



Appeal Decision

Site visit made on 30 March 2022

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 26th April 2022

Appeal Ref: APP/P4605/C/21/3288919

Land adjacent to 44 Walmley Ash Road, Birmingham, B76 1JA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Miss Freya Jones against an enforcement notice issued by Birmingham City Council.
 - The notice was issued on 9 November 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a single storey detached structure/dwelling house in the approximate position marked in green on the attached plan.
 - The requirements of the notice are to:
Demolish this single storey structure and remove the demolished materials from the site
 - The period for compliance with the requirement is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(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 is varied by the deletion of "3 months" and the substitution of "6 months" as the period for compliance.
2. Subject to the variation, the appeal is dismissed and the enforcement notice is upheld.

Background Matters

3. An application for planning permission¹ was made on the 20 December 2019 for retention of the bungalow which is the subject of the notice. Following a refusal by the Council, the subsequent appeal² was dismissed on the 9 March 2021. The current appeal is proceeding on the limited grounds of (f) and (g) and does not therefore include an application for planning permission or any consideration of the planning merits of the development or any part of it.

An appeal under ground (f)

4. Section 174(2)(f) of the Act states that an appeal may be made on the ground that the steps required by the notice to be taken, 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. An appeal under ground (f) is limited to consideration of whether the requirements of the notice exceed what is necessary to remedy the breach or remedy any injury to amenity. It is

¹ 2019/10055/PA

² APP/P4605/W/20/3264467

therefore necessary to establish whether the purpose of the notice is to remedy the breach or remedy any injury to amenity.

5. The requirements relate to demolition of the development and removing the demolished materials. The purpose of the notice is therefore to remedy the breach of planning control by restoring the land to its condition before the breach took place. The allegation refers to a single storey detached structure /dwellinghouse. There is no indication in the evidence before me or the grounds of appeal that the structure which has the appearance of a bungalow is not a dwellinghouse. It is occupied by the appellant and her partner as their home and includes a kitchen, bathroom and a bedroom being facilities necessary for independent day to day living, this being the distinctive characteristics of a dwellinghouse set out in the relevant case law³.
6. The appellant states that the development meets the criteria of Class E of the General Permitted Development (England) Order 2015 as amended (the GPDO) and could be retained as an incidental outbuilding as opposed to a dwellinghouse. The appellant proposes that the structure remains for incidental uses such as a gym, study, games room or store as permitted under Class E, Part 1 of Schedule 2 of the GPDO with existing living accommodation facilities to be removed. However, even if permitted development rights were applied retrospectively, changing the use of the structure by itself would not remedy the breach when the breach is the erection of a structure/dwellinghouse and the structure itself would remain in its current form.
7. The appellant has separately referred to a reduction in size to bring the development within Class E if the Council considers that the structure is too big to be permitted development which it does and I share that view. Whilst it is the case that permitted development rights do not apply retrospectively and the whole of the development is unauthorized following the dismissal of the earlier appeal, the enforcement regime is intended to be remedial rather than punitive.
8. Nevertheless, in the absence of any further details as to what is proposed in terms of reductions in size, which parts of the building would remain, what further work would be required to create a smaller building or any suggested detailed alternative requirements, it is not clear what is proposed by the appellant in order for me to assess whether it is appropriate to vary the requirements. Any alternative requirements which rely upon permitted development rights need to be framed with sufficient precision that the appellant knows what she is required to do. Any proposed building and use which purports to fall within Class E would need to be assessed against the relevant conditions and limitations and be incidental having regard to its size and relationship with the semi-detached host dwelling.
9. Neither of the proposals made by the appellant would achieve the purpose of the notice which is to remedy the breach of planning control. Demolition of the dwellinghouse is therefore not excessive and the appeal on ground (f) fails.

The appeal under ground (g)

10. This ground alleges that the time for compliance with the notice which is 3 months is too short. Whilst reference is made to the Covid 19 pandemic, its

³ Gravesham BC v SSE & O'Brien (1983) JPL 306

impacts are now likely to be reducing in the absence of ongoing restrictions. The appellant refers to a number of other matters including the demand within the rental market, the shortage of affordable housing and the length of time to buy a property and her personal circumstances including her work for the NHS and those of her partner. Although the appellant has also referred to the time taken to find suitable contractors to carry out the demolition, it is not clear why that in itself would take 9- 12 months.

11. No details are supplied of the steps taken by the appellant and her partner to secure alternative accommodation since the appeal was lodged as in the absence of an application for planning permission even if the limited ground (f) had succeeded the appellant and her partner would still need to find alternative accommodation. The Council acknowledges the matters raised by the appellant may mean that 3 months compliance is not achievable but that the Council would exercise its powers of discretion to extend the period of compliance where appropriate. The appellant however seeks a period of between 9 and 12 months.
12. It is never possible to guarantee that occupiers can find somewhere to live but I must ensure that anyone who is deprived of their home is given a reasonable period of time to look for other housing. I am mindful that the appellant and her partner will lose their home and the implications of Article 8 of the Human Rights Act 1998 (Right to respect for private and family life). Nevertheless, these are qualified rights and interference with them may be justified in the public interest.
13. A period of 12 months is the equivalent of a grant of a temporary planning permission and in considering the public interests of compliance with the notice with the personal circumstances of the occupiers, 9 to 12 months appears excessive. However, I do consider a period of 6 months to be an appropriate balance between the competing public and private interests and would ensure that the interference with the occupiers human rights was not disproportionate. The appeal under ground (g) succeeds to that extent and I will vary the notice accordingly.

Conclusion

14. For the reasons given above, I conclude that the appeal should not succeed. I shall vary the enforcement notice prior to upholding it.

E Griffin

INSPECTOR