
Appeal Decisions

Site visit made on 27 April 2021

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 May 2021

Appeal A Ref: APP/A2335/C/20/3263403

Appeal B Ref: APP/A2335/C/20/3263404

Appeal C Ref: APP/A2335/C/20/3263405

Land at 69 Scotforth Road, Lancaster, Lancashire LA1 4SD

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Zubeir Mister and Mrs Frances Mister against an enforcement notice issued by Lancaster City Council.
 - The enforcement notice was issued on 15 October 2020.
 - The breach of planning control as alleged in the notice is, without planning permission, the erection of a part single, part two storey rear extension.
 - The requirements of the notice are either:
 - (i) Demolish the rear extension in its entirety and restore the land to its former condition.
 - (ii) Alter the extension to fully accord with the terms of the Prior Approval – Not Required Notice dated 25 November 2019 issued in response to notification application 19/01323/PAH, dated 21 October 2019 for the 'Erection of a 6 metre deep, single storey rear extension with a maximum roof height of 3 metres and a maximum eaves height of 3 metres', by way of removing the second storey element and all resultant material from the site.
 - The period for compliance with the requirements is five months.
 - Appeal A is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Appeals B and C are proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Summary Decisions: the appeals are dismissed and the enforcement notice is upheld

Procedural matters

1. The appellants initially indicated on the appeal form that an appeal was made on ground (e): namely that copies of the enforcement were not served as required by Section 172 of the 1990 Act. In summary, Section 172 of the 1990 Act requires that the enforcement notice shall be served on the owner and on the occupier of the land to which it relates, and on any other person having an interest in the land. However, the appellants have not pursued that ground of appeal and no evidence has been presented in relation to it. I have therefore not considered that ground of appeal further.
2. The appellants contend that the lower ground floor element of the extension is not within the scope of this enforcement appeal since it is permitted by Class A, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). That is not correct. The breach

of planning control as alleged in the notice is, without planning permission, the erection of a part single, part two storey rear extension. That breach of planning control is described as a single building operation. The appellants have not made an appeal on ground (b) set out in section 174(2)¹ to challenge the breach of planning control as described. It follows that the extension as whole is subject to the enforcement notice.

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

3. 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. The Council has stated two substantive reasons for issuing the enforcement notice, from which the following main issues are raised:
 - the effect of the development on the character and appearance of the area, and
 - the effect of the development on the living conditions of the occupiers of the adjoining residential properties, specifically in relation to outlook.

Character and appearance

4. The appeal property forms part of a terrace of houses fronting onto Scotforth Road. The houses towards the northern end of this terrace, which includes the appeal property, are modest in scale and present two-storey elevations to Scotforth Road. The houses towards the southern end are generally larger in scale, are more articulated and appear to date from an earlier period than the houses at the northern end.
5. Behind this terrace, an alley leading from Addle Street provides access to the rear of the houses. Because of a fall in ground levels, the houses fronting Scotforth Road present a three-storey rear elevation to this alley. When viewed from this alley, and indeed from Addle Street, there is again a distinct difference in character between the houses at the northern end of the terrace and those at the southern end.
6. In this respect, the houses at the northern end present a generally plain rear elevation. With the exception of the end property, which has been extended at ground and first floor level, the houses have either not been extended at the rear or, where they have been, the extensions are confined to single-storey height. The rear elevations of these properties are faced with a dark red brick, with windows and lintels typically highlighted in white.
7. By contrast, the rear elevations of the properties toward the southern end of the terrace feature full height outriggers, with a pitched roof linking into the main roof of the house. This difference in character in the rear elevations of these properties is very apparent in views from Addle Street, from where unobstructed views down the full length of the alley are possible.
8. The extension subject to the enforcement notice is part single, part two storey in height. The extension has flat roof and, together with the upper part of the rear elevation, is finished in a white colour-through render.

¹ The appeal on ground (b) is that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters have not occurred.

