
Appeal Decision

Site visit made on 26 October 2021

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 November 2021

Appeal Ref: APP/C4615/C/21/3277699

The Land known as 72 Watsons Green Road, Dudley DY2 7LF

- 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 Rakesh Amin against an enforcement notice issued by Dudley Metropolitan Borough Council.
 - The enforcement notice was issued on 17 May 2021.
 - The breach of planning control as alleged in the notice is *without planning permission and within the last four years, the erection of a single storey rear extension on the Land (as shown on the attached photographs labelled Photo 1 and Photo 2).*
 - The requirements of the notice are *i. Demolish the unauthorised single storey rear extension from the Land in its entirety ii. Remove from the Land any waste and debris associated with or arising from the demolition works and compliance of the above.*
 - The period for compliance with the requirements is 4 (four) months.
 - The appeal 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 (the 1990 Act).
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Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Background

2. Planning permission was originally granted on 29 December 2015 for the erection of new building comprising of a retail unit (A1) on the ground floor and two flats on the first floor. In 2020, two planning applications were refused for works to the rear of the appeal property. P20/1004 - Partial demolition of extension and erection of open-air enclosure to the rear of the existing retail unit, including security roller shutters was refused on 28 September 2020. P19/1429 - Single storey extension to existing retail unit and erection of 2.8m high wall (retrospective) was refused on 24 January 2020.

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

Main Issue

3. This is the effect of the development on highway safety in terms of the accessibility of the site for service vehicles and the displacement of service and resident/customer vehicles onto the public highway.

Reasons

4. The appeal site comprises a two storey modern brick building with a retail unit occupied by 'One Stop' on the ground floor, and residential apartments above. The site is located within a predominantly residential area and is positioned opposite a T junction that intersects Watsons Green Road and Hill Crest Road. Close to this junction are two primary schools. To the front of the site is a bus stop on either side of the road. Parking areas are provided to both sides of the shop unit for customers and residents of the apartments.
5. The development which is the subject of the notice is a lean-to extension to the rear which extends from the rear elevation of the shop building to the retaining wall. It is accessed internally from within the shop and there are pedestrian doors to each side which provide access from the extension building to a small open yard area enclosed by solid security gates. At the time of my visit, the internal space was being used for storage in association with the shop.
6. The servicing arrangements for the appeal property approved by the original planning permission¹ allowed for the service vehicles to serve the development on-site, with access around the rear of the shop to enable vehicles to enter and exit the site in a forward gear. Given the constrained nature of the site, with limited space for parking and turning of large delivery vehicles, the proximity of the road junction and the residential nature of the area, the retention of the area at the rear for servicing and deliveries to the retail store was considered necessary to render the development under application P15/1607 acceptable.
7. The appeal development curtails this accessibility for service vehicles. The current situation means that these vehicles are no longer able to both enter and exit the site in a forward gear. Furthermore, the development is alleged to have displaced service vehicles and those which would use the site for resident and customer parking, to the public highway. From what I saw at my visit and from the presented evidence, I am not convinced that parking matters are problematic. Nevertheless, the rear extension does constrain the accessibility of the site and it is likely that service vehicles may park within the highway rather than navigating the parking areas within the appeal site.
8. Overall, the development does not allow for adequate or safe provision, and poses an unacceptable safety issue, for those using the site and the adjoining highway in an area which is predominantly residential, with two schools in close proximity and bus stops adjoining the appeal site. In this respect, the development conflicts with the National Planning Policy Framework, Policy TRAN2 of the Black Country Core Strategy (2011) and policies S6 and S17 of the Dudley Borough Development Strategy (2017).

Alternative scheme

9. Section 177(1) (a) of the Town and Country Planning Act 1990 (as amended) (the 1990 Act) allows permission to be granted under the appeal on ground (a) to any part of the matters alleged in the notice. To that end, the Appellant has advanced an alternative scheme to the development the subject of the notice.
10. Under the ground (a) appeal, the appellant seeks planning permission for a revised arrangement at the rear of the site which they consider addresses the alleged harm set out in the Notice. The revised development is described by

¹ P15/1607

the appellant as the “partial demolition of extension and erection of an enclosed yard to the rear with roller shutters together with access gates”. The proposed scheme is a modification to the previously refused scheme under reference P20/1004 which was refused on grounds of highway safety relating to the impact on the servicing arrangements for the retail store.

11. The plans show a significantly larger building which, according to the appellant’s Transport Technical Letter and evidence provided by the Swept Path Assessment, would allow for the refuse and delivery vehicles to serve the appeal site by entering and exiting the site in a forward gear. Nevertheless, the development as proposed by the appellant is significantly different in terms of size, materials and appearance. It does not form part of the development enforced against, and hence cannot come within the terms of the deemed planning application.

Conclusion on ground (a)

12. 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)

13. 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. Reading the notice as a whole, it would seem the purpose of the notice was to remedy the breach of planning control.
14. The steps which the Council require to be taken in order to remedy, wholly or partly, the breach of planning control is set out in section 3 of the notice. The steps required by the notice stipulate the demolition of the single storey rear extension to remedy the breach of planning control. This requirement is in accordance with s173(4)(a) of the Act.
15. There is no power under ground (f) to consider the merits of an alternative scheme that is not part of the matters stated in the notice as breaching planning control. 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.
16. The appeal on ground (f) therefore fails.

The appeal on ground (g)

17. 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 four months is too short a period to enable the removal of the extension and requests the compliance period be extended to six months. I am offered no justification for the requested extension to the period for compliance with the notice and the Council remains of the view that the period of compliance is proportionate.
18. Overall, and having regard to both parties, I do not consider that four months is an unreasonable amount of time to comply with the notice.
19. Accordingly, the appeal on ground (g) fails.

S A Hanson

INSPECTOR