



Appeal Decision

Site visit made on 4 April 2023

by **S A Hanson BA(Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 01 June 2023

Appeal Ref: APP/Q4625/C/22/3297630

100 Monastery Drive, Olton, Solihull B91 1DP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Valerie Chi Barlow against an enforcement notice issued by Solihull Metropolitan Borough Council.
 - The notice was issued on 30 March 2022.
 - The breach of planning control as alleged in the notice is Without planning permission, alteration and additions to the dwelling house on the land, including front and rear extensions, a dormer roof extension, rooflights, changes to fenestration, removal of a chimney, porch addition/alterations, and external tiling. All collectively constituting an unauthorised operational development in its own right, and also a breach of conditions 1 (compliance with approved drawings) and 3 (use of matching materials) of planning permission ref: PL/2021/00163/MINFHO dated 24.03.2021 and shown on drawings no's. 553-1 REV ZB; 553-2 ZB; 553-3 REV ZB; 553-4 REV ZB; 553-5 REV ZB; 553-6 REV ZB; 553-7 REV ZB; 553-9 REV ZB; and 553-10 REV ZC of retrospective planning application ref: PL/2021/02961/MINFHO refused 07.03.2022.
 - The requirements of the notice are to: i. Demolish, undo and remove, all of the unauthorised alterations and additions to the dwelling house and its roof, and return the land to its previous condition, size, design and appearance as it was before the breach commenced, as shown on attached drawing number 553-7 REV F; or, ii. Remove the unauthorised new rear dormer extension, and undo or alter the other unauthorised alterations and extensions such that they fully accord with the development approved under planning permission PL/2021/00163/MINFHO as shown on the attached drawing number 553-8 REVG. And iii. Remove all materials created by the taking of step (i) and (ii) above from the land.
 - The period for compliance with the requirements is: 3 (three) months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) 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 allegation be deleted and substituted with: 'Without planning permission, alteration and additions to the dwelling house on the land, including front and rear extensions, a dormer roof extension, rooflights, changes to fenestration, removal of a chimney, porch addition/alterations and external tiling.'
2. It is directed that the steps required to comply with the notice are corrected by:

deleting step i. and substituting it with: 'i. Demolish, undo and remove, all of the unauthorised alterations and additions to the dwelling house and its roof, and return the land to its previous condition, size, design and appearance as it was before the breach took place.'

deleting step iii and substituting it with 'iii. Remove all materials created by the taking of step (i) or (ii) above from the land.'

3. Subject to these corrections, the appeal is allowed in part and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for part of the development, namely the front and rear ground floor extensions, rooflights, changes to fenestration, removal of a chimney, porch addition/alterations and external tiling on land at 100 Monastery Drive, Olton, Solihull B91 1DP, referred to in the notice, subject to the conditions in schedule 1.
4. Otherwise, the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under S177(5) for the dormer roof extension.

Applications for costs

5. An application for costs was made by Ms Valerie Ping¹ against Solihull Metropolitan Borough Council. This is the subject of a separate decision.

Preliminary Matters

6. A planning application Ref PL/2021/02961/MINFHO, dated 22 January 2022 for 'amendments to existing approved application PL/2021/00163/MINFHO: Addition of a 31m³ dormer to the rear, addition of roof lights to the front roof, two rear windows on the first floor changed for full-height windows, increase in size of the rear kitchen extension. Original approved dimension was 3.72m, and the built kitchen measures 4.1m, due to a foundations issue. Changes in the size of south elevation ground floor windows in order to comply with the conditions set in the original approved application. Chimney stack which was originally removed until roof level has now been completely removed above roof level. A bathroom window has been blocked up on the first floor north elevation. House has been completely rendered in order to hide the mismatching bricks all around the house' was refused by notice dated 7 March 2022. This is the subject of a separate appeal Ref APP/Q4625/W/22/3297624.