9. In my judgement, by reason of its height and depth, the extension is out of proportion with the host property. The combination of the height and box-like form of the upper-ground floor element results in the extension being out of character with the relatively plain rear elevations of the remainder of the properties at this end of the terrace. The white colour-through render contrasts starkly with the dark red brick of the adjoining properties and only serves to exacerbate the harm in the above respects. Similarly, the form and materials used are out of keeping with the character of the well-integrated outriggers to the properties at the southern of the terrace. Significantly, this change in the character is clearly visible and noticeable in public views from Addle Street.
10. The appellant contends that, in the absence of the upper-ground floor extension, the 6m deep single storey extension at lower-ground level would be disproportionate when viewed in conjunction with the principal house. In the appellant's view, this relationship is demonstrated by the flat roof extension to the adjoining property (no. 67). On that basis, the appellant contends that the reduced 3m depth of upper-ground floor extension creates proportion by way of a stepping-down effect.
11. I concur with the appellant insofar as the 6m deep ground floor could be considered to be disproportionate to the host property. However, a single-storey extension of that depth was found by the Council to accord with Condition A.4 to Class A, Part 1, Schedule 2 of the GPDO. It was not granted express planning permission by the Council having first considered the planning merits of that extension. Moreover, although the appellant would have been perfectly entitled to construct the 6m deep extension in full accordance with Prior Approval – Not Required Notice issued by the Council, he was not compelled to do so. It was equally open to him to construct a smaller extension that, in his view, was proportionate to the host property². For that reason, the existence of the ground-floor element of the extension can provide no justification for the upper-ground floor element.
12. Furthermore, where I depart from the appellant is in relation to his view that the stepping-down effect somehow makes the upper-ground floor acceptable in visual terms. I take an entirely different view. In my judgment, the box-like upper-ground floor perched atop a lengthy ground floor extension creates a visually jarring combination that has no foundation in the local vernacular.
13. The appellant also points to the outriggers at Nos. 73 & 75 Scotforth Road as being features of properties from an earlier period and being constructed using traditional materials. The appellant contends that it would not be good design practice to attempt to replicate those features. Again, I concur with the appellant in that respect. However, neither in my view is it good design practice to extend the appeal property using a box-like design that is out of character with the host property and constructed of materials that contrast strongly with the dark red brick from which the rear elevations of the host property and its immediate neighbours are constructed.
14. I conclude that the part single, part two storey rear extension unacceptably harms the character and appearance of the area. I therefore conclude that the breach of planning control is contrary to Policy DM29 of the Council's

² Provided that such an extension accorded with the provisions of the GPDO or otherwise had the benefit of express planning permission granted by the Council.

Development Management Development Plan Document which, amongst other things, expects development to contribute positively to the identity and character of the area through good design and the palate of materials.

15. I also consider that the part single, part two storey rear extension fails to accord with the National Planning Policy Framework, which states that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area.

Living conditions

16. The Council accepts that the impact on the property to the immediate north, No 67 Scotforth Road, is somewhat limited given that the unauthorised extension is set in from the boundary and partially screened by the existing single storey garage to that property. The Council's concerns in this respect therefore relate primarily to the property to the immediate south, No 71 Scotforth Road. It is the Council's view that the combined effect of both the historic outrigger at No.73 Scotforth Road and unauthorised development results in No.71 being 'boxed in' between both projections. The Council argues that the resultant sense of enclosure would harm the amenity of the occupiers at No.71 when either utilising the upper ground floor rooms on the rear elevation and the external space of the property to the rear.
17. The extension subject to the notice runs along the shared boundary with No.71 and remains in close proximity to the upper ground floor window in the rear elevation of that property. At the time of my site visit, that window had been filled in with breeze-blocks or a similar material. However, it is evident from photographs embedded within the enforcement notice that this window was present and fitted with clear glazing at around the time that the notice was issued. I understand that this window served a kitchen, and therefore a non-habitable room. In any event, given the separation distance from the shared property boundary, I am satisfied that the extension subject to the notice would not have been overbearing when viewed from that window (and would not be overbearing in the event that the window was reinstated).
18. I recognise that the extension subject to the notice follows the boundary with No 71 Scotforth Road for some 6 metres at ground floor level, and for some 3 metres at upper-ground floor level. At the time of my site visit, the space at the rear of No 71 was hard surfaced and had the appearance of being a parking area. There is no evidence before me that this space has historically been used as amenity space by the occupiers of that property. Furthermore, the appellant explains that in February 2021 the Council issued a Prior Approval-Not Required notice for a ground floor rear extension to No 71, which the appellant advises he intends to implement. In that event, any impact on the external space to the rear of No 71 caused by the extension subject to the notice would become irrelevant.
19. I conclude that the part single, part two storey rear extension does not unacceptably detract from the living conditions of the occupiers of the adjoining residential properties in relation to their outlook. I therefore conclude that in this respect the breach of planning control does not conflict with Policy DM29 of the Council's Development Management Development Plan Document which, amongst other things, expects development to ensure that there is no significant detrimental impact to amenity in relation to overlooking.

