
Appeal Decisions

Site visit made on 19 May 2022

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

an Inspector appointed by the Secretary of State

Decision date: 24 May 2022

Appeal A: APP/B2355/C/21/3289941

272 Helmshore Road, Haslingden, Rossendale, Lancashire BB4 4DJ

- 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 Paul Horridge against an enforcement notice issued by Rossendale Borough Council.
 - The enforcement notice was issued on 10 December 2021.
 - The breach of planning control as alleged in the notice is the erection of a two storey and single storey rear extension.
 - The requirements of the notice are:
 - a. Remove the two storey and single storey extension to the rear of the dwelling.
 - b. Remove all arising materials from the Land in an appropriate manner.
 - c. Make good any damage caused to the dwelling as a result of compliance with the requirements of this notice.
 - The period for compliance with the requirements is 6 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.
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Appeal B: APP/B2355/C/21/3289942

272 Helmshore Road, Haslingden, Rossendale, Lancashire BB4 4DJ

- 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 Paul Horridge against the decision of Rossendale Borough Council.
 - The application Ref 2021/0534, dated 9 September 2021, was refused by notice dated 10 December 2021.
 - The development proposed is extension to rear of property, part stone/part timber cladding.
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Decisions

Appeal A

1. The appeal is dismissed and the enforcement notice is upheld with a variation.

Appeal B

2. The appeal is dismissed.

Application for costs

3. Applications for costs were made by Rossendale Borough Council against Mr Paul Horridge and by Mr Paul Horridge against Rossendale Borough Council and. These applications are the subject of separate Decisions.

Procedural Matters

4. Since the enforcement notice was issued and planning permission refused on application 2021/0534, the Council has adopted the Rossendale Local Plan 2019 to 2036 (the LP). Therefore, Policies 1, 23 and 24 of the Core Strategy Development Plan Document *The Way Forward (2011-2026)* Adopted 8 November 2011 have been superseded by Policies ENV1, HS9 and SD2 of the LP.

Appeal A on Ground (c)

5. The ground of appeal is that the matter alleged does not constitute a breach of planning control. The erection of a two storey and single storey extension comprises operational development within the meaning of s55 of the Act, for which s57 indicates, planning permission is required.
6. The appellant contends that in accordance with the *Sage* case¹ the ground floor part of the extension is operational development that has been substantially completed as a single operation. However, the Notice relates to the whole of the extension and there is no argument under ground (c) that the whole of the extension is permitted development pursuant to Class A, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (the GPDO). Indeed, the appellant clearly states that there is no claim under Ground (c) that the first floor is permitted development because it is 200 mm short of the necessary distance to the nearest boundary to the property.
7. In any case, the ground floor extension would fail to meet the condition A.3 (a) regarding the use of materials in any exterior work which must be of similar appearance to those used in the construction of the exterior of the existing house. Whilst the natural stone external walls may be of similar appearance to the stone front elevation of the house, the flat roof does not match the stone roof slates used on the existing house.
8. I have taken account of the appellant's evidence with respect to the development and conclude that it does not meet Class A, Part 1 of Schedule 2 of the GPDO. The appeal on ground (c) does not succeed.

Appeal A on ground (a) and Appeal B

9. The main issues are the effect on the character and appearance of the area and on the living conditions of the occupants of a neighbouring property with particular reference to drainage.
10. The appeal site is an end of terrace dwelling situated on Helmshore Road. The original property was of traditional construction with stone and render external walls and a stone tiled pitched roof. Neighbouring properties along the terrace are of similar construction and scale and all have garden areas to the rear. The site lies immediately adjacent to a large verdant area of public open space

¹ Sage v SSETR & Maidstone BC [2003] UKHL 22

which has a designated public right of way running across it in close proximity to the appeal site.

