development was not in accordance with the approved plans.
7. Subsequently, applications (19/01634/FULH & 19/01636/FULH) were submitted for the development as built. These applications were refused and were both dismissed at appeal (APP/W4515/D/20/3248442 & APP/W4515/D/20/3248443). The Council went on to issue two enforcement notices which are now the subject of the appeals before me.

8. Some small modifications have been made to the development since the last appeal decisions, but as far as I am aware, the main dimensions and positions of the structures remain the same. These appeal decisions are therefore an important material consideration in the determination of the current appeals.
9. The appellant has also applied for a certificate of lawful development (20/02138/CLEXIS, LDC) in relation to the changed ground levels in the rear plot. The application was refused, and so the matters relating to the ground levels remain to be considered below.

Appeals A and B - ground (c)

10. Ground (c) is that there has not been a breach of planning control, for example because permission has already been granted, or the work is permitted development. Under this ground, the onus of proof is on the appellant.
11. The Council allege that the ground on which the new rear extension and outbuilding sit has been raised by 0.42m from its original level. The appellant disputes this allegation, stating that the figure of 0.42m is incorrect and has been carried through in error from the previous applications. She states that the dimension has been reassessed and the level is now at 0.25m above the previous level. She argues that a 0.25m increase is de minimus and falls within permitted development limits.
12. I have had regard to the outcome of the refused LDC application. Here, the Council concluded that the appellant had failed to substantiate the position that the ground level increase was under 0.3m. I note in particular the Council's concern over the accuracy of the later information that was produced in support of the application, in view of the substantial amount of groundwork that had already taken place in the rear plot.
13. Crucially, however, the raising of the ground appears to have been part and parcel of the building operation comprising the development of the rear extension and the outbuilding. Therefore, even if it could be established that the new ground level was permitted development in its own right, it cannot be considered independently of the other building operations.
14. In the absence of evidence to the contrary, planning permission is required for both the extension and outbuilding. The new ground level is an integral element and so forms part of the development as a whole which falls to be considered against the relevant development plan policies.
15. The appeals on ground (c) therefore fail.

Appeal A - ground (a)

16. Ground (a) is that planning permission should be granted for what is alleged in the notice.

Main Issues

17. The main issues are the effect of the development on:
 - The character and appearance of the surrounding area; and
 - The living conditions of neighbouring residents, with particular regard to privacy and outlook.

Reasons

Character and appearance

18. The 2017 scheme included permission for a single storey extension at the rear of the appeal site. The extension was to project to a total depth of 4.6m from the back of the house. In terms of height, the flat roof was proposed to be around 3m tall, with an overall height of 3.5m including the glazed rooflights. As built, the main body of the rear extension projects to a depth of around 4.72m. It previously incorporated a canopy that extended by approximately 1m further. At the time of my visit, most of the canopy structure had been removed, leaving an overhang of around 200mm.
19. In her statement of case, the appellant states that the extension has been built to a height of 3.82m above the original ground level. The 2019 drawing titled 'Proposed boundary treatment to rear' shows the extension sitting at 3m above 'made up ground'. The height of the made up ground is not stated. As noted above, there is some difficulty in establishing the exact dimensions in question. However, for the purposes of my assessment, it seems reasonable to assume that the height of the flat roof of the extension now stands at between 0.25m and 0.82m above that permitted in 2017.
20. Policy DM6.2 of the North Tyneside Local Plan (LP) sets out design requirements for the extension of existing buildings. Extensions should complement the form and character of the original building. Their scale, height, mass and position should emphasise a subservience to the main building. Regard is to be had to the effect of the extension on the existing property, and whether it enhances the overall design.
21. The permitted extension was already a sizeable addition to the house, projecting by around 4.6m across the whole span of the rear elevation. The increased height and depth of the built extension result in a structure that does not achieve the necessary visual subservience to the main house. Instead, it appears overly bulky and out of scale, and dominates views of the rear of the property.
22. The projecting canopy would add a notably discordant element, emphasising the bulky appearance of the extension and departing further from the established architectural character of the house. I have taken into account the reduction of the canopy to a 200m projection beyond the edge of the roof. However, whilst its impact is clearly less than that of the 1m canopy, this feature still adds bulk to the extension and makes it appear somewhat top heavy. This change to the design therefore does not mitigate the overall impact of the development.
23. Taking these factors in combination, I conclude that the scale and design of the extension fail to complement the form and character of the original building, thus harming its appearance and that of the surrounding area. It thus conflicts with the design requirements of LP Policy DM6.2, and with LP Policy DM6.1, insofar as it requires high design standards with a positive relationship to neighbouring buildings and spaces.
24. I note the appellant's contention that the previous extension in the same location projected to a greater depth, and sat at a similar height to the

extension as built. Although I have had regard to the submitted photographs, it is difficult now to draw a direct comparison between the two.

