



Appeal Decision

Site visit made on 15 December 2021

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 31st January 2022

Appeal Ref: APP/P4605/C/21/3277016

88 Swanshurst Lane, Birmingham B13 0AL

- 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 Zafar Ali against an enforcement notice issued by Birmingham City Council.
- The enforcement notice was issued on 21 May 2021.
- The breach of planning control as alleged in the notice is; Without planning permission, the unauthorised erection of an outbuilding and increase in ground level in the approximate position marked in green on the attached plan.
- The requirements of the notice are to
 - I. Demolish the unauthorised outbuilding in its entirety and remove all materials in connection with the unauthorised development from the Land
 - II. Remove all materials deposited to raise the original ground level to the rear of the Land and reinstate the existing ground level to as it existed prior to the breach taking place.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a)(b)(f) and (g) of the Town and Country Planning Act 1990 as amended (the Act). Since an appeal has been made on ground (a), the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.

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 Act as amended.

Procedural Matters

2. Based upon the appellant's initial evidence, the parties were given an opportunity to provide further evidence and comments in relation to a partial ground (b) appeal and I am therefore able to address the ground (b) arguments without causing injustice to any party.

The appeal under ground (b)

3. An appeal on ground (b) is a claim that the breach of planning control has not occurred as a matter of fact. The burden of proof is on the appellant and the relevant test is the 'balance of probabilities.' The appellant does not dispute that an outbuilding has been erected at the end of the garden which requires planning permission but disputes that land levels have increased. The appellant has provided a short statutory declaration in which he states "the

ground I have built my outbuilding on has only been raised by 10cm in order to lay down hardcore for slabbing”.

4. The Council visited the appeal site in November 2019 when the base had been constructed on top of existing land levels with one end significantly higher at one end than the other with a maximum height of around 0.9 metres closest to the rear boundary and around 0.3 metres to the other end. As well as increasing the overall height of the outbuilding due to the incorporation of the concrete base, the Council also considers that the land levels particularly next to the rear boundary fence has increased. The appellants photographs are largely limited to events after the construction of the outbuilding and there is no detailed evidence from the appellant as to how the construction took place.
5. As the Council maintains that the base was built on top of existing levels, it considers that its photographs shows that there has been an increase in the land levels in the gap between the rear of the building and the rear boundary as only part of the concrete base is showing next to the soil level rather than all of it.
6. In an email following receipt of the Council’s later ground (b) evidence, the appellant accepts that the ground level has been raised by 3 brick courses or 0. 225 metres as the base is 7 brick courses at its highest and 4 brick courses are visible. Whilst the appellant has sought to explain the reasons for any increase, those are not relevant matters for consideration under ground (b).The Council’s photographs indicate that the base was constructed on top of existing land levels and the photograph showing the extent of the concrete base still visible, identifies the change in levels in the area between the rear of the building and the boundary fence.
7. Although the appellant has referred to an exception for an increase in height of less than 0.3 metres, any works carried out were done as part and parcel of the construction of the outbuilding and have to be assessed as such. For the purpose of ground (b) the appellant’s position has now changed from an indication that any ground level increase was limited to 10cm or 10mm.
8. In order for the ground (b) appeal to succeed, the appellant would need to show on the balance of probabilities that the breach alleged in the notice has not occurred. From the evidence before me, there has been an increase in land levels arising from the use of the concrete base and to the rear of the outbuilding. The appeal under ground (b) must therefore fail.

The appeal under ground (a) and the Deemed Planning Application (the DPA)

Main Issue

9. The main issue is the effect of the development on the living conditions of nearby occupiers particularly 22 Meadow View (No 22) having regard to outlook, overlooking and loss of privacy.

Reasons

10. The appeal site consist of a semi-detached dwelling with a dormer and single storey extension in a largely residential area with a long garden to the rear. Beyond the rear gardens of the dwellings on Swanshurst Lane are the more modest bungalows and gardens of Meadow View. The dwellings and gardens

on Meadow View are on lower ground due to a natural slope downwards from Swanshurst Lane. There are fence panels to the rear boundary of the appeal site with the garden of No 22 to the other side.

11. The development includes a single storey outbuilding situated at the bottom of the garden incorporating the concrete base. The outbuilding is currently made up of breeze blocks and is partially rendered. The parties disagree as to the height of the outbuilding as the Council considers that the height of the concrete base has to be included in that figure. In terms of assessing the harm to the living conditions to nearby occupiers on Meadow View, the increased height caused by using a base is, in my view, relevant.
12. No 22 has a garden of around 13 metres in length compared to the appeal garden of around 62 metres. The height difference between the land levels of the two gardens is significant and means that there are clear views when standing on the paving slabs behind the outbuilding into the whole of the garden of No 22 as well as views into the living areas of No 22. Tree cuttings are now up against the rear fence on the appeal site side so that this area that was previously covered with dense vegetation is now more accessible.
13. The appellant acknowledges that accessing this area to collect the wood could give rise to a sense of being overlooked and has suggested adding a 2 metre high boundary fence or mature planting. However, installing such a fence at the existing ground level or planting is likely to create an overbearing, towering effect particularly in views from No 22 given the significant differences in land levels.
14. The rear of the development consists of a solid breeze block wall with a pitched roof which is significantly higher than the rear boundary fence between the appeal site and the garden of No 22. The views for the nearby occupiers of Meadow View from within the rear of their houses and their gardens and particularly No 22 is of a solid wall with pitched roof of the outbuilding at an elevated level. The height and scale of the outbuilding together with the modest gap between the outbuilding and the boundary fence means that the development is overly dominant.
15. The appellant makes comparisons between the development and outbuildings at Nos 90 and 92 Swanshurst Lane. However, those outbuildings are not in line with the development. The plan attached to the enforcement notice clearly shows that the appeal garden is longer than the gardens of No 90 and No 92. The different garden lengths also means that the gardens that back onto No 92 and 90 have longer gardens than No 22. The outbuildings are therefore not comparable to the development in terms of their location and relationship to Meadow View and the principle that each development has to be assessed on its own merits and location has to be applied.
16. The elevated location and scale combined with the height, position and proximity to the boundary fence does result in an over dominant and overbearing development which causes harm to the living conditions of nearby occupiers particularly No 22 with regard to outlook, overlooking and loss of privacy.
17. The development is therefore contrary to the Council's Places for Living Supplementary Planning Guidance March 2021 which requires proposals to consider the amenity of neighbouring occupants. It would also be contrary to

