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## Appeal Decisions

Site visit made on 18 March 2022

**by Laura Renaudon LLM LARTPI Solicitor**

**an Inspector appointed by the Secretary of State**

**Decision date: 25 April 2022**

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### **Appeal Ref: APP/R0660/C/21/3289839 ("Appeal A") 106-108 Station Road, Scholar Green, Staffordshire ST7 3JT**

- 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 Daniel Trevelyan against an enforcement notice issued by Cheshire East Council.
- The enforcement notice, numbered 19/00306E(A), was issued on 7 December 2021.
- The breach of planning control as alleged in the notice is *Without planning permission:*
  - (i) *The erection of a single storey extension on the front elevation of the property*
  - (ii) *The erection of a single and two storey extension on the rear elevation of the property*
  - (iii) *The erection of an extension to the roof*
  - (iv) *The erection of decking.*
- The requirements of the notice are (in summary) to:
  - (a) Revert the building back to how it was, in accordance with the plan attached
  - (b) Remove all remaining exposed foundations
  - (c) Take up and remove decking
  - (d) Remove all resulting materials.
- The period for compliance with the requirements is 10 months for requirements (a) and (b) and 12 months for requirements (c) and (d).
- The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.

**Summary Decision: the appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails and the enforcement notice as varied is upheld as set out below in the Formal Decision.**

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### **Appeal Ref: APP/R0660/C/21/3287763 ("Appeal B") 106-108 Station Road, Scholar Green, Staffordshire ST7 3JT**

- 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 Daniel Trevelyan against an enforcement notice issued by Cheshire East Council.
- The enforcement notice, numbered 19/00306E(B), was issued on 29 October 2021.
- The breach of planning control as alleged in the notice is *Without planning permission, the erection of a boundary wall in excess of 1 metre in height adjacent a highway and two metres in height where not adjacent a highway.*
- The requirements of the notice are to reduce the height of the wall to not more than 1 metre on the eastern boundary and not more than 2 metres on the western boundary.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.

**Summary Decision: the appeal is dismissed.**

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## **Main Issues**

1. The Council's reasons for issuing the notice resulting in Appeal A raise two main issues; the effect of the extensions and decking on the character and appearance of the area and the effects on the living conditions of adjoining neighbours in Hollinshead Close. The reasons for issuing the notice in Appeal B concern the effects of the wall on the character and appearance of the area.

## **Reasons**

### **Appeal A**

2. Policy SD1 of the Cheshire East Local Plan Strategy 2010 – 2030 requires new development to be sustainable including by providing a high quality and well designed environment, and to contribute to protecting and enhancing the built environment. Policy SD2 expects all development to contribute positively to an area's character and identity by reference to matters such as scale and materials and the relationship to neighbouring properties and the street scene. Policy SE1 relates to design and expects development proposals to contribute positively to their surroundings. Additionally, saved policy GR6 of the Congleton Borough Local Plan First Review 2005 is permissive of development only where no undue detriment to residential amenity arises, and is thus relevant to the second main issue.
3. The residential property appears previously to have been a modest detached dwelling with rendered exterior walls, set back from the road towards the rear of the plot. It has recently been altered and extended in several directions.

### *Character and appearance*

#### *Front extension and decking*

4. To the front, a single storey extension has been constructed together with some decking to the front. The use of the external materials aside, I do not perceive any conflict with the above policies in relation to the front extension. The extension has a flat roof which is not altogether typical of the location. The façade of the garage next door however has stepped parapet walls that provide some context, and some flat roofed developments are seen in the area. The extended dwelling's footprint, with the decking, leaves a generous front garden area and lies further away from the road than the garage building next door. The design of the front extension is, given its single storey nature, clearly subordinate to the original house and I agree with the appellant that it appropriately integrates with the proportions of the dwelling.
5. The Council's reasons for issuing the notice include objection to the detailed design and the extensive areas of glazing. I note from photographs that the pre-existing house had more modest fenestration. The Council's notice is not directed against any changes to the fenestration of the front of the first floor or to that of the (pre-existing) roof.
6. Against those changes, I do not find the details of the design of the extended ground floor to be in conflict with the remainder of the frontage of the dwelling. However, I am not told whether enforcement against those other changes to the fenestration is an option open to the Council; reinstatement of the former fenestration is required by the existing notice, but (although there is no ground (f) appeal) this is problematic because those changes are not expressed as an

element of the unauthorised development against which the enforcement action, seeking to remedy the identified breaches of control, is taken. I shall return to this below.