25. Within the appeal process, the appellant has produced a set of cross sections showing the appeal property and the adjoining properties to show the development as built in its context. However, on examination of these drawings, I have found that in the 'Streetscene proposed' drawing, the roof heights of the main building and flat roofed building at the adjacent 4 West Lane are different to those shown on the 'Streetscene Existing' drawing. No explanation is given for this difference, and the discrepancy limits the weight I can give to these drawings.
26. Moreover, the previous extension no longer exists, and there is no permission for its reinstatement. The only permission now in existence is the 2017 scheme, and so the appeal scheme falls to be considered against that. Even if it can be accepted that the demolished extension was larger, it does not automatically follow that the construction of a comparable development would now be acceptable when assessed against the current development plan.

Living conditions

27. I saw on my site visit that the property at 4 West Lane sits at a lower level than No 2. The garage and utility room of No 4 sit closest to the boundary, and there is little evidence of harm to living conditions in the habitable rooms of the house. However, the extension is clearly visible from the garden of No 4. Due to the increased dimensions of the extension over the 2017 scheme, the size and proximity of the development have a dominating impact, giving rise to an unacceptable sense of overbearing for occupants using the garden.
28. In addition, the full height windows to the rear elevation of the extension allow overlooking of the adjacent garden area, resulting in a loss of privacy. The difference in land levels amplifies these negative impacts, particularly as the private outdoor space at No 4 appears relatively limited in size.
29. I have taken into account the previous Inspector's conclusions with regard to the adverse effect of the development on the living conditions of neighbours. I have not seen anything sufficiently compelling which would cause me to conclude differently to the previous Inspector on this matter. I also note that a previous obscure glazed window that faced towards No 4 has been removed, but this can have little weight in my consideration of the existing scheme.
30. I therefore conclude that the development unacceptably harms the living conditions of neighbouring residents, contrary to LP Policy DM6.1, which amongst other things seeks a good standard of amenity for existing users of buildings and spaces, and LP Policy DM6.2, insofar as it requires consideration for the implications for amenity on adjacent properties.

Conclusion

31. Appeal A on ground (a) therefore fails, and the deemed planning application is refused.

Appeal B - ground (a)

Main Issues

32. The main issues are the effect of the development on:

- The character and appearance of the surrounding area; and
- The living conditions of neighbouring residents, with particular regard to privacy and outlook.

Reasons

Character and appearance

33. The 2017 scheme included the conversion of an existing outbuilding in the rear garden for use as a sunroom/gym. The footprint of the building was to remain the same as existing, at around 5.5m wide by 5.75m long. Permission was given for an increase in height from 2.7m to approximately 3.2m. As built, the footprint of the outbuilding is around 5.5m wide by 7.48m in length.
34. The building is located in a bottom corner of the rear plot, in a position that is clearly visible from the surrounding properties. Due to its elevated height and the lower ground levels of the neighbouring plots, it has an overly prominent appearance that does not seem to be a characteristic form of development in the surrounding area.
35. I have taken into account the appellant's argument that the previous outbuilding was larger than represented in the 2017 plans. However, that building has now been demolished, which makes it difficult to make any meaningful comparison. In any case, if it sat on lower ground, then it is likely that its impact in the surrounding area was somewhat less.
36. As with the rear extension, the 1m canopy had been removed at the time of my visit, leaving a 200mm overhang. However, as with the extension, this overhang still increases the bulk of the structure and is an incongruous design feature in the context of the main house. This change is not sufficient to make the development acceptable.
37. I therefore conclude that, due to its design, overall dimensions and increased height in relation to the previous structure, the outbuilding unacceptably harms the character and appearance of the appeal site and the surrounding area. It thus conflicts with LP Policy DM6.1 insofar as it requires a high standard of design that responds to the existing building and the surrounding area.

Living conditions

38. The outbuilding is located at the opposite side of the plot from the boundary with 4 West Lane, which limits its impact on outlook from the garden of No 4. There had previously been a door and window in the elevation facing towards the plot of No 4 but these have since been removed. As a result, the outbuilding has little impact on the privacy of the neighbours at No 4 whilst using their garden.
39. There is little evidence of material harm to the living conditions of any other residents in the vicinity. I therefore conclude that the outbuilding is acceptable in this respect, and to that extent complies with the relevant LP Policies. However, this does not outweigh the harm to character and appearance I have identified above.

