



Appeal Decision

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

an Inspector appointed by the Secretary of State

Decision date: 17 February 2022

Appeal Ref: APP/P4605/C/21/3283093

10 Hobmoor Croft, Birmingham B25 8TJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Yasir Mohammed against an enforcement notice issued by Birmingham City Council.
 - The notice, numbered 2021/0615/ENF, was issued on 19 August 2021.
 - The breach of planning control as alleged in the notice is Without planning permission, the unauthorised erection of a single storey rear extension in the approximate position edged in green on the attached plan.
 - The requirements of the notice are to: (i) Demolish the entire unauthorised single storey rear extension and restore the rear elevation to the condition before the breach took place, and (ii) Remove all demolished building materials and rubble from the Premises arising from compliance with requirement (i) above.
 - The period for compliance with the requirements is: 3 (three) months.
 - The appeal is proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

2. Following consideration of the basis of the appeal and the submitted evidence, I consider that this appeal can be determined without the need for a site visit. This is because the planning merits of the matters applied for do not fall to be considered and I am able to reach a decision based on the information already available. Both parties were invited to comment on this matter. No comments were received from either party.
3. Matters relating to the planning merits of the structure in the context of the effect of the development on occupants of neighbouring properties are not relevant to an appeal made on ground (c). Those arguments are more relevant as to whether planning permission should be granted. However, no appeal is made on ground (a) that planning permission should be granted, and so I cannot take them into account in reaching my decision.

The appeal on ground (c)

4. This legal ground of appeal is that the matters alleged in the enforcement notice do not constitute a breach of planning control. The onus of proof in ground (c) is upon the appellant, and the test of the evidence is on the balance of probability. The appellant has not put forward a case to support his appeal and just relies on his view that he believed the development would be "allowed".

5. A breach of planning control comprises the carrying out of development without the required planning permission. Section 55(1) of the Town and Country Planning Act 1990 as amended (the 1990 Act) defines development as the carrying out of building, engineering, mining or other operations in, on, over or under land. Section 336 of the 1990 Act defines a "building" as including "any structure or erection".
6. The development, which is the subject of the notice, is the single storey flat-roof extension to the rear of the terraced dwelling, edged in green as indicated on the enforcement notice plan. From the evidence provided, the appeal development extends to a depth of 4 metres beyond a previous existing single storey rear extension and a two storey side and rear extension constructed as part of the development approved under 2007/02462/PA. These previous extensions extend beyond the rear wall of the original dwelling house by 7 metres (two storey extension 2 metres and single storey brick extension 5 metres). The combined depth of the additions from the rear wall of the original dwelling house is 11 metres.
7. The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) by way of Article 3, grants planning permission for certain types of development set out within the schedules and classes it contains. Schedule 2, Part 1, Class A of the GPDO grants permission for development within the curtilage of a dwellinghouse, subject to specified conditions and limitations.
8. Within section (ja) of Class A, development is not permitted if:

any total enlargement (being the enlarged part together with any existing enlargement of the *original* (my emphasis) dwellinghouse to which it will be joined) exceeds or would exceed the limits set out in sub-paragraphs (e) to (j);

sub-paragraph (g) states: for a dwellinghouse not on article 2(3) land¹ nor on a site of special scientific interest, the enlarged part of the dwellinghouse would have a single storey and—

(i) extend beyond the rear wall of the original dwellinghouse by more than 8 metres in the case of a detached dwellinghouse, or 6 metres in the case of any other dwellinghouse
9. Furthermore, this is subject to a neighbour consultation scheme to assess the impact of the proposed development on the amenity of their property. The requirements of the neighbour consultation scheme are set out in paragraph A.4 of Class A. Nevertheless, the extension exceeds the limitations set out above and therefore the single storey rear extension is development that does not benefit from a planning permission granted by the GDPO. Since no planning permission exists for the development, it constitutes a breach of planning control.
10. The appeal on ground (c) therefore fails.

S A Hanson

INSPECTOR

¹ Land described as being within National Parks, areas of outstanding natural beauty and conservation areas etc