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# Appeal Decision

Site visit made on 3 May 2023

**by Zoë Franks Solicitor**

**an Inspector appointed by the Secretary of State**

**Decision date: 22 May 2023**

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**Appeal Ref: APP/M2840/C/22/3300849**

**105 Warkton Lane, Barton Seagrave, KETTERING, NN15 5AB**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Michael Smith against an enforcement notice issued by North Northamptonshire Council.
  - The notice, numbered ENF/2021/00012, was issued on 9 May 2022.
  - The breach of planning control as alleged in the notice is without planning permission, the construction of a two-storey rear and side extension with single storey rear extension which fails to comply with the terms of the grant of planning permission through KET/2019/0486.
  - The requirements of the notice are to: (1) Install a Mansard roof on the first floor front elevation of the two storey side extension, to provide a continuous Mansard roof across the front of the property at first floor level as shown on the approved plan WL/02 Rev B of KET/2019/0486. The Mansard roof should be constructed in a roof tile to match those on the original dwelling. (2) Install 2 no. additional dormer windows (to provide a total of 3 no. dormer windows) to project beyond the enlarged Mansard required by step (1) as shown on approved plan WL/02 Rev B of KET/2019/0486 (3) Permanently remove the smooth render from the front elevation to reveal the original buff facing brickwork of the original house. The front elevation of the extension at ground floor should comprise pebbledash render.
  - The period for compliance with the requirements is: 4 months.
  - The appeal is proceeding on the grounds set out in section 174(2)(a), (f), (g) 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. It is directed that the enforcement notice is varied by the deletion of 4 months and substitution of 6 months as the period for completion.
2. Subject to the variation, 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.

## Ground (a) and the deemed planning application

3. The main issue is the effect of the development on the character and appearance of the area.
4. The appellant has submitted amended plans and asked that they be considered as part of the deemed application for permission. However, under a ground (a) appeal what may be granted planning permission is ultimately governed by the wording of s177(1)(a) which states that permission may be granted in respect of the whole or any part of the matters stated in the enforcement notice as constituting a breach of planning control. This is different to planning appeals

brought under section 78 of 1990 Act where caselaw holds that amended plans can be accepted on appeal provided there is no substantial difference between what was originally applied for and the amended scheme.<sup>1</sup>

5. The scheme proposed in the amended plans provided by the appellant does not form part of the matters stated in the notice, which alleges the construction of a two-storey rear and side extension with single storey rear extension which fails to comply with the grant of planning permission through KET/2019/0486 ('the 2019 Permission'). The appellant's proposal shows a mono pitched roof which extends across the front elevation of the property, and retains the cream render and black roof slates, whilst also proposing that the element of mansard roof which remains in the original concrete tiles should be replaced with matching slate. These elements are not part of the approved plans in the 2019 Permission, and therefore not part of the matters stated in the notice. As such they cannot be granted permission pursuant to an appeal under s174 of the Act and the ground (a) appeal therefore falls to be considered regarding the development as it was when the notice was served.
6. The appeal property is a large detached dwelling located on a slip road set back from Warkton Lane along with 8 other dwellinghouses which were constructed in around the 1960s. These houses are built from buff coloured brick with brown-coloured concrete roof tiles, with mansard roof elements, and most have been extended in a variety of ways over time. The appeal property can be seen from Warkton Road as well as the slip road, and is viewed within the context of the group of houses on the slip road.
7. The light-coloured render on the front elevation and the dark slate roof appear discordant and out of place in the setting surrounded by the other houses which have fairly uniform materials which match the originals used. Whilst many of the other houses have been extended, and the appeal property is not overly large in its location and plot, it does appear incongruous in this setting as the materials and overall roof shape are so very different from everything else in the immediate vicinity in which it is experienced.
8. The development therefore causes harm to the character and appearance of the area. This is in conflict with Policy 8 of the North Northamptonshire Joint Core Strategy, which forms part of the local development plan and which, amongst other things, seeks create a distinctive local character by responding to the site's immediate and wider context. The development is therefore not in accordance with the local development plan overall or the National Planning Policy Framework, and in the absence of any other consideration of sufficient weight to overcome this conflict should not be granted permission, and the appeal on ground (a) fails.

### **Ground (f)**

9. Ground (f) is an appeal on the basis 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 the matters stated in the notice or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. As the notice under-enforces in that it does not require full compliance with approved plan WL/02 Rev B, the purpose of the notice in this case was to

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<sup>1</sup> Bernard Wheatcroft Ltd v SSE [1982] JPL 37

remedy injury to amenity (i.e. harm to the character and appearance of the area).

10. Whilst section 176 of the Act permits that on appeal the notice can be corrected or varied this can only be done if it would not cause injustice to the appellant or Council. In this case the requirements cannot be made more onerous, for example by requiring that the development is built in accordance with all of the approved plans from the 2019 Permission, as this would cause an injustice to the appellant and put him in a worse position than if he had not appealed.
11. The appellant argues that the cream render, if removed, could be immediately re-applied without the need for planning permission. However, such works would materially affect the external appearance of the building and therefore constitute development pursuant to section 55 of the 1990, and condition A.3(a) of Schedule 2 Part 1 Class of the Town and Country Planning (General Permitted Development) (England) Order 2015 provides that the enlargement, improvement or other alteration of a dwellinghouse is only permitted where the materials used in any exterior work must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse. The smooth cream render is not of a similar appearance to the original buff-coloured bricks and would therefore require an express permission.
12. I am satisfied that the steps required by the notice do not exceed what is necessary to remedy the injury to amenity and remedy the harm to the character and appearance of the area. I have already dealt with the appellant's proposed alternative scheme in relation to ground (a) above.

### **Ground (g)**

13. The appellant seeks additional time in which to comply with the notice, but has not indicated how long is sought although he was entitled to wait until the outcome of this appeal before complying with the notice. The works are not insubstantial, and I accept, in the current climate, that 4 months may be insufficient to find an appropriate builder to undertake and complete them. I therefore vary the timescale to 6 months and the appeal succeeds to this limited degree.

*Zoë Franks*

INSPECTOR