Other considerations

20. 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 part single, part two storey rear extension fails to accord with the development plan in one respect. 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.
21. The appellant refers to a planning permission granted by the Council for the erection of a two-storey rear extension at a property in Gleneagles Drive, Lancaster (Council Ref: 15/00541). I have been provided with a copy of the approved plans, together with photographs of application property and the completed extension. The appellant considers that granting this permission contradicts the Council's position in respect of the breach of planning control subject to this appeal.
22. On the information provided to me, the circumstances surrounding the grant of that planning permission appear to be materially different to those of the appeal site. The application property in that case formed part of a terrace of modern three-storey town houses. Although the two-storey extension features a flat roof and has a box-like appearance, the external materials used, the fenestration and the detailing are significantly different to those employed on part single, part two storey rear extension subject to the notice. The overall dimensions of that extension are also significantly different and, unlike the extension at the appeal property, are in proportion to the host property. In summary, the extension at Gleneagles Drive appears to be a wholly sympathetic addition to a property within an entirely different setting, and as such provides no justification for the breach of planning control subject to this appeal.
23. The appellant also makes a wider point in relation to flat roof extensions, pointing out that such extensions are permitted by the GPDO. Whilst that is correct, it only applies to extensions that fall within the strict dimensions set out within the GPDO. The appellant has not sought to argue that the upper-ground floor element of the part single, part two storey rear extension constitutes permitted development under the GPDO. By implication, the appellant therefore accepts that the extension requires express planning permission and as such the design merits of the flat roof fall to be considered against the policies in the Council's development plan.

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

24. I have found that the part single, part two storey rear extension conflicts with the development plan. However, I have not been advised of any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan. Neither could the imposition of conditions overcome the harm that I have identified above.
25. Accordingly, I conclude that planning permission ought not to be granted for the matters stated in the notice.

The appeals on ground (f)

26. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the 1990 Act sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) the remedying of the breach of planning control by discontinuing any use of the land or by restoring the land to its condition before the breach took place or (b) remedying any injury to amenity which has been caused by the breach. In this case, the requirements of the notice are, in summary, to demolish the extension in its entirety or alter the extension to fully accord with the terms of the Prior Approval – Not Required Notice dated 25 November 2019. The purpose of the notice must therefore be to remedy the breach of planning control that has occurred.
27. Under this ground of appeal, the appellants indicate that there is potential to slope the walls of the development, to introduce a pitched roof and/or to reduce the size of the development. The appellants also indicate that there is potential to clad the extension in brickwork or other materials to break up the extent of the render finish. I have not been provided with detailed drawings showing the potential alterations that the appellants are minded to make, and it is therefore not possible for me to determine the extent of those alterations. In any event, whilst the potential solutions put forward by the appellants all involve alterations to part of the matters stated in the notice, they would not achieve the purpose of the notice, which is to remedy the breach of planning control that has occurred.
28. Accordingly, the appeals on ground (f) must fail.

The appeals on ground (g)

29. The ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The period for compliance specified in the notice is five months.
30. The appellants' case on this ground of appeal is that the works to comply with the notice would be weather dependant. The appellants also cite the difficulty in obtaining contractors due to the Covid-19 pandemic. A period of compliance of 9 months is sought.
31. In the event, the timetable of this appeal has resulted in my Decision being issued in the late Spring/early summer. The period of compliance of 5 months will therefore span the summer months, when weather conditions are likely to be generally favourable. Extending the period of compliance to 9 months would extend that period into the autumn and winter, when weather conditions are likely to be generally less favourable. Consequently, there would be no benefit in extending the period of compliance for the reasons advanced by the appellants.
32. The appellants have provided no evidence to support the contention that it would difficulty in obtaining contractors due to the Covid-19 pandemic. In any event, my Decision is being issued at a time when the restrictions imposed by the Covid-19 pandemic are beginning to be eased.
33. Having regard to the above, I am not persuaded that there is any need to extend the period for compliance with the notice. I am satisfied that the period

of compliance of five months stated in the notice is a proportionate response to the breach of planning control that has occurred. Accordingly, the appeals on ground (g) fail.

Conclusion

34. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice 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 Decisions

Appeal A Ref: APP/A2335/C/20/3263403

35. 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.

Appeal B Ref: APP/A2335/C/20/3263404

36. The appeal is dismissed and the enforcement notice is upheld.

Appeal C Ref: APP/A2335/C/20/3263405

37. The appeal is dismissed and the enforcement notice is upheld.

Paul Freer

INSPECTOR