7. In addition, however, again there are cues from the garage building next door which, although evidently in a different use, has extensive openings to the frontage thus lending some context to the ground floor fenestration of the extended appeal property. The property is separated from the public house to the other side by a narrow lane, extensive hedgerow and area of car parking. It lies much further back from the road than does the public house. As such I find that it does not derive its context from the public house to nearly the extent that it does from the adjoining garage. In that context, the ground floor fenestration does not appear out of character and I find no overall conflict with the relevant development plan policies in this regard (subject to the matter of materials, to which I will return). I note that permission has previously been refused, and dismissed on appeal, for a front extension but that was of a very different design and fenestration from the present construction.
8. As to the decking, the Council's reasons for issuing the notice do not reveal any objection to the decking in relation to the character or appearance of the dwelling or the street scene: the objections are directed to the extensions and the cladding materials. As the appellant notes, the decking is a modest development, made of a natural material and is set sufficiently back from the road not to result in harm when viewed from the street. I agree that the decking causes no harm to character or appearance such as to raise any conflict with the development plan policies.

#### *Rear and roof extensions*

9. The rear of the property backs onto modern estate houses on Hollinshead Close and to the rear yard of the adjoining garage, to the other side of which lies the rear of an historic row of terraced houses on Cinderhill Lane. The effect of the rear extensions is to bring the built form up to the rear boundary of the property, in a form characterised by an almost flat roof and extensive voids. The appearance is very different from anything else in the vicinity. Although the historic terrace and the modern estate houses are different themselves in form and finish, they are all characterised by having two storeys (with the occasional modest dormer window) with pitched roofs to both sides, proportionate fenestration, and recognisable curtilage areas to the front and rear and, in some cases, sides.
10. The effect of the rear and roof extensions is to create the overall impression of a three storey house cramming the rear of the plot with an elevational treatment that is markedly discordant with the character of the area. The rear extensions are overwhelmingly disproportionate to the size of the original dwelling.
11. I am referred to permitted development rights that may exist to construct some extensions and particularly to those arising under Class B concerning roof alterations, with the suggestion that a similar roof alteration could be built under such rights. I have not been supplied with any information as to the real prospects of that happening. Moreover, the roof extensions have resulted in raising the ridge height to the western end of the property and thus it does not appear to me that the exercise of permitted development rights could result in an appearance quite like the existing. Whilst the potential exercise of such

rights is a material consideration, I do not find that it overcomes the objections to the development or the conflict with the development plan that arises.

#### *Living conditions*

##### *Front extension and decking*

12. The Council's notice alleges adverse impacts on the living conditions of the occupiers of properties to the rear of the appeal site, in Hollinshead Close. The works to the front of the property do not have any impacts on the living conditions of neighbours and this is no reason to dismiss the appeal in respect of these elements.

##### *Rear and roof extensions*

13. The rear extensions create considerable opportunity for overlooking of nearby properties. Doors to the rear upper storey give access to a sizeable roof terrace area that directly overlooks some of the neighbouring gardens. The extensive voids to the roof extension present the same opportunity from inside the house. One such property (no 15) is presently screened by a substantial hedgerow. Although this may not be retained in future, the development does not present a problematic relationship with the hedgerow in place. However, that is not the only property potentially affected. By bringing the built form so much closer to the properties on Hollinshead Close and creating these opportunities for overlooking, I find that the development as constructed adversely affects the living conditions of neighbours in the ways alleged by the Council and contrary to the requirements of saved policy GR6 and the development plan overall.

#### **Conditions, and conclusions on Appeal A**

14. The appellant has indicated that a planning condition controlling the materials used in the external finish of the development would be acceptable. For the reasons set out above, subject to the matter of conditions I do not find the front extension and decking to contravene the requirements of the development plan, but I do so find in respect of the rear elements. The appellant also draws my attention to my power to issue a 'split decision' if parts of the development are found acceptable but others not.
15. The front of the house is presently clad in what appears to be a composite material amounting to faux timber horizontal boarding, parts of which are off-white and other parts in a near-navy blue. The successful use of such a material can be made, but is highly dependent on the context of the relevant building. The appeal site here lies next to a garage premises apparently of some vintage. Beyond that lie some historic terraced properties, to which I have referred. The appeal site lies on one of the principal thoroughfares in the evidently historic settlement of Scholar Green. It lies in a semi-rural location, overlooking agricultural fields to the north. The predominant building materials used locally are bricks, sometimes rendered.
16. Given this context I do not find the property to have made a successful use of the finished cladding material. Instead I find it to seriously detract from the character of the area. With a change to the exterior materials to a finish that is appropriate to the building's location, however, I find the front extensions to be capable of being made acceptable. In order to avoid any conflict of materials arising, I shall therefore require the finished materials on the whole dwelling to

match. This includes those aspects not expressly enforced against, such as the first floor frontage, because without matching the rest of the house in an acceptable material I would not find the front extension to be acceptable.

