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# Appeal Decision

Site visit made on 26 October 2022

by **E Griffin LLB Hons**

an Inspector appointed by the Secretary of State

**Decision date: 16 January 2023**

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**Appeal Ref: APP/C1055/C/22/3299143**

**1 Rushdale Avenue, Littleover, Derby, DE23 1HY**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Amrit Pal Kaur against an enforcement notice issued by Derby City Council.
- The notice was issued on 20 April 2022.
- The breach of planning control as alleged in the notice is without planning permission alterations to the dwelling house on the Land comprising the erection of two storey side and rear extensions; single storey rear extensions; porch on front elevation; construction of new roof raising the ridge height of the dwelling house; creation of a large window on the 2nd floor front elevation and the installation of a dormer on the rear roof slope of the dwelling ("the Unauthorised Works")
- The requirements of the notice are to
  - 5.1 With the exception of the porch on the front elevation as shown on the attached photograph (DCC2), which may be retained, to remove and alter the Unauthorised works and carry out all such works as necessary to either:
    - 5.1.1 return the dwelling house to its former condition prior to commencement of the Unauthorised Works: or
    - 5.1.2 implement and complete in full the works as authorised by the planning permission dated 21 August 2020 ref 20/00597, in accordance with the related conditions and the approved plans thereof, the decision notice (DCC4) and approved plan (DCC3) which are attached to this notice.
  - 5.2 Remove all debris and other material from the Land arising from the works carried out under 5.1.1 and 5.1.2 above.
- The period for compliance with the requirements is 9 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 ("the Act") 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.

**Summary of Decision: The appeal succeeds in part and permission for that part is granted but otherwise the appeal fails and the enforcement notice is upheld prior to being varied as set out in the Decision.**

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## Decision

1. It is directed that the enforcement notice be corrected by deletion of requirement 5.1.2 from Section 5 of the notice in full and substituting it with  
" Alter the development to comply with the terms of planning permission reference 20/00597 dated the 21 August 2020 including the conditions subject to which the permission was granted".
2. Subject to that variation, the appeal is allowed in part only and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the single storey rear extension erected at 1 Rushdale Avenue, Littleover, Derby DE23 1HY referred to in the notice.

3. The remaining part of the appeal is dismissed, the enforcement notice is upheld as varied and planning permission is refused in respect of the application deemed to have been made under Section 177(5) of the 1990 Act for alterations namely the erection of two storey side and rear extensions; porch on front elevation; construction of new roof raising the ridge height of the dwelling house; creation of a large window on the 2nd floor front elevation and the installation of a dormer on the rear roof slope of the dwelling at 1 Rushdale Avenue, Littleover, Derby DE33 1HY.

### **Preliminary and Background Matters**

4. Planning permission was granted on the 21 August 2020<sup>1</sup> for “*two storey side and rear and single storey rear extensions to dwelling house (garage, studio, office, wet room, dining room, lounge, two bedrooms with en-suites and enlargement of kitchen, bedroom, and bathroom*” (the 2020 permission).
5. Work subsequently commenced but does not accord with the 2020 permission. A planning application <sup>2</sup> to make amendments to the 2020 permission by adding work already carried out including an additional porch, raising the ridge height, alterations to a rear roof to a flat roof and fenestration and the addition of a rear facing dormer was refused on the 1 April 2021. The works largely related to converting roof space to add a second storey to the appeal dwelling. The Council declined to register a further planning application<sup>3</sup> pursuant to Section 70A of the Act in October 2021 and subsequently issued the enforcement notice which is the subject of this appeal.
6. The notice alleges the carrying out of alterations to the appeal dwelling without planning permission not that development has taken place in breach of conditions imposed on the 2020 permission. I have therefore considered the 2020 permission where it is relevant.
7. The appeal dwelling has a basement which is not shown on the approved plans or included in the notice and I have therefore disregarded the basement for the purpose of the appeal. The Council indicates that the boundary walls and gates have not been installed in accordance with the relevant planning permission<sup>4</sup>. However, that is also a matter that falls outside the terms of this notice.

