



Appeal Decision

by **S A Hanson BA (Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10 June 2021

Appeal Ref: APP/P4605/C/20/3264974

96 Brooklands Road, Birmingham B28 8JZ

- 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 Agha Gul Kakar against an enforcement notice issued by Birmingham City Council.
 - The enforcement notice, numbered 2019/1294/ENF, was issued on 12 November 2020.
 - The breach of planning control as alleged in the notice is: *Without planning permission, the unauthorised erection of a single storey rear extension in the approximate position edged in green on the attached plan.*
 - The requirements of the notice are: *i. Demolish the entire single storey rear extension*
ii. Remove all building materials and rubble from the Premises arising from compliance with requirement (i) above.
 - The period for compliance with the requirements is *3 (three) months.*
 - The appeal is 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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Decision

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

Preliminary matters

2. In light of the Covid-19 coronavirus pandemic, the consequent travel limitations, and following consideration of the basis of the appeal and the submitted evidence, I consider that this appeal can be determined without the need for a site visit. This is because the planning merits of the matters applied for do not fall to be considered and I am able to reach a decision based on the information already available. Both parties were invited to comment on this matter. No comments were received from either party.

The ground (f) appeal

3. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to remedy the breach of planning control or the injury to amenity caused by the alleged development. S173(4)(a) and (b) of the 1990 Act provides that the purposes of an enforcement notice can be (a) to remedy the breach of planning control, including by restoring the land to its condition before the breach took place, or (b) to remedy any injury to amenity which has been caused by the breach.
4. It is necessary to first establish what the Council is seeking to achieve by the notice. The reasons given on the notice include planning objections to the development, including: it not complying with the 45 Degree Code for House Extensions, which would lead to a loss of outlook and light for both neighbouring properties, and it being out of scale with the existing house and

dominating its appearance and the street scene. In this context the development is considered contrary to Policy PG3 of the Birmingham Development Plan 2031, Paragraphs 3.14C and 8.39-8.43 of the Birmingham Unitary Development Plan, guidance in Places for Living adopted as Supplementary Planning Guidance and Extending your Home Supplementary Planning Document and the National Planning Policy Framework.

5. It is clear from the Council's reference to planning policy and the requirement for the complete removal of the extension rather than a reduction in its size or another modification, that the purpose of the notice is to remedy the breach of planning control by restoring the land to its condition before the breach took place.
6. The appellant acknowledges that planning permission would be required for the current structure and he is of the opinion, through conversations with the Council, that this would not be forthcoming due to its impact on the neighbouring properties. Nevertheless, this is not a ground where the planning merits of the appeal can be considered, for that a ground (a) appeal would need to have been made and the relevant fee paid. No such ground has been appealed.
7. Notwithstanding the above, the appellant argues that the structure could be modified by separating it from the house and reducing the roof height to less than 2.5m thereby complying with the limitations and conditions in Schedule 2, Part 1, Class E of The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). However, Class E also requires that the building is for a purpose incidental to the enjoyment of the dwellinghouse as such. In these circumstances, no such purpose has been put forward by the appellant.
8. Where the GPDO limitations exemptions or provisos are exceeded, the whole development is unlawful not just that element in excess of permitted development tolerances. Furthermore, GPDO rights cannot be claimed retrospectively by the later removal of one element to return the remaining development to the permitted level.
9. I am mindful that enforcement action is meant to be remedial, not punitive. There would undoubtedly be less cost and disruption to the appellant if part of the structure could be retained. However, for the reasons set out above there is no mechanism available that would enable that objective to be achieved. In any event, in view of the above, there is no evidence that the structure would be permitted development.
10. For the above reasons, permitted development rights do not represent a valid fall-back position and consequently, I find that remedying the breach of planning control can only be achieved by complete removal of the extension and all the resulting materials, as set out in the notice requirements. It follows that those requirements are not excessive for their purpose and the ground (f) appeal must fail.

The ground (g) appeal

11. The appeal on ground (g) is that the period specified in the notice falls short of what should be reasonably allowed. The appellant argues that 6 months should

be sufficient to hire builders to carry out works to ensure the development complies with the GPDO.

12. As the ground (f) appeal was unsuccessful the extension must be removed in its entirety, not altered.
13. I note the Council has stated that even though these are unprecedented times they believe the requirements of the notice are still achievable. They also provide that should the Covid-19 pandemic create a barrier to achieve compliance with the requirements of the enforcement notice within the 3 month compliance period, the Council will consider its powers of discretion under S173A of the Act, which gives the Council the ability to extend the time for compliance with the notice.
14. Therefore, I am satisfied that three months, with the Council's powers of discretion under s173A of the Act, if considered necessary, would be reasonable for compliance with the requirements of the notice.
15. Accordingly, the appeal on ground (g) fails.

S A Hanson

INSPECTOR