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# Appeal Decision

Site visit made on 23 November 2021

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

**an Inspector appointed by the Secretary of State**

**Decision date: 31 January 2022**

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**Appeal Ref: APP/P4605/C/21/3275652**

**41 Walsh Drive, Birmingham, B76 2NU**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr J C Robbins against an enforcement notice issued by Birmingham City Council.
  - The enforcement notice was issued on 20 April 2021.
  - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a detached garage in the approximate position marked in green on the attached plan and the erection of a fence marked blue on the attached plan.
  - The requirements of the notice are to: 1. Demolish the detached garage and remove the demolished materials from the premises 2. Remove the fence or reduce it to 1m in height at which height it would constitute permitted development.
  - The period for compliance with the requirements is: 2 (two) 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. 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.

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

### Main Issues

2. These are the effect of the development on i. the character and appearance of the property, surrounding area and street scene ii. the living conditions of the occupier of the neighbouring property, 2 Stourton Close (No.2) regarding privacy.

### Reasons

#### *Character and appearance*

3. The appeal property is a two storey detached dwelling constructed using buff coloured brick and red vertically hung tiles under a corrugated concrete tile roof. It is within a residential area where development consists of dormer bungalows and semi-detached and detached houses of similar architectural design. Properties are generally set back from the road with open frontages which are landscaped and/or set aside for parking.
4. Within the immediate area, many properties have integral garages and these, together with the detached examples, are constructed using materials which

match the host dwelling, mainly brick. They are of proportionate size to the properties and those that are separate from the house are seen as a subordinate ancillary structure.

5. Low level soft landscaping is a dominant feature in the street scene and boundary treatments to the front of properties within the immediate area are limited. The character of the surrounding residential area is open with significant areas of green space to break up the built environment. Walsh Drive gently curves its way through the estate with enhanced corner plots on road junctions, many of which are devoid of buildings, instead providing an oasis of open green space. The layout allows for extensive views within the public realm along Walsh Drive and across the frontages of properties.
6. The appeal property sits on a corner plot and commands uninterrupted views for some distance along Walsh Drive and from properties situated close by. The eyes are drawn to the contemporary form of the garage and the high boundary fence to the side of the dwellinghouse. The garage is clad with stained vertical Larch timber boarding which has no reference to its host property or its immediate surroundings. It has a mono-pitch roof which slopes down towards the house, and it has a wide frontage with a double width garage door situated asymmetrically on its façade. These elements of the design appear awkward in this setting and do not complement the property.
7. To the side of the house and attached to the front corner of the garage is a 1.8m<sup>1</sup> high fence. This structure consists of timber panels with a horizontal form atop a white coloured plinth and white posts between the panels. The fence encloses the side garden which is adjacent to the public highway. In contrast to the open frontages to the street, this portrays an alien feature. Although the front garden remains open, because of the estate layout the open land to the side of the house is also an important design feature on this corner plot.
8. The height and design of the fence, in a place where there are uninterrupted and direct public views, significantly detracts from the appearance of the house and street scene and the character of the area. I have seen photographs provided by the appellant which shows that there previously was a fence to the side garden. However, this was screened by a tall hedge and was set back from the roadway, not dominating the corner plot, allowing for views across the appeal site.
9. The appellant has also provided examples of developments within the area that have fences to the front. I am not privy to the facts of these individual circumstances or whether planning permission had been granted for such developments. Furthermore, the existence of such developments does not alter my judgement on the development before me.
10. Overall, both the garage and the fence dominate the side of the property and due mainly to their design, form and materials, they have a negative effect on both the character and appearance of the house, street scene and area. I note that previously there was a hedge between the appeal site and No.2 which the appellant considers dominated the boundary in a manner similar to the new garage. However, the hedge was not development within the meaning of s55 of the 1990 Act.