Matters concerning the notice

7. The alleged breach of planning is one of operational development pursuant to s171A(1)(a) of the 1990 Act. What has been constructed does not benefit from planning permission, therefore the conditions attached to planning permission Ref PL/2021/00163/MINFHO no longer apply. Consequently, I shall correct the notice to delete reference to the breach of conditions. Also, as there are options to comply with either step i. or step ii. the same option should be used instead of 'and' in step iii. It is open for me to correct and/or vary the notice in accordance with my powers under section 176(1) of the Act. As such, I consider that the corrections provide clarity and by doing so, I am satisfied that no injustice will arise to either of the main parties.

Ground (a) and the deemed planning application

Main Issue

8. This is the effect of the development on the character and appearance of the dwelling and the wider street scene.

¹ Ms Valerie Ping and Valerie Chi Barlow are confirmed by the agent as being the same individual

Reasons

9. The appeal relates to a detached house of suburban design located at the northern end of Monastery Drive, close to the junction with Grange Road. It, like its immediate neighbours on Monastery Drive and those it shares a boundary with on Grange Road are large properties within spacious plots. The north end of Monastery Drive displays modern detached houses set back from the road with open frontages planted with trees and shrubs providing a softening appearance. The houses display differing architectural asymmetrical designs which adds to the visual interest of the area. As the road progresses south, bungalows dominate one side and the frontage space between the residential properties and the road lessens and their architectural features become more uniform. Dwellings along Monastery Drive display a variety of materials in their construction with reddish brick and light coloured render being the dominant feature.
10. The appeal property, formerly of brick and render construction, has been extended to both the front and rear. The roof has been raised and on the rear roof slope is a large dormer roof extension to one side. While elements of the recent works were subject to planning approval under planning permission ref PL/2021/00163/MINFHO, development including the construction of the dormer, the addition of roof lights and alterations to fenestration, an increase in the depth of the rear single storey extension, alterations to the porch, removal of a chimney stack and tiling to the front of the property have taken place. These were the subject of an application for planning permission to regularise the development, ref PL/2021/02961/MINFHO, which was refused by notice on 7 March 2022 and subject to an appeal Ref APP/Q4625/W/22/3297624.
11. To the front of the property, alterations to the porch have resulted in a hipped roof instead of a gable with eaves at a slightly higher level and partially enclosed side elevations. To the rear, the flat roof single storey extension has been extended by some 400mm in depth. There are several alterations to the fenestration on the property that include additional openings on the front and rear roof slope and larger openings on the rear elevation at first floor. The enlarged openings are in the form of two floor to ceiling windows to which Juliet balconies have been added. The Juliet balconies are fully glazed with a horizontal metal bar at the top and bottom. Their purpose is to provide safety and they appear not to enable access to the flat roof.
12. The design of the porch and its tile detailing sits comfortably with the wide and open property frontage which is set back from the road, and the enlarged rear extension has a limited visual impact on the appearance of the property and the character of the wider street scene. The alterations to the windows are not visually harmful to the property or to the character and appearance of the wider area. The original property is shown as having two chimneys, one being external and on the side of the building and the other being an internal chimney positioned centrally and visible on the front roof slope. While the side chimney remains in situ, the central chimney has been removed. Although two chimneys feature on several of the surrounding properties, they do not define the characteristics of the dwellings to such an extent that loss of the feature would be harmful to the character of the area.

13. Overall, on the above matters I find that the alterations that have taken place have a limited effect on the character and appearance of the property and wider street scene. In this respect the development conserves and enhances local character and streetscape quality and there is no conflict with Policy P15 of the Solihull Local Plan 2013.
14. Notwithstanding my views on the above, the roof extension in the form of a dormer to the rear slope is a prominent form that has substantially altered the aesthetics of the property. Although situated on the rear roof slope, its height, scale and design draw the eye from both the public and private realm. Its contrived design fails in terms of scale and proportion to relate to the dwellinghouse and to its surrounding context. Being constructed to the outer wall it has the appearance of another floor rather than an extension into the loft space. In this respect it dominates the building and fails to respect the fundamentals of quality or proportion that is so important within the more traditional designs nearby. The dormer extension represents poor design, and this has a substantially harmful impact on the character and appearance of the dwellinghouse and the wider street scene.
15. The dormer roof extension conflicts with Policy P15 of the Solihull Local Plan 2013, which amongst other things, expects development to achieve good quality design. It is also in conflict with the overarching principals of good design in the National Planning Policy Framework.

