



Appeal Decision

Site visit made on 7 June 2022

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 August 2022

Appeal Ref: APP/P4605/C/21/3287900

18 Avondale Road, Birmingham B11 3JX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Muhammed Azam against an enforcement notice issued by Birmingham City Council.
 - The notice, numbered 2020/0087/ENF, was issued on 29 October 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission, the unauthorised erection of a rear dormer in the approximate position marked in green on the attached plan.
 - The requirements of the notice are to: Demolish the rear dormer in its entirety, restore the roof to the condition before the breach took place and remove all the demolished materials from the land.
 - The period for compliance with the requirements is: 6 (six) months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (c) of the Town and Country Planning Act 1990 as amended. 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. The appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters

2. It is clear from the council's evidence that the notice is aimed at the entire extension to the roof encompassing the rear roof slope of the house and the extension above the two-storey outrigger to the rear. However, it seems that, from the appellant's submissions which includes plans, they interpreted the breach of planning control as alleged by the notice, to attack only part of the roof extension atop part of the outrigger. I wrote to the appellant to ask them to clarify whether the roof extension was constructed in one section or two. The appellant responded in an email dated 6 July 2022 confirming that "the alteration to the roof was done in two parts. The first loft conversion was carried out in February 2020, completed March 2020. The second part of the extension to the loft area was started in April 2020 and completed in May 2020."
3. Whilst the appellant submits that the roof extension was constructed in two sections, both being within the last 4 years, there is no substantial space in time between building operations. I consider that, for the purpose of development, the gap in time is negligible, being simply too short for the development to be regarded as being undertaken as two separate building operations. Furthermore, the integrated layout of the roof extension makes it

unlikely that it was erected in two wholly separate building operations, and that while it may have been constructed in phases, I do not have sufficient evidence to be reasonably confident, on the balance of probabilities, that one had been substantially completed before the next section commenced. Accordingly, I find that the extension to the roof is a single operation, and the notice correctly attacks the entire roof extension.

The appeal on ground (c)

4. This legal ground of appeal is that the matters alleged in the enforcement notice do not constitute a breach of planning control. The appellant must show why their appeal on this ground should succeed, the applicable test of the evidence being the balance of probability.
5. The appellant's limited case argues that the 'dormer sits very similar to the permitted development rights. It is smaller than 50m cubed in size.' The council considers that the development would not have been permitted because 'no setback has been achieved on the rear dormer'.
6. The development comprises a flat roof rear dormer spanning the width of the main roof and sitting just below its existing ridgeline. This extends to the rear above the outrigger, whose eaves are level with those on the main roof, but whose ridge height is at a lower level. Consequently, the extension above the outrigger section extends beyond its existing ridgeline. The flat roof extension above the roof of the outrigger together with the extension to the main roof is commonly referred to as an L-shape dormer.
7. Whether the development would benefit from permitted development rights is set out in the following paragraphs.
8. The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) by way of Article 3, grants planning permission for certain types of development set out within the schedules and classes it contains. Within Schedule 2, Part 1 of the GPDO, Class B grants permission for the enlargement of a dwellinghouse consisting of an addition or alteration to its roof, subject to specified conditions and limitations set out in paragraphs B.1 to B.3. Paragraph B.2(b)(ii) of Class B states:

(b) the enlargement shall be constructed so that –

(i) other than in the case of a hip-to-gable enlargement or an enlargement which joins the original roof to the roof of a rear or side extension—

(aa) the eaves of the original roof are maintained or reinstated; and

(bb) the edge of the enlargement closest to the eaves of the original roof is, so far as practicable, not less than 0.2 metres from the eaves, measured along the roof slope from the outside edge of the eaves.

9. An interpretive provision at paragraph B.4. explains that for the purposes of paragraph B.2(b)(ii)—

(b) "rear or side extension" includes an original part of, or a subsequent extension of, the dwellinghouse that extends from the rear or side of the principal part of the original dwellinghouse.

10. The roof extension is less than 0.2m from the eaves of the original roof. However, while the extension covers two roofs ('main' and 'outrigger' parts), it is 'an enlargement which joins the original roof to the roof of a rear or side extension' and so I find that the requirements set out under B.2(b)(i)(aa) and (bb) do not apply.
11. Nevertheless, B.2(b) is not the only condition or limitation which is relevant to this case. B.1(d)(ii) provides that development is not permitted where the cubic content of the resulting roof space would exceed the cubic content of the original roof space by more than 40 cubic metres in the case of a terrace house. For the purposes of Class B, 'resulting roof space' means the roof space as enlarged, taking into account any enlargement to the original roof space, whether permitted by this Class or not. Whilst no measurements were provided on the plans, the extent of the addition to the main roof and outrigger clearly exceeds this limitation.
12. From the available evidence, I find on the balance of probability that the roof extensions to the appeal property were carried out simultaneously as one building operation with the volume of the resulting development exceeding that of the original roof by more than 40 cubic metres. On that basis I conclude that the roof extension cannot be construed as development permitted by Part 1 Class B of Schedule 2 of the GPDO.
13. The appeal on ground (c) therefore fails.

The appeal on ground (a) and the deemed planning application (DPA)

Main Issue

14. This is the effect of the development on the character and appearance of the host dwelling and the surrounding area.

Reasons

15. The appeal property is a mid-terraced dwellinghouse in a residential street. It has a pitched roof and a two storey outrigger with a lower roof level. The dwellinghouse has been extended with two storey and single storey additions to the outrigger. The rears of the properties along Avondale Road have a strong architectural style with traditional and uniform pitched roofs extending out from main roof slopes.
16. The council's Extending Your Home – Supplementary Planning Document (2007) (SPD) specifies that dormers must not be so big that they dominate the roof. It goes on to say that they should be proportionate to the overall roof size to reflect the character of the dwellinghouse¹. The appeal development covers the entire rear main roof slope and extends towards the rear above the two storey outrigger. It has an extensive flat roof, and its form is box-like above the rear wing of the property. The roof extension is a significant structure which is disproportionate to the original roof, which lacks architectural subtlety due to its considerable bulk and projection. Furthermore, it has the appearance of a third storey in part, and this is incompatible with and diminishes the character and appearance of the host property and the immediate surroundings in an unacceptable manner.

¹ pages 5 and 6

17. The development is a visually dominant addition to the rear of the host dwelling. It draws the eye because of its scale and design and because it is an anomaly amongst its neighbours. While there are views of the development from the public realm, these are limited and localised. However, wider views towards the rear of the property will be achieved from surrounding neighbouring properties.
18. In this respect, I find the appeal development to be contrary to policy PG3 of the Birmingham Development Plan 2031 (adopted 2017), which requires that all new development will be expected to demonstrate high design quality which, amongst other things, respond to the local area context. Saved paragraphs 3.14 C-D of the Birmingham Unitary Development Plan (2005) requires development to have regard to the guidelines set out in the SPD and states that, amongst other things, the scale and design of new buildings should generally respect the area surrounding them. There is also conflict with the National Planning Policy Framework which states that good design is a key aspect of sustainable development and that developments should be visually attractive and sympathetic to local character.

Conclusion on ground (a) and the DPA

19. There are no material considerations that indicate the DPA should be determined other than in accordance with the Development Plan. For the reasons given, the appeal on ground (a) should not succeed, and I shall refuse to grant planning permission on the DPA.

S A Hanson

INSPECTOR