The Planning Inspectorate

Appeal Decision

Site visit made on 27 July 2021

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 October 2021

Appeal Ref: APP/X4725/C/21/3272593
90 Thornleigh Avenue, Wakefield

- 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 Zaheem Aksar against an enforcement notice issued by City of Wakefield Metropolitan District Council.
- The enforcement notice was issued on 19 March 2021.
- The breach of planning control alleged in the notice is failure to comply with condition No 1 of a planning permission Ref APP/X4725/D/20/3252099 granted on 2 November 2020.
- The development to which the permission relates is the formation of a through car port, first floor side/rear extension, dormers and single storey extension to rear (amendment to previously approved application 11/00244/FUL).
- The condition in question is No 1 which states that: The development hereby permitted shall be in accordance with the following approved plans: Proposed Plans & Proposed Elevations (received by the Council on 22 November 2019).
- The notice alleges that the condition has not been complied with because the extension as built is not in accordance with the approved plans. The first floor extension as built is currently approximately 2.7m. The approved plans show a maximum projection of 1.5m.
- The requirements of the notice are: Reduce the depth of the first floor side and rear extension over the car port by 1.25m so that the total projection is 1.5m as per Proposed Plans & Proposed Elevations approved under appeal reference App/X4725/D/20/3252099.
- The period for compliance with the requirements is 9 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended. 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 Act.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a correction in the terms set out in the Formal Decision below.

The Notice

1. The Council has indicated that an application reference number cited in section 3 of the notice is incorrect. The reference is included within the reciting of the description of development from the planning permission to which the alleged breach relates. It is not the reference number for the actual permission itself, which is correctly cited. In which case, the error would not have caused the recipient to misunderstand the alleged breach and thus no injustice would be caused to either the appellant or the Council if I were to correct it. I will do so accordingly.

Appeal on ground (a)

Main Issues

2. The main issue is the effect of the development on the living conditions of the occupiers of 92 Thornleigh Avenue with particular regard to outlook and light.

Reasons

3. The appeal site comprises a two-storey, semi-detached property. Planning permission was granted on appeal in November 2020 for a car port, first floor side/rear extension, dormers and a single storey extension to the rear. I saw from my site visit that a car port, dormers, single storey and first floor side/rear extensions had been constructed, However, the first floor extension has a greater depth to the rear than is shown on the approved plans.

4. The adjacent property No 92 has a two-storey extension to the side which infills the gap between the original side wall of the house and the boundary with the appeal property. In the first floor of No 92 there is a window in the rear elevation which serves a bedroom.

5. The side extension of the appeal property infills the gap between the original flank wall of the house and the boundary with the adjacent property. The two-storey extension projects beyond the rear wall of No 92 by around 2.7m. In addition, it has a flat roof with a blank gable wall facing the adjacent property. As a result, the extension will appear as a significant expanse of solid, unrelieved brickwork in particularly close proximity to the bedroom window of No 92.

6. Section 1.07 of the Wakefield District Residential Design Guide Part 2: Guidance for Householders Supplementary Planning Document Councils Residential Design Guide Part 2 for Householders (undated) (SPD) states that development should prevent excessive overshadowing of habitable rooms and avoid over-bearing impacts on adjacent properties. The SPD defines habitable rooms as including bedrooms. It also sets out that the '45 degree rule' will be used to assess the impact of development on neighbouring properties.

7. Taking the midpoint of the first floor bedroom window in No 92, the extension will go beyond a 45 degree line from that point. The SPD states that in such scenarios, the extension is likely to cause overshadowing of the neighbouring property. Moreover, the extension is sited to the south-east of the bedroom window. As such, daylight and sunlight to the bedroom will be restricted from much earlier in the day than would have previously been the case prior to the erection of the extension.

8. I conclude, therefore, that the development will have a harmful effect on the living conditions of the occupiers of 92 Thornleigh Avenue with particular regard to outlook and light. As such, the development will fail to comply with Policies D9 and D10 of the Wakefield Metropolitan District Local Development Framework Development Policies 2009 which state that development should have no significant detrimental impact on the amenity of neighbouring residents and should not overshadow neighbouring dwellings.

Personal Circumstances

9. The appellant indicates that the family member who uses the first floor bedroom within the extension has disabilities. In exercising my function on behalf of a public authority, I have had due regard to the Public Sector Equality Duty (PSED) contained in the Equality Act 2010 (EA). The EA sets out the relevant protected characteristics which includes disability. Since there is the potential for my decision to affect persons with a protected characteristic, I have had due regard to the three equality principles set out in Section 149 of the EA.

10. I recognise that the physical and mental health of the family member would be compromised by having to move to a different room in the house since the first floor bedroom would become too small for them once the reduction in the size of the extension has taken place.

11. Nevertheless, in this instance the extension will be permanent and remain indefinitely regardless of the persons who occupy the dwelling. Having regard to the planning policy aims to prevent harm to the living conditions of neighbouring occupier, I find those matters of public interest carry greater weight. Dismissal of the appeal and upholding the notice is therefore necessary and proportionate.

Other Matters

12. I note that there would be a substantial cost to the appellant to undertake the works required by the notice. The appellant also indicates that the remedial works will require access to the adjacent property which will not be allowed and thus the works cannot be completed safely. However, no evidence has been put forward which demonstrates that access would not be provided, or that safe means to carry out the works could not be done within the confines of the appellant's land. Overall, such matters do not outweigh the harm I have identified.

Conclusion

13. For the reasons given above, I conclude that the appeal on ground (a) should not succeed and planning permission on the application deemed to have been made under section 177(5) of the 1990 Act should be refused.

The appeal on ground (g)

14. An appeal on ground (g) is made on the basis that the period for compliance with the requirements of the notice is too short. The notice gives a period of 9 months for it to be complied with.

15. The appellant has not proposed an alternative time period or indeed indicated why a period of 9 months is unreasonably short. It seems to me that a period of nine months would be reasonably sufficient to undertake the required works to ensure compliance with condition 1 of the 2020 planning permission. It would also ensure the necessary expediency to overcome the planning harm.

16. The appeal on ground (g) therefore fails.

Formal Decision

17. It is directed that the enforcement notice be corrected by deleting the phrase "11/00244/FUL" from section 3 of the notice and substituting it with the phrase "19/02618/FUL". Subject to this correction, 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.

J Whitfield

INSPECTOR