



Appeal Decisions

Site visit made on 21 June 2022

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 July 2022

Appeal A Ref: APP/X4725/C/21/3285521

Land at 56 Horbury Road, Wakefield WF2 8TU

- 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 Modhafar Al-Kazhraj against an enforcement notice issued by City of Wakefield Metropolitan District Council.
- The enforcement notice was issued on 27 September 2021.
- The breach of planning control as alleged in the notice is, without planning permission, the unauthorised erection of a part single storey and part two storey structure to accommodate three storage units for bedsits, (the Structure) on the Land, in the approximate location shown edged red on the plan attached.
- The requirements of the notice are to permanently remove the Structure from the Land.
- The period for compliance with the requirements is 2 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.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld.

Appeal B Ref: APP/X4725/W/21/3285513

56 Horbury Road, Wakefield WF2 8TU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Modhafar Al-Kazhraj against the decision of City of Wakefield Metropolitan District Council.
- The application Ref 20/01755/FUL, dated 21 August 2020, was refused by notice dated 11 August 2021.
- The development proposed is described as a lightweight timber framed one storey structure to accommodate a gymnasium and building manager's office, for bedsits at no. 56, 54, 52 Horbury Road and apartments at the back.

Summary of Decision: The appeal is dismissed.

Appeal A on ground (f)

1. An appeal on ground (f) is made on the basis that the requirements of the notice are excessive. S173(4) of the 1990 Act states that the purposes of an enforcement notice are to: (a) remedy the breach of planning control; or, (b) remedy any injury to amenity.
2. The notice does not explicitly state which of the two it seeks to achieve. Nevertheless, given the requirements are to remove the development which comprises the breach from the Land, I am satisfied that the purpose of the notice is to remedy the breach of planning control by restoring the land to its condition before the breach took place under S173(4)(a).

3. As a result, the requirement to remove the development does not go beyond what is necessary to remedy the breach. The steps required to be taken in the notice are not therefore excessive.
4. Most of the appellant's submissions on the ground (f) appeal relate to the planning merits of the development. However, it is not open to me to consider the planning merits on the ground (f) appeal, particularly since there is no appeal on ground (a).
5. The appeal on ground (f) fails.

Appeal A on ground (g)

6. An appeal on ground (g) is made on the basis that the time for compliance with the requirements of the notice is too short. The notice gives 2 months for compliance.
7. The appellant states that the building is needed as a storage unit to facilitate the refurbishment work of the adjacent apartments. Thus, it is requested that a compliance period of 3 years is given. However, an extended period of 3 years would be akin to granting a planning permission for what is a considerable period. Such a compliance period would wholly lack the necessary expediency to deal with the planning harm which arises.
8. Having viewed the structure, it seems to me on the face of it a reasonably straightforward task to secure its complete removal. Indeed, the appellant has provided little evidence to suggest there would be any difficulties or unique circumstances that would prevent compliance with the steps within 2 months.
9. I note the LPA indicates it would be agreeable to an extended period, however, does not suggest what it considers an appropriate extension nor any justification for it. As such, the evidence before here leads me to conclude that it would not be reasonable to extend the compliance period. I am nevertheless mindful that the LPA has the power under section 173A(1)(b) of the Act to extend the compliance period if they deem it necessary.
10. However, the appeal on ground (g) fails.

Appeal B

Preliminary Matters

11. The description of development in the heading above is taken from the application form. However, in part E of the appeal form, a revised description has been stated which is said to have been agreed with the LPA. The description reflects that contained in the LPA's decision notice. As such, I have determined the appeal on the basis of the revised description which is proposed part single and part two storey structure to accommodate 3 storage units for bedsits at no. 56, 54 and 52 Horbury Road and apartments to the rear of the site.

Main Issues

12. The main issues are:
 - the effect of the development on the character and appearance of the area; and,

- the effect of the development on the living conditions of neighbouring residents with particular regard to outlook, light, privacy and access to outdoor space.

