
Appeal Decision

Site visit made on 6 September 2022

by D A Hainsworth LL.B(Hons) FRSA Solicitor
an Inspector appointed by the Secretary of State

Decision date: 7 October 2022

Appeal Ref: APP/W4705/C/22/3299616

18 Tannerbrook Close, Clayton, Bradford, West Yorkshire BD14 6NJ

- The appeal is made by Dean McNally under section 174 of the Town and Country Planning Act 1990 against an enforcement notice (ref: 20/01351/ENFUNA) issued by City of Bradford Metropolitan District Council on 14 April 2022.
 - The breach of planning control as alleged in the notice is "the construction of a front porch extension and external chimney breast extension on the land, as shown in the attached photographs". These are two discrete works of construction, which have been dealt with in this appeal decision as two separate alleged breaches of planning control.
 - The requirements of the notice are to demolish the front porch extension and chimney breast extension and to remove from the land all materials arising.
 - The period for compliance with these requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) and an application for planning permission is deemed to have been made by section 177(5) in respect of the matters stated in the notice as constituting breaches of planning control.
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Decision

1. The appeal is allowed on ground (c) in so far as it relates to the construction of an "external chimney breast extension on the land".
2. It is directed that the enforcement notice be varied by replacing paragraphs 5 and 6 by: -

"5. WHAT YOU ARE REQUIRED TO DO

- i. Either demolish the front porch extension or reduce its size so that it complies with the limitations in sub-paragraphs (b), (c) and (d) of paragraph D.1 of Class D in Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015.
- ii. Remove from the land all debris and surplus materials arising from compliance with Requirement i.

6. TIME FOR COMPLIANCE

Six months"

3. Subject to this direction, the appeal is dismissed in so far as it relates to the construction of a "front porch extension on the land", the enforcement notice is upheld as varied and planning permission is refused on the application relating
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to the “front porch extension” that is deemed to be made by section 177(5) of the Town and Country Planning Act 1990.

Reasons for the decision

The “external chimney breast extension”

4. After I had looked at this development I asked the Council to consider whether it could be permitted development by virtue of the Town and Country Planning (General Permitted Development) (England) Order 2015, Schedule 2, Part 1, Class G – chimneys, flues etc on a dwellinghouse. The Council responded: “Class G only allows for the installation of chimneys, flues etc provided they do not exceed the highest part of the roof by 1 metre or more. In this respect the chimney appears to be acceptable. I note however that chimney could also be considered to be an ‘enlargement, improvement or other alteration’ granted by Town and Country Planning (General Permitted Development) (England) Order 2015, Schedule 2, Part 1, Class A”, in which case the Council maintained that it would not comply with paragraphs (e) and (j) of that Class.
5. However, paragraph (k) of Class A states that development is not permitted by that Class if it consists of the installation of a chimney. The Government’s publication “Permitted development rights for householders: Technical Guidance” explains in the penultimate paragraph on page 8 that Class A prevents the installation of a chimney from being development permitted under that Class because chimneys are specifically provided for in Class G subject to the rules set out under that Class.
6. Class G permits the installation of a chimney on a dwellinghouse, subject to four exclusions, three of which do not apply in the case of 18 Tannerbrook Close and the fourth of which has been complied with since the height of the chimney does not exceed the highest part of the roof. Class G is clearly intended to apply to chimneys installed on a wall as well as those installed on a roof slope since both are referred to in one of the exclusions.
7. I have concluded therefore that planning permission for the “external chimney breast extension” has been granted by the Town and Country Planning (General Permitted Development) (England) Order 2015, Article 3(1) and Schedule 2, Part 1, Class G. The appeal has therefore succeeded on ground (c) in this respect, the requirements of the notice relating to the chimney have been removed and other grounds of appeal no longer fall to be considered in relation to it.

