



Appeal Decision

Site visit made on 8 March 2022

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 April 2022

Appeal Ref: APP/P4605/C/21/3287761

99 Trittiford Road, Billesley, Birmingham B13 0ET

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Mohammed Mughal against an enforcement notice issued by Birmingham City Council.
- The notice was issued on 26 October 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 immediately before the breach took place, and (ii) Remove all demolished building materials and rubble from the Premises arising from compliance with requirement (i) above, or; Carry out remedial works to the unauthorised single storey rear extension so that the development strictly accords with planning approval 2020/03897/PA or 2020/05770/PA and all attached conditions.
- The period for compliance with the requirements is: 3 (three) months
- The appeal is proceeding on the grounds set out in section 174(2)(a) 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.

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. This is the effect of the development on the living conditions of the occupants of the neighbouring property with particular regard to outlook and loss of light.

Reasons

3. Saved Paragraphs 3.14C and 8.39-8.43 of the Birmingham Unitary Development Plan 2005 (the UDP) aim to protect the amenity of existing residents from the effects of new development by having regard to the 45 degree code and more detailed guidance set out in Supplementary Planning Guidance/Documents. The most relevant of which are the Council's '45 Degree Code for House Extensions (2006)' document, 'Places for Living' Supplementary Planning Guidance (2001) and 'Extending Your Home, Home Extensions Design

Guide' Supplementary Planning Document (2007). These are material considerations to which I attach substantial weight.

4. The '45 degree code' (the Code) applies to extensions to existing premises which might affect adjoining residential occupiers. Its purpose is to achieve a reasonable balance between the interests of those wanting to extend and the occupiers of adjoining residential accommodation by ensuring that development would not seriously affect the outlook or daylight of those properties. To comply with the Code, new buildings should be designed so as to not cross the appropriate 45 degree line from the nearest window of the residential accommodation that may be affected. The window must be the main source of light to a habitable room such as a living room, kitchen, conservatory or bedroom.
5. The appeal development is situated close to the boundary with No.101. It extends some 5.5m in length beyond the rear elevation of the original semi-detached two-storey property. The 45 degree line is breached by the development where the line is taken horizontally from the neighbouring habitable ground floor window to the rear of 101 Trittiford Road (No.101). How this contravenes the Code is clearly shown on Drawing 2 Rev C for application 2020/03897/PA provided at Appendix 2 of the council's appeal statement.
6. Further to the breach of the technical guidance, the mass and bulk of the conservatory would be a noticeable change to the outlook previously enjoyed from the neighbouring windows closest to it. The conservatory is likely to be visible as an intrusive built feature when viewed from the windows as well as from adjoining rear garden area. This will be exaggerated by the expanse of brick wall above the fence on the common boundary elevation. The effect is likely to be oppressive particularly as the garden areas to the rear of both the appeal property and No.101 are limited.
7. In addition, the resultant impact of the development on the level of natural light received by neighbouring windows will be affected. This is mainly due to the scale of the development, its materials and its position with the neighbouring property in relation to the movement of the sun across the sky. Whilst the elevation adjacent to the common boundary has three small windows, this could not be considered an exception to the "planning rules being cited", as suggested by the appellant and which I understand to mean 'the Code'.
8. The applications approved under 2020/03897/PA and 2020/05770/PA allowed a conservatory extension of a similar size, which although it contravened the Code, was deemed acceptable by the council in terms of its effect on the occupiers of No.101. This was because "the 45 Degree Code policy allows for structures which are mainly made of glass as they continue to allow light to pass through to affected windows." However, in the case of this appeal, the flat roof is solid with a roof lantern and common boundary elevation is an expanse of brick work punctured by three small windows. These windows, without the fully glazed pitched roof, will have limited effect on increasing the level of natural light to the neighbouring property.
9. Overall, and notwithstanding the absence of any objection made by the occupiers or owners of No.101, I conclude that the development is harmful to the living conditions of existing and future occupiers of that property having regard to outlook and resultant light levels. In this respect, the development

conflicts with Policy PG3 of the Birmingham Development Plan 2031 (adopted 2017) which encourages design to respond to site conditions, it conflicts with saved Paragraphs 3.14C and 8.39-8.43 of the UDP, the '45 Degree Code for House Extensions (2006)' document, 'Places for Living' Supplementary Planning Guidance (2001) and 'Extending Your Home, Home Extensions Design Guide' Supplementary Planning Document (2007) which aim to protect the amenity of existing residents from the effects of new development. There is also conflict with the National Planning Policy Framework which, amongst other things, aims to ensure that new development has a high standard of amenity for existing and future users.

Other matters

10. Whilst the concerns about energy loss and the useability of a conservatory during times of hot and cold weather are noted, modern construction techniques and technology enable such structures to be enjoyed all year round.

Conclusion

11. There are no material considerations that indicate the deemed application should be determined other than in accordance with the Development Plan. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

S A Hanson

INSPECTOR