Reasons

Character and Appearance

13. The appeal site lies in an area of mixed residential and commercial character. To the south side of the site is a three storey terraced building which comprises retail at ground floor with residential properties above. To the north side of the site is a two-storey block containing residential units. The appeal development sits within a yard area between the two buildings.
14. The appeal development is a part single storey, part two storey structure. It is almost entirely finished in white cladding which appears at odds to the prevailing use of red brick within the surrounding buildings. Indeed, the finish of the building increases its prominence from several vantage points in the area.
15. Moreover, whilst lower than the building to the front of the site, the two storey height of the development means that is particularly noticeable from Horbury Road, Co-Operative Street, St Michael's Close and Cambridge Street. Furthermore, the building covers a significant proportion of the open yard area between the three storey building to the front and the two storey building to the rear. As a result, the development appears as an incongruous and discordant addition to the street scene.
16. I conclude, therefore, that the development will have a harmful effect on the character and appearance of the area. Consequently, it will conflict with Policy CS10 of the Wakefield Local Development Framework Core Strategy (2009) (CS) which states that new development should incorporate high quality design which is appropriate to its location in terms of scale and density. In addition, there is conflict with Policy D9 of the Wakefield Local Development Framework Development Policies (2009) (DP) which states that all new development shall make a positive contribution to the environment and amenity of its locality by virtue of high quality design. Finally, there is conflict with the aims of the National Planning Policy Framework (the Framework) to achieve the creation of high quality buildings and places (paragraph 126).

Living Conditions

17. The appeal site sits to the rear of the three storey buildings of 52-56 Horbury Road which contain retail uses at ground floor with residential properties above. The Council indicates the buildings contain single flat and a 10 bedroom HMO. I have no reason to believe that is not the case.
18. To the rear of the appeal site, north-west of the development, is a two-storey block of flats. Whilst it was apparent from my site visit and the appellant's evidence that the block is undergoing refurbishment, the Council's evidence nevertheless indicates that at the time the application was determined, it comprised 8, 1 bedroom flats. There is no evidence from the appellant to suggest that is no longer the case.
19. Both the ground floor and first floor units are served by windows in the front of the building facing the appeal development. I was able to see from my site

visit that the appeal development is sited very close to the front of the building to the north-west such that any outlook from the ground floor windows would be almost entirely obscured by the appeal development. This harmful effect on the rooms served by the ground floor windows is further increased by the stark, large swathes of cladding used on the exterior of the building. Furthermore, it is noted that, due to the arrangement of the building, one of the ground floor flats is served by a window onto a shared corridor which has a window adjacent to the appeal building. The presence of the appeal development thus further worsens an already reduced sense of outlook for occupiers of that flat.

20. In addition, the appeal development is sited south-east of the flats. Consequently, given its height and close proximity, the appeal development significantly reduces already limited levels of sunlight and daylight to the flats in the adjacent block. Indeed, I made my site visit on a sunny day at the height of summer and was able to see upon entering the corridor area of the flats directly adjacent to the appeal development, that light levels were substantially reduced.
21. Moreover, the upper floor of the appeal development contains windows in the north-west elevation which face directly onto the windows in the front of the upper floor of the block of flats which serve habitable living space. Given the minimal separation distance of only a few metres, there is likely to be a significant loss of privacy for those residents from people using the appeal development having direct and clear views into their living space at particularly close quarters.
22. Furthermore, the appeal development has occupied a significant proportion of the outdoor space which serves the existing residential development. As such, the development has harmfully reduced the level of usable, outdoor amenity space for the adjacent residents. Indeed, I was able to see from my site visit that the potential for use of the remaining outdoor space for day-to-day residential uses was limited by its shape and its use for circulation of people moving around the site.
23. Given the separation distances to the residential units in the upper floors of 52-56 and intervening development of the ground floor canopy to the rear of that building, I am satisfied that the living conditions of residents in those residential units would not be unduly comprised. However, I consider that the appeal development results in a significantly harmful loss of outlook, light, privacy and access to outdoor space for residents in the block of flats to the north-west of the development.
24. I note the flats to the north-west are not currently occupied due to the ongoing refurbishment works. Nevertheless, the fact that the appellant is undertaking refurbishment suggests an intention for them to be occupied in future. Moreover, the use of the buildings remains residential regardless of the intentions of the current owner, and there is a realistic likelihood of them being occupied again in the future.
25. I conclude, therefore, that the development will have a harmful effect on the living conditions of neighbouring residents with particular regard to outlook, light, privacy and access to outdoor space. As such, there is conflict with DP Policy DP9 which states that development should have no significant detrimental impact on the amenity of neighbouring users or residents.

Other Matters

26. The appellant states that a condition restricting the life of the permission to a temporary period would be necessary. However, I am not satisfied on the evidence before me that any need to access storage facilities during refurbishment works cannot be met by alternative means which are less harmful than the appeal development. Indeed, there is no suggestion that there are no realistic alternatives to accessing suitable storage space. Thus, I do not find that a temporary permission would be necessary.

Conclusions

27. For the reasons given above I conclude that the appeal should be dismissed.

Formal Decisions

Appeal A

28. The appeal is dismissed and the enforcement notice is upheld.

Appeal B

29. The appeal is dismissed.

J Whitfield

INSPECTOR