The “front porch extension”

Ground (a)

8. Planning permission for the porch was refused in July 2021 and an appeal against the refusal was dismissed in January 2022 (application 21/02780/HOU; appeal APP/W4705/D/21/3283441). The ground (a) appeal seeks planning permission to retain the porch with its width reduced from 4.9m to 4.4m, as shown on a revised drawing that has been provided. This proposal can be considered in this appeal in view of the powers in section 177(1)(a).
9. One of the reasons why the appeal was dismissed was because the “porch extension is a wide and bulky structure that projects out considerably from the

front elevation, while also awkwardly overlapping with the two-storey side extension". I agree with this assessment. Reducing its width by 0.5m would only be a marginal improvement; it would not reduce its outward projection or its height and it would still be harmful to the character and appearance of the house and the street scene, contrary to Policies DS1 and DS3 of the Bradford Core Strategy and the guidance in the Council's Householder Supplementary Planning Document.

10. The appeal was also dismissed because the house would be left with inadequate parking provision, since the construction of the porch resulted in the loss of the parking space at the front and the proposed parking space in the rear garden was unlikely to be "practically achievable". The proposal now put forward shows that the reduction in the width of the porch would allow a parking space to be provided in front of the two-storey extension. It is unlikely that this parking space would be used since it would be impracticable to get in and out of many cars without stepping on to the neighbour's land or striking a door against the side of the porch. For the reasons given in the previous appeal the house requires adequate parking space to be provided, but the proposals now put forward do not achieve this.
11. For the above reasons, the ground (a) appeal relating to the porch has failed and planning permission has been refused.

Ground (f)

12. The appellant considers that the injury to amenity caused by the porch could be remedied by painting or staining the brickwork so that it matched the house. The previous appeal inspector considered that the colour of the bricks had a "jarring effect" and added to the "discordant and unsympathetic appearance" of the porch. I agree that colouring the brickwork so that it matched the house would help in this respect, but it is not an answer to the more significant issues relating to the porch that have been discussed in paragraphs 9 and 10 above.
13. After I had looked at the porch, I asked the Council to consider whether the steps required by the notice, as an alternative to the demolition of the porch, could have given the appellant the option of reducing its size to that permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015, Schedule 2, Part 1, Class D - porches. The Council replied: "To do this would result in an ambiguous notice as there would be no certainty over what would be constructed on site. Furthermore the porch as constructed is significantly larger than a structure that could be constructed under permitted development given that it has a ground area (measured externally) of around 17sqm and a height of around 3.6m."
14. Class D permits "The erection or construction of a porch outside any external door of a dwellinghouse", subject to certain exclusions. At 18 Tannerbrook Close, the permission is granted for such a porch unless the ground area (measured externally) of the structure would exceed 3m², or any part of the structure would be more than 3m above ground level, or any part of the structure would be within 2m of any boundary of the curtilage of the house with a highway (including an unadopted street or a private way).

15. It is probable that the appellant will be able to modify the porch, retaining parts of it and reusing some of the materials, if he exercises the permission granted by Class D. The requirement in the notice to demolish the porch and remove all the materials from the land, without giving him this option, is excessive in these circumstances because Class D provides an obvious alternative that could be achieved with less cost and disruption. Giving him this option would not make the notice ambiguous - notices are often written with alternative requirements - and there would not be any more uncertainty about what would be constructed here than there is with any porch that is erected in accordance with the permission granted by Class D.
16. The notice has therefore been varied to provide this option. The appeal relating to the porch has succeeded under ground (f) to this extent.

Ground (g)

17. The appellant seeks a compliance period of six months to allow sufficient time for the required works to be carried out. The Council state that, given the time that has already passed since they became aware of the development in October 2020, the two-month compliance period in the notice is reasonable, but they would not object to it being extended to four months.
18. The appellant is entitled to a reasonable compliance period after the date of this appeal decision and this should now take into account the additional time that may be needed to carry out alteration works, since these will be more complex than straightforward demolition. A reasonable compliance period in these circumstances is six months and the notice has been varied accordingly. The appeal relating to the porch has therefore succeeded on ground (g) to this extent.

D.A.Hainsworth

INSPECTOR