### **The Notice**

8. The requirements of the notice include an alternative to removal of the development which refers to implementing and completing the works permitted by the 2020 permission. However, the wording of such a requirement should state “alter the development to comply with the terms of planning permission reference 20/00597 dated the 21 August 2020 including the conditions subject to which the permission was granted.” Such an amendment does not cause injustice to either party and I will delete the existing requirement at paragraph 5.1.2 and substitute the new wording.
9. Although the front porch is included in the allegation, it is not included in the requirements as the Council has no objection to the porch being retained. Section 173(11) of the Act provides that where an enforcement notice could

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<sup>1</sup> Council Reference 20/00597/FUL

<sup>2</sup> Council Reference 20/00166/FUL

<sup>3</sup> Council Reference 21/01743/FUL

<sup>4</sup> Council Reference 21/00692/FUL

have required any buildings or work to be removed but has not done so and all the requirements of the notice have been complied then, so far as the notice did not require, planning permission is treated as having been granted by virtue of Section 73A in respect of development consisting of the construction of buildings. In the event of the notice being upheld and all of the requirements of the notice being complied with, planning permission will therefore be granted for the porch.

## **The appeal under ground (a)**

### **Main Issues**

10. The main issues are (i) the effect of the development on the character and appearance of the area and (ii) the effect of the development on the living conditions of nearby occupiers of Sundown Avenue with particular regard to overlooking.

### **Reasons**

#### **Character and Appearance**

11. The appeal dwelling is located on a prominent corner of Rushdale Avenue and Sundown Avenue in a residential area. Whilst the postal address of the appeal site is Rushdale Avenue, the appeal dwelling fronts onto Sundown Avenue. Land levels on Rushdale Avenue rise to the south with the appeal dwelling being in an elevated position compared to the set down modest bungalows on the opposite side of Sundown Avenue to the appeal dwelling. There are also bungalows on the opposite side of Rushdale Avenue of the appeal site and to the side of the appeal dwelling on Hazel Avenue which runs parallel to Rushdale Avenue.
12. The Council indicates that prior to being extended the dwelling was of a largely simple style as shown in a photograph provided by the Council. In terms of design, appearance and scale, it resembled the existing two -storey dwellings with simple pitched roofs and window styles which are to the rear of the appeal dwelling on Rushdale Avenue.

#### *Single Storey Rear Extension*

13. Although the single storey rear extension is included in the allegation in the notice, the Council has confirmed that that it is not alleging that this element of the development affects the character and appearance of the area and I agree with that assessment. As the rear extension is severable from the rest of the development due to its location, I will grant planning permission for the single storey rear extension as existing. No conditions are necessary as the building already exists and it forms part of the dwelling house in terms of use.

#### *The Remaining Development*

14. The remaining development consists of two storey side and rear extensions, increasing the roof height resulting in an increased ridge height, a new apex window on the 2<sup>nd</sup> floor front elevation and the installation of a dormer on the rear roof slope of the dwelling. The appeal dwelling as constructed, particularly from the front, appears as a three storey house. Given that the appeal dwelling is on a prominent corner and largely surrounded by modest bungalows, the appeal dwelling is incongruous and out of keeping with the surrounding area

which is made up of more modest dwellings largely due to its overall scale and height. The appeal dwelling is particularly overbearing and dominant in relation to the bungalows which are set down on Sundown Avenue. Approaching from Rushdale Avenue, the scale and extent of the roof is emphasised by the addition of the rear dormer which is on the side roof plane nearest to Rushdale Avenue. The height of the dwelling combined with the scale appears to be out of proportion to surrounding development particularly with the location, design and size of the apex window the front which creates the three storey effect and adds to the visual dominance of the appeal dwelling.

