



Appeal Decision

Site visit made on 26 April 2022

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 May 2022

Appeal Ref: APP/C4615/C/21/3289564

1 Hunstanton Close, Brierley Hill DY5 3QZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr J Preece against an enforcement notice issued by Dudley Metropolitan Borough Council.
 - The notice was issued on 15 November 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission and within the last four years the erection of an unauthorised single storey side extension on the land.
 - The requirements of the notice are to: i) Demolish the unauthorised single storey extension on the Land. ii) Lawfully remove any debris and waste materials arising from the above.
 - The period for compliance with the requirements is: One 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). 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 Act.
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Decision

1. It is directed that:

The enforcement notice be varied by the deletion of "One month" and the substitution of "Three months" as the period for compliance.

2. Subject to this variation, 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 Issue

3. This is the effect of the development on the character and appearance of the host dwelling and wider area.

Reasons

4. The appeal property is a detached red brick two-storey dwelling within a residential estate dating from the 1990s. The immediate area is well landscaped and consists of similar red brick properties although some, including its adjoining neighbours in Hunstanton Close, have a mock Tudor façade to their first floor and some have been extended. A distinctive feature of the immediate surroundings is its open plan character. Residential properties are set back from the road with lawns and driveways to the front. Most have open frontages, and some have soft landscaping to define boundaries. The

layout allows for extensive views within the public realm along Suffolk Drive and across the frontages of properties.

5. The appeal development is a flat roof timber structure attached to the side elevation of the house, which is situated on a corner plot. The development is rectangular in form and finished with horizontal feather edged boarding stained dark grey. It measures some 2.38m in width, 2.6m in height, is set back from the front elevation and does not extend the full depth of the house. Although it is used for domestic storage and is not accessible from within the house, it is attached to the house and is therefore an extension. A timber panelled fence surrounds the development. The fence is stained a similar colour to the appeal development and is roughly less than half its height.
6. A previous appeal¹ for a garage to the side of the house has been brought to my attention and a copy of the decision letter and plans have been made available. I note that the Inspector found the proposed garage to be "awkward in appearance, due to the need for it to taper as it runs the full length of the dwelling" and thus "appearing as an incongruous feature, unlike any neighbouring garages". I further note that the Inspector considered that the proposed garage would "largely close an important gap in a prominent location by replacing an open area with built development" thereby detracting from the contribution that the appeal property makes to the spaciousness of the area. While this was considered against a different development plan, it was judged against the Council's House Extension Design Guide.
7. The appeal development differs significantly from that which was previously proposed. Nevertheless, it is highly visible within its surroundings because of its position close to the highway on the corner of Hunstanton Close and Suffolk Drive. While the structure is modest in size, the design, colour and materials are contrasting and incompatible in this situation. The extension has the appearance of an outbuilding/shed and its siting is insensitive and harmful to the character of the area. The development fails to assimilate with the dwelling and the wider street scene, and this has a negative effect on both the dwelling and on the immediate surroundings. This is particularly so because the development is clearly visible from neighbouring properties and longer views.
8. The appellant suggests that the breach of planning control could be remedied by the application of an appropriately coloured paint or wood stain to 'secure a closer visual match with the host property and to blend in more with its surroundings'. I acknowledge that enforcement action should be remedial rather than punitive, and an alternative colour may go some way to alleviate the starkness of the build. However, the scheme proposed by the appellant would not satisfactorily overcome the harm I have identified. The appeal development would still be a building of inappropriate design and contrasting materials. It would remain a somewhat incongruous presence in the street scene and one that has little regard to the character or appearance of the host dwelling or the surrounding environment.
9. In this respect the appeal development conflicts with Policy S6 and Policy L1 of Dudley Borough Development Strategy which seeks appropriately designed, development of an appropriate form, siting, scale, and mass, with the use of materials, which respect and are responsive to the context and character of the surrounding area. Moreover, the development also conflicts with the Council's

¹ APP/C4615/D/15/3078148

adopted 'House Extension Design Guide - Planning Guidance Note 17' which provides that house extensions should relate to the character of the original house in terms of scale, materials and design details and are of a high standard of design and layout and are compatible with the character of the surrounding area.

Other matters

10. Extensions to two dwellings in proximity to the appeal property have been brought to my attention by the appellant. These are said to be substantially larger than the appeal structure and protrude further into the street scene, being more prominent as a result. The Council provide that the additions to No 7 Suffolk Drive were approved in 1988 and 2002 under a former development plan and prior to the previous appeal decision. Nevertheless, No 7 is not situated on a corner and therefore its side elevation, which has been extended, is not overly prominent in the street scene. Furthermore, the extension is more sympathetic with the existing dwelling in terms of design, materials, colour and texture.
11. The addition to No 4 Suffolk Drive has not been referred to by the council and I have no information regarding whether and/or when planning permission was granted. Nonetheless, while the property is positioned on a corner plot, it is set further back from the highway than the appeal site, and the design and materials are more appropriate and relate to the original house.
12. The appellant has suggested that the appeal structure only requires planning consent by virtue of being attached to the main house and would be exempt from planning control if it were to be separated and moved outwards, further towards the highway. Furthermore, it is suggested that a 'more prominent' outbuilding would be erected at the site under the permitted development allowances within Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (the GPDO).
13. The 'fallback position' or what is likely to happen if the notice is upheld is a material consideration on the merits of any deemed planning application. However, there must be a realistic and not merely theoretical prospect of the fallback position being an alternative. The appellant considers that 'it would simply be a matter of modifying the existing structure and relocating in a way which ensured compliance with Part 2, Class E of the GPDO'. While this may be possible, the appellant has not advanced any alternative scheme to demonstrate how such development would fall within the necessary parameters to enable a comparison of what could take place and potentially be less desirable than that for which planning permission is sought. Therefore, in these circumstances, I give little weight to any potential fallback.

Conclusion on ground (a) and the deemed planning application

14. There are no material considerations that indicate the deemed application should be determined other than in accordance with the Development Plan as a whole. For the reasons given above I therefore conclude that the appeal on ground (a) should not succeed, and I shall refuse to grant planning permission on the deemed application.

The appeal on ground (f)

15. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. S173(4) provides that the purpose shall be either to remedy the breach of planning control or to remedy any injury to amenity. In this case it would appear from the requirements of the notice that its primary purpose is to remedy the breach by restoring the land to its condition prior to the breach taking place.
16. I have already considered the alternatives put forward under ground (a) and found them to be unacceptable. The issued requirements do not exceed the purpose behind the notice and there are no other lesser steps before me that would remedy the breach.
17. Accordingly, the Ground (f) appeal fails.

The appeal on ground (g)

18. An appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable.
19. The council considers that one month is sufficient to remove the building which is not supplied with gas, electricity or water and which is essentially constructed of timber elevations, a roof and rainwater goods. It contends that the requirement to engage contractors has not been proven by the appellant, and that the appellant has not satisfactorily demonstrated how the current position regarding the pandemic would impact on their ability to comply with the notice within the timescale, nor how this would warrant a longer time scale for the removal of the structure.
20. The Appellant argues they do not have the necessary skills or equipment to demolish the outbuilding themselves, nor to lawfully dispose of resultant materials. Concern is also expressed about the availability of contractors to undertake the work and the availability of finance.
21. Taking into consideration these comments, one month is likely to be insufficient to fully comply with the notice. In these circumstances, although I consider 6 months to be excessive, I will vary the compliance period to 3 months.
22. The appeal on ground (g) succeeds.

S A Hanson

INSPECTOR