



Appeal Decision

Site visit made on 18 May 2021

by S A Hanson BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 June 2021

Appeal Ref: APP/P4605/C/21/3267465

2 Dunstall Grove, Weoley Castle, Birmingham B29 5LY

- 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 Ms Jane Lenart against an enforcement notice issued by Birmingham City Council.
 - The enforcement notice, numbered 2020/0811/ENF, was issued on 14 January 2021.
 - The breach of planning control as alleged in the notice is: *Without planning permission, the unauthorised erection of a two storey side extension. The extension is in the approximate position edged in green and marked with a green cross on the attached plan.*
 - The requirements of the notice are: *Demolish the extension in its entirety and remove all demolished materials off the Land or carry out remedial works to ensure that the works are in accordance with the approved plans referenced under 2018/05715/PA.*
 - The period for compliance with the requirements is six 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 (the 1990 Act). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the 1990 Act.
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Decision

1. It is directed that the enforcement notice be varied by the insertion of the following words at paragraph 5. What you are required to do following

"Demolish the extension in its entirety and remove all demolished materials off the Land

or

Carry out remedial works to ensure that the works are undertaken in accordance with the terms of the planning permission referenced 2018/05715/PA, including its conditions and limitations, and remove all constituent materials from the property resulting from compliance with this requirement"
2. Subject to these variations the appeal is dismissed and 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.

Preliminary Matter

3. The development is also the subject of a separate appeal under s78 of the 1990 Act against the decision issued by the Council for application ref 2020/08567/PA for "retention of a two storey side extension, single storey rear

extension, installation of porch to front and remedial works to include replacement of gable end roof to a hipped roof” which was refused by notice dated 31 December 2020. This is the subject of a separate decision under ref APP/P4605/W/21/3266649.

The notice

4. The requirements of the notice are appropriate in that they require the breach of planning control to be remedied by making the development comply with the terms of the permission 2018/05715/PA, pursuant to section 173(4)(a) of the 1990 Act. However, the notice should seek that the development is modified in accordance with the terms and conditions of the permission, not just the plans. Varying the notice on this basis would cause no injustice to either party as this is clearly what the Council intended to seek.

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

Main Issues

5. These are (i) the effect of the development on the character and appearance of the dwelling and the street scene; and (ii) the effect of the development on the living conditions of the occupants of the neighbouring property with regard to privacy and overlooking.

Reasons

Character and appearance

6. The appeal site is a two storey semi-detached dwelling situated within a cul-de-sac with 15 similar properties. The residential road is characterised by the analogous design features with fenestration, central chimneys and hipped roofs with the houses forming a mirror image of each other either side of the road. The appeal property is found at the entrance to the cul-de-sac with its frontage facing Dunstall Grove and its side facing Somerford Road.
7. The Council’s home extensions design guide supplementary planning document ‘Extending Your Home’ 2007 (Extending your Home SPD) requires extensions to respect the appearance of the local area and the original property. It states that a side extension should be designed to look less important than the existing building; the pitch of the new roof should match those on the existing property, however the ridge line should generally be lower than that of the main roof so that it does not dominate the appearance of the house.
8. The two storey extension is clearly not a modest addition to the property. Maintaining the current ridge height for such a sizeable extension does not promote the development as a subservient addition to the original house. Additionally, the width of the extension is greater than that of the original dwelling and this unbalances the property. This is further exacerbated by the absence of a break in the front elevation that would be gained by stepping-in the extension. Furthermore, the gable end is an alien feature within the immediate location, especially on this corner plot where it is highly visible against the backdrop of Dunstall Grove and within the setting of properties along Somerford Road, which share characteristics with the cul-de-sac in particular hipped roofs. Planning permission was previously granted for a two storey side extension under ref 2018/05715/PA. The proposed development, as approved, presented a more subservient addition to the host dwelling with a

lower ridge height and a reduced width which resulted in a more successful extension which would have less impact upon the street scene.