15. There is no dispute between the parties that the 2020 permission is a relevant consideration for this appeal. In assessing the additions, the new apex window is approximately 3.7 metres wide and 2.9 metres in height and is of an unusual design and has no similarities with any of the approved windows. The highest point of the feature window is just below the roof which draws attention to the excessive height of the appeal dwelling.
16. The appellant states that the existing ridge height of the appeal dwelling is 9.1 metres as a result of a steeper roof pitch from the eaves level upwards. Whilst I have no details of the height of the original dwelling, the approved ridge height in the 2020 permission is 7.9 metres. Whilst the increased height has provided more living space for the appellant, the overall scale of the appeal dwelling has significantly increased. Given the scale of the appeal dwelling in terms of width, the difference in height from what was approved and what has been built is significant in terms of harm to the character and appearance of the area.
17. At the rear, as well as the prominent dormer, the roof has different ridge heights in close proximity to each other when looking north east towards the appeal dwelling when viewed from Rushdale Avenue. The dormer adds bulk in the form of further built development to a roof that already dominates the skyline.
18. There are significant material differences between what has been approved and what has been built with the two schemes not being comparable in terms of visual harm due to differences in design, height and bulk. The development is out of keeping and incongruous when the prevailing character of the surrounding area is largely of simple roof styles and modest bungalows or two storey dwellings.
19. For the reasons given, I do consider that the development does harm the character and appearance of the area. It is therefore contrary to Policy H16 of the City of Derby Local Plan Review which amongst other things states that permission for extensions will be granted where there is no significant adverse effect on the character and appearance of the dwelling or the streetscene in terms of design, massing and proportions. It is also contrary to Policy CP4 (Character and Context) of the Derby City Local Plan – Part 1 which refers to development making a positive contribution towards the character of the neighbourhood. I find Policy CP3 (Placemaking Principles) of the Derby City Local Plan – Part 1 to be less relevant to the development than the other policies referred to.

## Overlooking

20. The apex window at the front directly below the roof is significantly higher than the bungalows on the opposite site of Sundown Avenue. The window has an oblong lower section with a triangular section on top which sits below the highest point of the roof. Viewed from the outside, whilst the lower rectangular section of the window is filled in, it does appear as though occupiers would be able to see out of the top glass section of the window. From inside, views out of the window are limited due to the filling in at the lower level and the height of the triangular section. There are however two openings at the lower level. The plan approved as part of the 2020 permission does not include the apex window as second floor living space was not part of that planning application.
21. At the time of my site visit, windows on the front of bungalows opposite Sundown Avenue which have low pitched roofs had closed shutters although it is not clear if that is due to the proximity of the road or perception of overlooking. The height of the appeal building combined with the size, design and location of the window does mean that the dwellings and front areas of the bungalows opposite the appeal dwelling on Sundown Avenue which are set down are likely to perceive that they are overlooked. I do not consider that obscure glazing and/ or locking the openings at lower level would overcome the perception of overlooking largely due to the size, design and location of the window.
22. The development is therefore contrary to saved Policy H16 of the City of Derby Local Plan Review which states that permission for extensions will be granted where there is no significant adverse effect on nearby properties in terms of loss of privacy. It is also contrary to Policy GD5 of the City of Derby Local Plan Review which states that only development which does not cause unacceptable harm with regard to matters including loss of privacy will be permitted.

## Alternative Schemes

23. The appellant has asked for alternative schemes to be considered under ground (f). However, any alternative schemes are more appropriately assessed under ground (a) as the appellant is asking for planning permission to be granted for this alternatives. Section 177(1)(a) of the Act states that planning permission can be granted for the matters constituting a breach of planning control in relation to the whole or any part of the development.
24. The appellant has proposed three alternative options in total. Those options include combinations of removal or reduction of the apex window, the removal of the rear dormer with some infilling and the addition of rendering. Recent case law has established<sup>5</sup> that in assessing whether any alternative proposal can be considered to be "the whole or any part" an Inspector is not entitled to say that the mere fact that any new work is required excludes an alternative proposal. I do agree that the removal of elements such as windows or the dormer could be considered to be "part of the development" as infilling would be limited and it is not unusual for rendering to be conditioned if considered to be appropriate.
25. Option 1 includes the removal of the dormer. At the front, the size of the apex window would be reduced by infilling and then adding render to the existing