11. A two storey extension has been erected to the rear of the two storey terraced property. The single storey element extends across the rear elevation and is constructed with a natural stone and rendered external walls with a flat roof. The additional first floor element has timber cladding external walls and a flat roof.
12. The development is in a visually prominent location and is clearly visible in its surroundings, including from neighbouring residential properties, Helmshore Road, Dean Road and the adjacent public open space known as The Orchard. The extension is the only two storey one to the rear of this particular terrace and at my site visit I did not observe any two storey extensions to the rear of the adjacent residential terrace along Dean Road.
13. As a consequence of its overall scale, form and massing it is inconsistent with its surroundings and incongruous in its setting. It fails to appreciate the relatively modest terrace of which it forms part and it is out of proportion with its host property and the terrace as a whole. Its overall form features flat roofed elements which present an awkward relationship with the terrace. The terrace features a stone tiled roof and the flat roof fails to complement the design of the terrace and is an unsympathetic feature which jars with its surroundings.
14. Furthermore, the choice of materials is unsympathetic to the host dwelling and wider surroundings and exacerbates concerns with regard to the appearance of the extension in relation to its traditional surroundings. The colour and finish of the timber cladding is very much at odds with the surroundings and draws unwanted attention to the development.
15. The extension fundamentally changes the character and appearance of the host property and the terrace, failing to successfully integrate with the area. Furthermore, it detracts from the character and appearance of its surroundings and is an unattractive addition to the local townscape. Therefore, on this issue I conclude that the development is harmful to the character and appearance of the area and is contrary to the provisions of Policies ENV1, HS9 and SD2 of the LP, the National Planning Policy Framework (the Framework) and guidance in the Alterations and Extensions to Residential Properties Supplementary Planning Document (2008) (the SPD). Among other objectives these seek to ensure that new development takes account of the character and appearance of the local area, including massing, scale and materials. House extensions should respect the existing house and surroundings in terms of size, scale and materials. Flat roofs will not normally be permitted on two storey rear extensions.
16. With respect to Appeal B there is a second issue relating to the inadequate provision for drainage and, in particular inadequate installation of rainwater goods. The extension is drained via a drainage channel on the flat roof and a series of standard sized drain pipes and down spouts. It is my understanding that there has been an incident where a pipe became blocked, resulting in water discharging onto the neighbour's land. However, I am satisfied that adequate provision has been made for drainage purposes and as such I find that the development does not result in harm to the living conditions of the

occupants of the neighbouring residential property with particular reference to drainage. As such there is no conflict with Policy ENV1 of the LP.

Appeal A on Ground (f)

17. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve that 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 the subject of this appeal requires the removal of the two storey extension to the rear of the dwelling, the purpose is clearly to remedy the breach. Leaving any part of it in place would not achieve that purpose. In this respect the appeal on ground (f) cannot succeed.
18. Nonetheless I am mindful that enforcement action is intended to be remedial and not punitive. With a ground (a) included in the appeal it would be possible to grant planning permission for part of the development according to s177(1) of the Act. The appellant has suggested that the property benefits from permitted development rights and such rights will be exercised should the appeal fail. An alternative scheme has been submitted which shows the first floor part of the extension moved approximately 200mm away from the shared boundary with No 270 Helmsore Road.
19. For the avoidance of doubt, the exercise of permitted development rights in this case could not include the erection of a two storey flat roofed extension since the roofing materials would not be of similar appearance to those on the host property. With respect to the reduced two storey rear extension shown on Drawing 001/04 Revision P1 dated December 2021 my concerns remain as those identified under Ground (a) above in that the relatively large two storey flat roofed extension with a mix of stone, render and timber cladding external walls would fail to satisfactorily respect the character and appearance of the host property, the terrace and the area, generally. Its size, form, design and materials are unsuitable in its context and would be harmful to the character and appearance of the area, failing to comply with relevant development plan policies and related national and local planning guidance.
20. In this regard, the appeal on ground (f) does not succeed.

Appeal A on ground (g)

21. The ground of appeal is that the time given to comply with the requirements is too short. The six months given would be sufficient to remove the two storey extension to the rear of the dwelling, to remove all arising materials and make good any damage caused. The ten month compliance period suggested by the appellant would be excessive having regard to the continuing harm caused by the extension. However, I do consider the period should be extended to enable the appellant, should he wish to do so, to explore with the Council whether an alternative development, retaining part of the existing structure, might be possible. In this respect I consider eight months would strike an appropriate balance and would not place a disproportionate burden on the appellant. To this limited extent, the appeal on ground (g) succeeds.

Formal decisions

Appeal A

22. The enforcement notice is varied by the deletion from paragraph 6 of the words "6 months" and the substitution therefore of the words "8 months" as the time for compliance with the requirements.
23. Subject to this correction the appeal is dismissed and the enforcement notice is upheld

Appeal B

24. The appeal is dismissed.

A A Phillips

INSPECTOR