9. However, the extension as partially constructed, is a disproportionate addition and by reason of its scale and mass it has a significantly detrimental impact on the character and appearance of the host property and the street scene both within Dunstall Grove and Somerford Road. In this respect, the proposal conflicts with guidance contained within the Council's Extending Your Home SPD, Policy PG3 of the Birmingham Development Plan (2017) and the saved policy 3.14 C-D of the Birmingham Unitary Development Plan (2005) which seek high design quality and outline the need to protect and enhance the environment and to not allow proposals which would have an adverse effect on the quality of the built environment. The proposal also conflicts with the National Planning Policy Framework (the Framework) which seeks to secure high quality design which should contribute positively to making places better for people.

Living conditions

10. The two storey addition extends significantly to the side of the property and due to its perpendicular position with the neighbouring property, 22 Somerford Road (No 22) it is an overwhelming presence. This is intensified by the limited depth of the rear garden of the appeal site in this position and the proximity of the two storey extension to both the site boundary and the neighbouring property. The expanse of the two storey extension, particularly with the bulk of the gable ended roof form, will undoubtedly also have a negative impact upon the outlook of the neighbouring occupants.
11. The extension, as partially constructed, has window openings at first floor level which, according to the plans, would service a bathroom and bedroom. Although the bathroom window could be subject to a condition which ensured it be obscure glazed, the bedroom window would allow direct overlooking of No 22's outdoor space. Due to the limited separation distance between the properties, this would be detrimental to the privacy of the occupants of that property.
12. Overall, the two storey extension is an unneighbourly addition to the appeal property and its impact upon the occupants of No 22 is unacceptable. In this respect it conflicts with Policy PG3 of the BDP, saved Paragraph 3.14C of the UDP and guidance contained within the Council's Places for Living Supplementary Planning Guidance. These emphasise the importance of good design responding to site conditions and not compromising the privacy of neighbouring occupants. There is also conflict with the Framework which promotes development with a high design quality and a high standard of amenity for existing users which does not undermine the quality of life.

Alternative scheme

13. As part of the appeal under ground (a) the appellant advanced alternative schemes to be considered. The appellant argues that alterations to form a hipped roof, the addition of a chimney and the omission of the ground floor and first floor bedroom window on the rear elevation would overcome the Council's reasons for issuing the notice. Although the hipped roof would be visually more pleasing, and the exclusion of windows in the rear elevation would aid the

negative impact upon the occupants of No 22, it remains that the extent of the two storey addition is bulky and unbalances the property.

14. I acknowledge that enforcement action should be remedial rather than punitive. However, I consider that the alternative schemes proposed by the appellant would not satisfactorily overcome the harm to the character and appearance of the dwellinghouse or the street scene as identified above.

Conclusion on ground (a)

15. There are no material considerations that indicate the deemed application should be determined other than in accordance with the Development Plan. For the reasons given above I therefore conclude that the appeal on ground (a) should not succeed and I shall refuse to grant planning permission on the deemed application.

The appeal on ground (f)

16. An appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve the purpose of the notice. The purposes of an enforcement notice are set out in s173 of the 1990 Act and are to remedy the breach of planning control¹ or to remedy injury to amenity². Reading the notice as a whole, it would seem the purpose of the notice was to remedy the breach of planning control.
17. In these circumstances, s173(4)(a) of the 1990 Act provides that the purposes of an enforcement notice are remedying the breach of planning control by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place.
18. The steps required by the notice stipulate either the complete removal of the two storey side extension or the carrying out of remedial works to ensure that the works are in accordance with the planning permission referenced under 2018/05715/PA. These requirements are in accordance with s173(4)(a) of the 1990 Act.
19. I have already considered the alternatives put forward under ground (a) and found them to be unacceptable. The issued requirements do not exceed the purpose behind the notice to remedy the breach of planning control. There are no other lesser steps before me that would remedy the breach.
20. The appeal on ground (f) fails.

S A Hanson

INSPECTOR

¹ s173(4)(a)

² s173(4)(b)