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<sup>5</sup> Bhandal & Ors v Secretary of State for Housing, Communities & Local Government & Anor

central section. There is currently a section of lighter coloured bricks from the original dwelling in the centre of the appeal dwelling and the render would cover and extend beyond the original bricks. However, use of render is not a feature of the surrounding properties. The appellant has referred to partially rendered properties on the north west side of Nevinson Avenue. However, as shown on the photograph provided by the appellant, those dwellings are largely symmetrical pairs of semi-detached houses and the use of render appears to be limited and is not a particularly prominent feature.

26. In the absence of any reduction in the roof height itself, removing the lower part of the window whilst adding a central panel of rendering as a new feature would not lessen the visual dominance of the appeal dwelling. The retention of the upper part of the apex window is unlikely to overcome the perception of overlooking.
27. Option 2 also retains the dormer but proposes removing the apex window entirely and rendering the whole of the front central section up to roof level.. The only difference between Option 2 and Option 3 is that Option 3 would include the removal of the rear dormer. Any option which removes the apex window would address the perceived overlooking aspect for nearby occupiers of Sundown Avenue. Removing the rear dormer would reduce bulk at the rear but retain the rest of the roof arrangement at the rear including the ridge heights.
28. With regard to the front elevation, all three options focus on the apex window with different degrees of rendering to the front. However, none of the options address the issue of the increased ridge height which given the appeal dwelling's prominent location is particularly significant in terms of visual harm.
29. The proposed rendering would in my view simply add another feature to the front of the appeal dwelling and would not reduce its prominence particularly when render is not a feature of surrounding dwellings. Whilst removing the apex window would address the overlooking issue, I do not consider that any of the options proposed address the harm that I have found with regard to the character and appearance of the area.

### **Conclusion on ground (a) and the DPA**

30. For the reasons given above, the appeal should be dismissed subject to a variation to the notice for the development other the grant of planning permission for for the single storey rear extension.
31. Section 180 of the Act states if after the service of an enforcement notice, planning permission is granted for the retention on land of buildings or works, the enforcement notice shall cease to have effect in so far as it requires steps to be taken for the demolition or alteration of works. The requirements of the upheld notice will therefore cease to have effect so far as they are inconsistent with the permission which I am granting for the single storey rear extension. It is therefore not necessary to make any further changes to the requirements.

### **An appeal under ground (f)**

32. Section 174(2)(f) of the Act states that an appeal may be made on the ground that the steps required by the notice to be taken, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.



33. Section 173(4) of the Act those purposes are (a) remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place: or (b) remedying any injury to amenity which has been caused by the breach. The purpose of the notice is not the same as the reasons for issuing the notice.
34. Both parties have referred to the purpose of the notice as remedying any injury to amenity not remedying the breach. However, the requirements as amended with the exception of the front porch are either return the dwelling to its former condition or alter the development to comply with the terms of planning permission reference 20/00597 dated the 21 August 2020. The purpose of the notice is therefore to remedy the breach in requiring either removal and restoration or compliance with an existing planning permission.
35. However, the basis for the appellant's ground (f) appeal is that the steps required by the notice exceed what is necessary to remedy any injury to amenity caused by the development and that planning permission could be granted for an alternative proposal. Even if the purpose of the notice was to remedy the injury to amenity, I have already addressed under ground (a) why the alternative options do not overcome the harm to the character and appearance to the area which includes visual amenity. The requirements of the notice which provide for an alternative are not excessive. The appeal under ground (f) therefore fails.

*E Griffin*

INSPECTOR