Conclusion

40. Appeal B on ground (a) therefore fails, and the deemed planning application is refused.

Appeals A and B - ground (f)

41. Ground (f) is that the steps required to comply with the requirements of the notice are excessive, and that lesser steps would overcome the objections.
42. At s173 (4), the Act provides that an enforcement notice can have two purposes. These are to remedy the breach, which can include making development comply with the terms (including the conditions and limitations) of any planning permission which has been granted in respect of the land or by restoring the land to its condition before the breach took place, or; to remedy any injury to amenity caused by the breach. The purpose need not be stated explicitly, and it appears that the notices here seek to remedy both the breaches and the injury to amenity.
43. With regard to the outbuilding, it is required to reduce its dimensions to those approved in the 2017 scheme. The appellant states that the footprint cannot be so reduced because the 2017 submissions were incorrect. She asserts that the unauthorised outbuilding has the same footprint as the original outbuilding and should therefore remain as built. However, the only planning permission that exists for an outbuilding in this location is the 2017 scheme. No permission exists for a structure of the dimensions as built. The requirement to reduce its footprint and height to those permitted is not excessive.
44. It is required to reduce the projection of the rear extension to 4.6m from the original house wall. The appellant argues that a difference of around 100mm is de minimus. She also contends that it is reasonable that the extension should remain at the stated height of 3.82m, on the basis that the previous extension was 3.8m high.
45. Had the extension not been raised in height and had the canopy added, then the increase of approximately 100mm by itself might have been acceptable in this context. However, I have assessed the extension as a whole, and found its overall dimensions to be excessively large. It is therefore reasonable to require the extension to be reduced to the permitted dimensions in order to remedy the breach and mitigate the harmful effects.
46. Both enforcement notices require the reduction of the ground level by 0.42m to the original ground level, including all internal floor areas in the extension and outbuilding. As above, I have taken into account the appellant's stance that the rise to the ground level has been measured incorrectly, and also the refusal of the LDC in view of the difficulty of establishing the levels now that the work has been done.
47. The courts have held that a notice must fairly tell the recipient what they have done wrong and what they need to do to put it right. To achieve this, there must be some certainty over the figure of 0.42m, otherwise the reference to this figure within the requirements would be unfair. Although the Council assert that 0.42m is the correct measurement, little corroborative evidence has been produced to substantiate this figure.

48. The Council state that agreement was reached in 2019 over this figure and it was reflected in the 2019 submissions. The planning officer's report for application 19/01634/FULH 2019 give a figure of 0.4m for the raise, whereas the report for application 19/01636/FULH gives a figure of 0.425m. The difference may be small, but it exists nonetheless. Therefore, for the purposes of the notices, I have directed that the requirements be changed so as to refer only to the levels prior to the breach. With regard to the internal floor levels, I have directed that these should comply with the permitted 2017 scheme, in the interests of clarity and certainty.
49. As amended, the requirements are commensurate with the purposes of the notices, and so the appeals on ground (f) fail.

Appeals A and B - ground (g)

50. Ground (g) is that the time given to comply with the notice is too short. In both enforcement notices, a period of 16 weeks is given to carry out the requirements.
51. Although some alterations have been made to the structures, the majority of the requirements have not been complied with. The appellant states that the changes to the heights and ground levels would involve substantial alteration to the developments. On that basis, she argues that one year is needed to consider and carry out the alterations.
52. However, a compliance period of one year would be tantamount to a grant of temporary planning permission. In view of the length of time that the developments have been in place, this would be inappropriate, and would unacceptably undermine the confidence of the public in the planning system. Conversely, I agree that the changes to the heights in particular will be a substantial project. For that reason, I consider it reasonable to extend the compliance period to six months, to give time for a contract to be arranged and the work to be carried out.
53. In any case, I am mindful that the Council have the power to extend the compliance period, if they see fit. Whilst this is entirely a matter for the Council's discretion, it would be open to the appellant to ask for a further extension of time, should it prove necessary.
54. I am therefore satisfied that six months is a reasonable period for compliance, and so the appeals on ground (g) succeed to that limited extent.

Conclusion

55. For the reasons above, Appeals A and B are dismissed, the enforcement notices are upheld as amended, and the deemed planning applications are refused.

Elaine Gray

INSPECTOR