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<sup>1</sup> LPA statement para 5.15

11. I find that the development conflicts with Policies PG3 and TP27 of the Birmingham Development Plan 2017 (BDP) and the National Planning Policy Framework (the Framework) which expect new development to be of high quality design and respond to local area context. It also conflicts with the essence of saved Paragraph 3.14C-D of the Birmingham Unitary Development Plan 2005 (UDP), 'Places for Living' Supplementary Planning Guidance (SPG) and 'Extending your Home' Supplementary Planning Document (SPD) which require development to have particular regard to the local character of an area, including, amongst other things, street patterns, boundary treatments, open spaces and landscape, scale and massing, reinforcing and evolving any local characteristics.

*Living conditions*

12. It is not expressly clear what the Council mean regarding the side windows in the garage facing No. 2 "would not meet the separation distance of 5m as required in 'Places for Living' and 'Extending Your Home' design guidance. The reference to 5m set back is in the SPD/SPG regarding *main* (my emphasis) windows overlooking existing private space where a minimum standard of a 5m set back is a design point. The guidance suggests that it is important to leave an appropriate gap or space between an extension and neighbouring buildings especially along boundaries. In the locality, garages are commonplace situated along a boundary with a neighbouring property and together with the mis-interpretation of the SPD/SPG planning guidance, a separation distance as referred to in the Council's third reason for issuing the notice is not considered to be required.
13. However, along the boundary shared with No.2 the upper section of the garage sits on the brick boundary wall and overhangs into the neighbour's space. This upper section is painted white and displays 3 windows which face the rear garden area belonging to No.2. Although the windows are relatively high in the wall, the potential for looking into the neighbour's garden and rear of their house, due to the closeness of the buildings, remains. I consider that this does compromise the private amenity of the occupier of the neighbouring property to an unacceptable level.
14. In this respect, Policy TP27 of the BDP is not relevant. However, the development conflicts with Policies PG3 of the BDP and the Framework which expect development to be high quality design that responds to site conditions. It also conflicts with the essence of saved Paragraph 3.14C-D of the UDP which requires development to respect the area surrounding them and have regard to the development guidelines set out in the SPD and SPG. Although I have found that the 'numerical standards' regarding the 5m separation provided both within the SPD and SPG should not be utilised in this context, the development is considered to conflict with the three principles contained within the design guidance provided in the SPD: respect the appearance of the local area and your home; ensure the extension does not adversely affect neighbours; and minimise the impact on the environment.
15. As part of the appeal under ground (a) the appellant suggested that either the windows on the boundary elevation be blocked up or the height of the garage be reduced to be level with the lowest wall thereby removing the windows from the garage and reducing its impact on this neighbour. The appellant considered that by doing this it would mitigate all the concerns raised within the

Enforcement Notice whilst still enabling the appellant to make the best use of land. The alternative suggested could be considered as part of the development being enforced against. As such, it is appropriate to consider and to assess whether the alternative scheme would overcome the planning difficulties at less cost and disruption than the total removal of the building.

16. A reduction in the roof height would lessen the impact of the building on the neighbouring occupier and would also lessen the visual impact of the development to an extent from public viewpoints. However, it would still be a building of poor design and contrasting materials with a somewhat incongruous presence in the street scene that has little regard to the character or appearance of the surrounding environment.
17. The appellant suggests that step 2 be removed from the requirements on the enforcement notice. Although I acknowledge the concerns regarding privacy and security, the height of the fence in this position harms the open character of the surrounding area and a lower fence would naturally have a lesser impact.
18. 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, street scene or surrounding area as identified above.

### **Conclusion on ground (a)**

19. There are no material considerations that indicate the deemed application should be determined other than in accordance with the Development Plan as a whole. 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)**

20. 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 control<sup>2</sup> or to remedy injury to amenity<sup>3</sup>. Reading the notice as a whole, it would seem the purpose of the notice was to remedy the breach of planning control.
21. 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 and there are no other lesser steps before me that would remedy the breach.
22. The appeal on ground (f) fails.

*S A Hanson*

INSPECTOR

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<sup>2</sup> s173(4)(a)

<sup>3</sup> s173(4)(b)