Planning Conditions

16. In the absence of conditions supplied by the Council as part of the appeal, the conditions set out in the accompanying schedule are based on those contained within the Council's report to Committee. Where necessary, I have amended the wording of the suggested conditions, in the interests of precision and clarity, and to comply with advice in the Planning Practice Guidance.
17. As the development has commenced, a time limit condition is not necessary. A condition specifying approved plans/documents is necessary for the avoidance of doubt and in the interests of certainty. The condition to restrict openings and control glazing of the side windows above ground floor level is deemed reasonable to restrict overlooking. The restricted use of the roof area of the ground floor is necessary to protect privacy of occupiers of neighbouring properties.

Conclusion on ground (a) and the deemed planning application

18. For the reasons given, and having taken all other matters into consideration, I conclude that the appeal should be allowed in part only, and I will grant planning permission for the alteration and additions to the dwellinghouse including front and rear extensions, rooflights, changes to fenestration, removal of a chimney, porch addition/alterations and external tiling.
19. The remaining development is contrary to the development plan as a whole and there are no other material considerations, including the provisions of the Framework, which outweigh this finding.
20. Therefore, I will uphold the notice and refuse to grant planning permission for the rear dormer roof extension. Section 180(1) of the 1990 Act provides that the requirements of the upheld notice will cease to have effect so far as inconsistent where a planning permission is subsequently granted for the same

development or part of it. The permission granted under notice requires the removal of the dormer roof extension only. As the decision is split, I will leave the requirements as they are and allow the planning permission to override the notice where there is inconsistency.

Ground (f)

21. An appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve the purpose of the notice. The purposes of an enforcement notice are set out in s173 of the 1990 Act and are to remedy the breach of planning control or to remedy injury to amenity. Reading the notice as a whole, it would seem the purpose of the notice was to remedy the breach of planning control.
22. In these circumstances, s173(4)(a) of the 1990 Act provides that the purposes of an enforcement notice are remedying the breach of planning control 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.
23. The steps required by the notice stipulate either the complete removal of the unauthorised alterations and additions to the dwelling house and its roof or the carrying out of remedial works to ensure that the works are in accordance with the planning permission referenced under PL/2021/00163/MINFHO. These requirements are in accordance with s173(4)(a) of the 1990 Act.
24. The issued requirements do not exceed the purpose behind the notice to remedy the breach of planning control. There are no other lesser steps before me that would remedy the breach. The appeal on ground (f) therefore fails.

S A Hanson INSPECTOR

Schedule 1

- 1) The development hereby permitted shall be carried out and completed in accordance with the following approved plans and the specifications and recommendations contained therein, except where otherwise stipulated by conditions attached to this permission: 553-2 REV ZB; 553-4 REV ZB; 553-7 REV ZB; 553-8 REV ZB; 553-9 REV ZB; and 553-10 REV ZC insofar as they relate to the alteration and additions to the dwelling house including front and rear extensions, rooflights, changes to fenestration, removal of a chimney, porch addition/alterations and external tiling.
- 2) The windows to be installed in the side elevations above ground floor level shall be obscurely glazed, and non-opening unless the parts of the window that can be opened are more than 1.7 metres above the floor of the room in which the window is installed. The windows shall thereafter be permanently retained in that condition.
- 3) The roof area of the rear extension hereby permitted shall not be used as a balcony, roof garden or similar amenity area.

END.