17. Therefore I will grant permission for the front extension and decking, subject to a planning condition requiring the approval by the Council of details for the exterior finish of the property as a whole and restricting the exercise of any permitted development rights that would otherwise permit a change to the approved finish. I shall however refuse to grant permission in relation to the rear and roof extensions for the reasons I have set out. The consequences for the notice are that it will be upheld, but its requirements will be overridden to the extent that permission is granted, by reason of section 180 of the 1990 Act.

#### *Excessive requirements*

18. I shall however make variations to the requirements of the notice, because those existing requirements exceed what is necessary to remedy the breaches of planning control that are alleged. Where the requirements are commensurate with the allegation, it follows that the notice can require the restoration of the land to its former condition. The requirement to reinstate the original roof will require the use of the original (or matching) materials, but only insofar as that reinstatement corresponds to the allegation of 'an extension' to the roof. Similarly the requirements to remove the rear extensions and the front ground floor extensions and reinstate to the original can only reasonably extend to remedying those identified breaches.
19. Because the allegations made by the notice are discrete and severable and each alleges extensions rather than alterations, I find the notice's attempt to require the full reinstatement by reference to a plan, including those elements of alteration such as the front first floor fenestration that are unaffected by the allegations, to be excessive. I shall therefore vary the requirements of the notice so as to require the restoration of the land in respect of each element of the alleged breaches, but no further. In granting the planning permission for the front extension and decking, however, I shall require a scheme for matching materials in the exterior finish of the property as a whole. Although this will require works to parts of the dwelling that are not the direct subject of the permission, those works are required in order to make the development permitted acceptable and so are reasonable requirements of a planning condition.

## **Appeal B**

### *Character and appearance*

20. The predominant boundary materials used in the location are hedgerows, bricks and occasional vertical timber fencing, generally of low heights as they adjoin Station Road. The materials used here are the same composite material, in off-white and blue, that are used in cladding the dwellinghouse. It follows from my reasons in relation to the cladding used on the dwelling that I find the boundary treatment, in what appears to be the same material but used adjacent to the highway and thus of even greater prominence than on the house, to be unacceptable to the character and appearance of the area.

21. I agree with the Council that the development is contrary to policies SD1 and SD2 of the Cheshire East Local Plan, because I do not consider it to be designed in such a way as to protect or enhance the built environment, or to contribute positively to its surroundings. Although I do not discern a conflict with saved policy GR6, because the boundary treatment results in no direct visual intrusion to neighbouring residential occupants, I nonetheless consider the development to be in conflict with the development plan overall. Therefore Appeal B will be dismissed.

## **Conclusions and Formal Decisions**

### **Appeal A**

#### **Conclusion**

22. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for one part of the matter the subject of the enforcement notice, but otherwise I will uphold the notice with variations and refuse to grant planning permission on the other part. The requirements of the upheld notice will cease to have effect so far as inconsistent with the permission which I will grant by virtue of s180 of the Act.

#### **Formal Decision**

23. The appeal is allowed insofar as it relates to the erection of a single storey extension and decking to the front of the property, and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the erection of a single storey extension on the front elevation of the property and the erection of decking to the front of the property, subject to the following condition:

- (i) Unless within four months of the date of this decision a scheme for the exterior materials, including their colour, to be used in the finish of the dwelling to which the extension is hereby permitted is submitted in writing to the local planning authority for approval, and unless the approved scheme is completed within six months of the local planning authority's approval, the single storey extension and decking to the front of the dwelling shall be demolished and all constituent materials removed from the land.

If no scheme in accordance with this condition is approved within 12 months of the date of this decision, the single storey extension and decking to the front of the dwelling shall be demolished and all constituent materials removed from the land.

Notwithstanding any permitted development rights that may otherwise be conferred by any Order made under section 59 of the 1990 Act or otherwise, upon implementation of the approved scheme specified in this condition, the exterior materials forming the approved scheme shall thereafter be maintained and retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

24. It is directed that the enforcement notice be varied by deleting requirement 5(a) and replacing it with "Restore the building to its former condition, insofar as that condition has changed as a result of the matters alleged, by:
- (i) removing the single storey extension on the front elevation of the property, the single and two storey extension on the rear elevation of the property, and the extension to the roof of the property; and
  - (ii) reinstating to their former appearance the exterior elevations of the ground floor to the front, the exterior rear elevation, and the roof where the extensions have been removed pursuant to paragraph (i) above".
25. The appeal is dismissed and planning permission is refused in respect of the erection of a single and two storey extension of the rear elevation of the property and the extension to the roof of the property on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

## **Appeal B**

### **Conclusion**

26. 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.

### **Formal Decision**

27. 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.

*Laura Renaudon*

INSPECTOR