



Appeal Decision

Site visit made on 4 March 2022

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 March 2022

Appeal Ref: APP/P4605/C/21/3284245

22 St Oswalds Road, Birmingham, B10 9RA shown edged in red on the attached plan hereinafter referred to as the Land.

- 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 Zohiab Hassan Farooq against an enforcement notice issued by Birmingham City Council.
 - The enforcement notice was issued on 2 September 2021.
 - The breach of planning control as alleged in the notice is without planning permission the erection of an unauthorised rear extension in the approximate position marked with green crosses on the attached plan.
 - The requirements of the notice are to remove the unauthorised rear extension in its entirety, remove all demolished materials from the Land to the condition that it was in prior to the erection of the unauthorised rear extension.
 - The period for compliance with the requirements is 1 month.
 - 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 Act).
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Decision

1. It is directed that the enforcement notice be corrected by deleting the sentences including the words '*two and single storey rear extension*' in paragraph 4 and replacing these words with '*two, single and three storey extension*'. Subject to these corrections, the appeal is dismissed and 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.

The Notice

2. Paragraph 3 of the Notice refers to an '*unauthorised rear extension in the approximate position marked with green crosses on the attached plan*'. It is clear from considering the green crosses on the attached plan, and my site visit observations, that the green crosses relate to a two and single storey rear extension with a sloping roof and a dormer extended over the first floor rear extension that has created a third storey with a flat roof. Paragraph 4 (i.e. reasons for issuing this notice) of the Notice refers to a '*two and single storey rear extension*'.
3. Taking into account paragraph 3 of the Notice, and the accompanying plan, I am satisfied that it is clear that reference to '*rear extension*' includes the '*third storey*'. I shall therefore correct the reasons for issuing the notice in paragraph 4 of the Notice by deleting the words '*two and single storey rear extension*' and replacing these words with '*two, single and three storey extension*'. This would

not come as a surprise to the appellant as it has been referenced in the Council's appeal statement and at final comments stage the appellant would have had an opportunity to respond. Furthermore, I am content that the corrections would not cause injustice to any interested party.

Reasons

Ground (a) appeal and the deemed planning application

4. The appeal has been made on ground (a) of s174 of the Town and Country Planning Act 1990 (as amended) which is that planning permission ought to be granted in respect of any breach of planning control which may be constituted by the matters stated in the notice.
5. I have taken into account the corrected reasons for issuing the enforcement notice and the main issues in respect of the ground (a) appeal are the effect of the development on (i) the character and appearance of the area and (ii) the living conditions of the occupiers of No 20 St Oswalds Road in respect of light and outlook, and No 24 St Oswalds Road in respect of privacy.

Character and appearance

6. The appeal property falls within a long terrace of residential properties built in the Victorian period. Some of the properties have been extended to the rear, although the Council indicates that some do not have the benefit of planning permission. While there is variation in terms of the design of rear extensions and outriggers in the wider terrace, there is nevertheless a consistency in terms of subservient and in scale rear additions. Furthermore, Nos 20 and 24 St Oswalds Road, which adjoin the appeal property, have not been extended to the rear and include the original two storey rear extensions and single storey rear wings, and have similar open gaps to neighbouring boundaries. The open gaps are prevalent in this part of the rear of the long terrace and this adds positively and distinctively in design terms.
7. The unauthorised development has resulted in a much wider rear extension than previously. It has removed the open gap with No 24 Oswalds Road. This in itself has caused material harm to the character and appearance of the area and represents poor design. In addition, the extensions are higher than those of the neighbouring properties and, in particular, the dormer extension adds significant bulk and dominance when viewed from neighbouring land. Overall, the extensions appear incongruous and out of scale when compared to the original proportions and appearance of the appeal property.
8. For the above reasons, I conclude that the development has caused unacceptable harm to the character and appearance of the area and the host property. Consequently, it does not accord with the design, character, appearance and sustainable neighbourhood requirements of Policies PG3 and TP27 of the 2017 Birmingham Development Plan 2031; saved paragraphs 3.14C-D of the Birmingham Unitary Development Plan 2005 (UDP); the Council's Extending Your Home SPD 2007 and Chapter 12 of the National Planning Policy Framework 2021 (the Framework).

Living conditions

9. Windows are included within the side elevation of the unauthorised development both at ground and first floor levels facing the amenity space and

windows of No 24 St Oswalds Road and at a very close distance. Given this close relationship, I find that there has been a material loss of privacy for the occupiers of this neighbouring property, particularly when using outside amenity space. This aspect of the unauthorised development is at odds with the Council's Places for Living SPG 2001 (SPG) which states that there should be 5 metres per storey set back where new development with main windows overlooking existing private garden space is proposed.

10. In addition to the above, the rear extension as a whole is built in close proximity to the boundary with No 20 St Oswalds Road. Owing to its overall scale, bulk and height, the development has a dominating and enclosing impact when viewed from the relatively short and contained rear amenity space of this neighbouring property. Furthermore, the development has resulted in some loss of sunlight to this garden area at certain times of the day.
11. The aforementioned adverse effects are echoed by the occupier of No 20 St Oswalds Road who also states that *'most of our outside time is spent in the garden as it is difficult for us to travel anywhere else'* due to *'age related illnesses'*. The occupier of the No 20 St Oswalds Road also raises concern about alleged removal and damage to a brick wall at the end of the garden. This is not a consideration that is directly relevant to the consideration of this appeal and would need to be pursued as a separate private and legal matter.
12. For the reasons outlined above, I conclude that the development has resulted in the material loss of privacy for the occupiers of No 24 St Oswalds Road and an unacceptable loss of outlook and light for the occupiers of No 20 St Oswalds Road. Therefore, the development does not accord with the amenity requirements of paragraph 3.14C of the UDP; the SPG and paragraph 130(f) of the Framework.

Ground (f) appeal

13. The appeal on ground (f) is that the steps required by the notice to be taken, or the activities required by the notice to cease, 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.
14. The appellant's case under ground (f) is that *'it is possible to reach a mutual agreement on a planning approval given the fact that I did not have the time to open dialogue with the planning department'*. The purpose of the notice is to remedy the breach of planning control. The appellant has not provided any reasonable evidence to justify why the steps in the notice are excessive.
15. For the above reasons, I conclude that the ground (f) appeal fails.

Ground (g) appeal

16. The appeal on ground (g) is that the period specified in the notice in accordance with s173(9) falls short of what should reasonably be allowed.
17. The compliance period in the notice is 1 month. The appellant states that a period of 1 month is not reasonable as *a 'decision of the submitted application is outstanding'*. I have considered a ground (a) appeal and hence have determined a deemed planning application. Therefore, whether or not there is an outstanding planning application to be determined does not justify

extending the compliance period. In any event, if it transpires that it can be justified that a longer period is needed to deal with the requirements of the notice then under Section 173A (1) (b) of the Act the local planning authority can '*waive or relax any requirement of such a notice and, in particular, may extend any period specified in accordance with section 173(9)*'.

18. For the above reasons, I conclude that the ground (g) appeal fails.

Conclusion

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

D Hartley

INSPECTOR