



Appeal Decision

Site visit made on 1 February 2022

by **A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC**

an Inspector appointed by the Secretary of State

Decision date: 23 February 2022

Appeal Ref: APP/W4705/C/21/3280331

22 Bank, Bradford BD10 8BN

- 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 Yangjie Chen against an enforcement notice issued by City of Bradford Metropolitan District Council.
- The enforcement notice was issued on 22 June 2021.
- The breach of planning control as alleged in the notice is the construction of a single storey rear extension with an attached timber framed canopy structure and the construction of a detached outbuilding with an attached timber framed canopy structure, as shown on the attached photographs.
- The requirements of the notice are
 - i. Demolish the unauthorised single storey rear extension, detached outbuilding and attached timber framed canopy structures.
 - ii. Remove all arising materials from the land.
- The period for compliance with the requirements is two calendar months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with variations.

The Appeal on Ground (c)

1. The ground of appeal is that the matter alleged does not constitute a breach of planning control. The erection of a single storey rear extension with attached timber framed canopy and the construction of a detached outbuilding with an attached timber framed canopy comprise operational development within the meaning of s55 of the Act, for which s57 indicates, planning permission is required. In July 2019 planning permission was granted for a 3.5 metre single storey rear extension to the dwellinghouse, new stone boundary walling and detached garage. The appellant acknowledges that there are some differences between the scheme approved in 2019 and what has been built but argues that the differences are not significant enough to take the entire proposal outside the approved development. Its scale is materially different to the approved scheme and it also incorporates a significant additional timber framed canopy structure. Consequently, in my judgement the differences are significant enough to constitute a breach of planning control.
2. The rear extension does not comprise permitted development for which planning permission was granted by way of Article 3 of the Town and Country Planning (General Permitted Development)(England) Order 1995 (the GPDO) because it exceeds the limitations under Class A of Schedule 2 which states that development is not permitted if the enlarged part of the dwellinghouse

would extend beyond the rear wall of the original dwellinghouse by more than 3 metres in the case of a dwellinghouse such as this. Prior notification procedures are provided in the GPDO for larger single storey extension but such procedures were not followed before beginning the development and cannot be applied retrospectively.

3. With respect to the garage, the attached canopy incorporates a timber frame with plastic sheeting roof which was not part of the development approved in 2019 and therefore the outbuilding is materially different. The differences are significant enough to constitute a breach of planning control.
4. In addition, it is my understanding that at the time work started in 2020, part of the outbuilding was situated on land that was owned by a neighbour which was subsequently sold to the appellant in July 2021. Therefore, at the time the development was started it was outside the curtilage of the dwellinghouse and could not benefit from permitted development rights under Part 1 (Development within the curtilage of a dwellinghouse) of Schedule 2 to the GPDO.
5. The appeal on ground (c) fails.

The appeal on ground (a)

6. The ground of appeal is that planning permission should be granted. The main issue is the effect on the character and appearance of the area.
7. The appeal property is a stone built two storey semi-detached modern dwellinghouse which is situated in a predominantly residential part of Bradford. It is situated adjacent to an access road which serves garages to the rear. Works have taken place to erect a single storey rear extension and outbuilding. Some of the development the subject of the enforcement notice was approved, but the works that have taken place take the extension and outbuilding beyond the scope of the authorised scheme.
8. The rear extension is substantially different from the extension that was previously approved. It is larger than the approved extension and incorporates a timber and plastic canopy which gives an untidy and rather makeshift appearance to the building. As a consequence of its overall scale, it provides a disproportionate extension to the rear of the property which is visually dominant and at odds with the design, scale and appearance of the host property. As a consequence of the relative open character of the land to the rear of the property, the extension is clearly visible from its immediate surroundings and is unacceptably intrusive.
9. The detached outbuilding is also substantially different to the approved scheme. As well as having different arrangement of openings, it has a relatively large timber and plastic canopy, black metal painted gates and timber walling. As a consequence of its overall scale, design and the poor quality materials used the outbuilding is at odds with its surroundings. As a result of its close proximity to an open parcel of land to the rear of the appeal site, the outbuilding is unduly prominent and visually intrusive in its residential surroundings.
10. Therefore, I conclude on that the development has a harmful effect on the character and appearance of the area and conflicts with Policies DS1 and DS3 of the Local Plan for the Bradford District – Core Strategy Development Plan

Document Adopted July 2017, the Householder Supplementary Planning Document and the National Planning Policy Framework. These require development proposals to contribute to achieving good design and high quality places, creating a strong sense of place and be appropriate in their context in terms of layout, scale, details and materials.

The appeal on ground (f)

11. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve the purpose. The purpose of an enforcement notice are set out in s173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). Since the notice requires the demolition of the single storey rear extension, detached outbuilding and the attached timber framed canopy structures, the purpose is clearly to remedy the breach. Any measures short of those specified in the notice would not achieve that purpose. In this respect, the appeal on ground (f) fails.
12. Nonetheless, I am mindful that enforcement action is intended to be remedial and not punitive. With there being an appeal on ground (a) it would be possible to grant planning permission for part of the development. On 11 July 2019 planning permission was granted under reference 19/02121/HOU for a 3.5 metre single storey rear extension, including store to side elevation, new stone boundary walling and detached garage. Under s173(4)(a), the purpose of remedying the breach of planning control may be achieved by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land. The appellant suggests that the demolition of the structures is excessive as opposed to demolishing only those parts that were not included in the approved scheme.
13. However, in my judgement the differences between the approved scheme and what has actually been built go further than merely the erection of the timber and plastic canopy structures. Therefore, the demolition of those canopies would not be sufficient to bring the development back to the scheme for which permission has been granted. Although there is no obligation on me to raise alternatives that are not put to me in evidence it seems that there is an obvious alternative which would be proportionate and less disruptive than the entire demolition of the rear extension and outbuilding. Where an enforcement notice is directed at a building which differs materially from approved plans and the allegation is the construction of a building without planning permission, the notice may require that the building is either demolished or altered to comply with the terms of the permission that was granted. The appellant should be given this choice because either step would remedy the breach in accordance with s173(4)(a) and injustice would not result for either main party. To this limited extent the appeal on ground (f) succeeds.

The appeal on ground (g)

14. The ground of appeal is that the time given to comply with the requirements is too short. The two months given would be barely sufficient to remove the single storey extension and outbuilding and remove all arising materials from the land. A six month compliance period is suggested by the appellant and I agree that the period should be extended to give the appellant time to consider which option he wishes to pursue, to find a suitable builder and ensure that the

works are completed and all materials arising are removed from the land. Therefore, the appeal on ground (g) succeeds.

Formal Decision

15. I direct that the enforcement notice shall be varied by:

- a) the addition to paragraph 5 of the words "or ii) alter the single storey rear extension and detached outbuilding to comply with the terms of planning permission reference 19/02121/HOU dated 11 July 2019 including the conditions subject to which that permission was granted; and " after the words "i) Demolish the unauthorised single storey rear extension, detached outbuilding and attached timber framed canopy structures";
- b) the deletion from paragraph 5 of "ii)" before the words "Remove all arising materials from the Land" and the substitution therefore of "iii)"; and
- c) the deletion from paragraph 6 of the words "two calendar months" and the substitution therefore of the words "six calendar months" as the time for compliance with the requirements.

16. Subject to these variations the appeal is dismissed, 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.

A A Phillips

INSPECTOR