Paragraph 130 of the Framework which refers to providing a high standard of amenity for existing and future users. It would also be contrary to Policy PG3 of the Birmingham Development Plan 2031 (Adopted 2017) which refers to development responding to site conditions and the local area context. I find Policy TP27 of the Birmingham Development Plan 2031 (Adopted 2017) to be of less relevance to the issue of living conditions.

Permitted Development and Alternative Developments

18. The Council accepts that the issue of the notice would not prevent the appellant from constructing a new building which meets the requirements of Class E. However, whether the appellant chooses to do that and where the location of that new building would be is a matter for him.
19. The appellant has asked for alternative schemes to be considered. Although raised under ground (f), any alternative schemes are more appropriately firstly assessed under ground (a) as the appellant is asking for permission to be granted for these alternatives.
20. Section 177(1)(a) of the Act states that planning permission can be granted for the matters constituting a breach of planning control in relation to the whole or any part of the development. Option A would involve modifying the existing outbuilding so that the location of the development remains the same but with changes to the design of the outbuilding to remove the pitched roof and replace it with a flat roof with a total overall height for the building not exceeding 2.5 metres when taking into account an increase in ground level of only 10mm or 10 cm.
21. However, Option A disregards the presence of the base in creating height and retaining the building with a flat roof. Proposed boundary treatments create the same issues as with the existing development. Even if I was to consider that the changes proposed did fall within Section 177(1) (a) of the Act, Option A would not overcome the harm that I have identified as the elevated location and the proximity of the outbuilding to the shared boundary would not change.
22. Option B involves demolishing the existing outbuilding and using the materials to create a different building with a flat roof in a different location. As the existing outbuilding would be demolished under this option, what is proposed is not the development nor part of it and cannot be considered under ground (a) due to the provisions of Section 177 (1)(a) of the Act. If the appellant wishes to pursue a new building in a different location, these are matters for discussion with the Council outside of this appeal process.

Conclusion on ground (a) and the DPA

23. I have found harm to the living conditions of nearby occupiers particularly No 22 having regard to outlook, overlooking and loss of privacy. I do not consider Option A overcomes the harm that I have identified and Option B falls outside the remit of ground (a). The appeal under ground (a) is therefore dismissed.

The appeal under ground (f)

24. Section 174(2)(f) of the Act states that an appeal may be made on the ground that the steps required by the notice to be taken, exceed what is necessary to remedy any breach of planning control which may be constituted

by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. It is therefore necessary to consider whether the purpose of the notice is to remedy the breach of planning control or remedy any injury to amenity.

25. The appellant has referred to remedying injury to amenity and considers that Option A as an alternative scheme does that and that there would be no injustice to the Council. However, my assessment of the planning merits of Option A does not support the view that there would be no injury to amenity.
26. Whilst the appellant has asked for the notice to be varied to allow for Option B, the appellant's request would add a further requirement to build a different building. In addition to the need for discussions with the Council about this alternative, adding a requirement to build an alternative building within an unknown timescale is not an argument that the existing requirements exceed what is necessary irrespective of the purpose of the notice. The appeal under ground (f) therefore fails.

The appeal under ground (g)

27. An appeal under ground (g) is that the time for compliance with the notice is too short. The time for compliance is 6 months. The appellant has asked for a period of 12 months and refers to the cost of demolition and removal and personal circumstances of his family as reasons for requiring extra time.
28. The appellant accepts that the physical works involved in demolition are not major and are within the capabilities of a jobbing builder. However, the actual demolition is likely to take considerably less time than 6 months which gives the appellant the opportunity to obtain quotes and plan his finances accordingly. With regard to personal circumstances, the location of the outbuilding at the end of the garden should lessen the impact upon family members to a minimum to cause least disturbance.
29. A period of compliance of 12 months would be excessive having regard to the nature of the works required when the notice needs to be complied with in the public interest. A 6 month period does allow time for the appellant to consider which alternative options he wishes to pursue and obtain any necessary consents. However, in view of the ongoing harm, it is important that the demolition of the building is not delayed any further by that process. When weighing the conflicting public and private interests, I do consider that the current compliance of 6 months does strike a reasonable balance without placing a disproportionate burden upon the appellant. However, the Council does have discretionary powers under Section 173A(1)(b) of the Act to extend or waive a requirement within the notice if it considers that there are justified reasons to do so. This may be relevant if the appellant and the Council agree on an alternative scheme which would utilise materials after demolition. The appeal under ground (g) therefore fails.

Conclusion

30. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

E. Griffin INSPECTOR