



Appeal Decision

Site visit made on 23 May 2023

by R Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 June 2023

Appeal Ref: APP/W4705/C/22/3304877

133 Lapage Street, Bradford, West Yorkshire BD3 8AF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Mohammed Shahid Khan against an enforcement notice issued by City of Bradford Metropolitan District Council.
- The enforcement notice was issued on 30 June 2022.
- The breach of planning control as alleged in the notice is Without planning permission, the construction of a single storey extension to the rear elevation of the dwelling on the land, as shown on the attached photograph.
- The requirements of the notice are i) Demolish the unauthorised single storey rear extension to the dwelling; ii) Make good of all resulting damage, restoring the rear elevation of the property to its original appearance; iii) Remove all arising materials from the land.
- The period for compliance with the requirements is two calendar months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (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.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Preliminary Matters

1. The appellant referred in their statement to an appended letter, providing medical evidence in support of the appeal. The letter was omitted in error but was subsequently provided, and the Council was given the opportunity to comment on the significance of this document. I have therefore taken this information into account, referred to later in my decision, and in so doing am satisfied that this would not result in prejudice to the parties.
2. The extension to which this appeal relates, was previously the subject of an unsuccessful planning appeal¹. The Inspector's decision letter in relation to that case is therefore a key material consideration which I have had regard to. I refer in my decision to that Inspector as the 'previous Inspector'.

The appeal on ground (a)

Main Issues

3. The main issues are i) the effect of the development on the character and appearance of the area; ii) the effect of the development on the living

¹ Appeal Ref APP/W4705/D/21/3283631

conditions of the occupiers of neighbouring properties at Nos 135 and 127 Lapage Street, having particular regard to privacy, overshadowing and overbearing impact and iii) if there is any harm arising from the aforementioned issues, whether that harm is outweighed by any need for the extension, as built, because of the personal circumstances of the appellant's family.

Reasons

4. The appeal site is part of a back-to-back group of terraced dwellings and faces onto a communal alleyway, opposite the rear of properties on Chelmsford Terrace. The dwelling is immediately behind, and accessed via an undercroft to the side of, No 131 Lapage Street.

Character and Appearance

5. The previous Inspector identified the depth of the extension as some 5 metres in length; that it was an imposing structure occupying most of the courtyard area, leaving limited outdoor space; that whereas most extensions in the street were modest and proportionate in size, the extension in this case was substantial in scale and clearly visible from the south, blocking views along the terrace. The Inspector also referred to the partial blockwork finish, concluding that even if this was to be rendered and painted in a colour to match the existing brickwork, the size of the structure would nevertheless remain incongruous and dominant.
6. As a result of my visit, I have no reason to take a contrary view, and conclude that the extension is a disproportionate addition which results in harm to the character and appearance of the original dwelling and the wider street scene. Accordingly it conflicts with Policies DS1, DS3 and DS5 of the Council's Core Strategy 2017 (CS) and with the National Planning Policy Framework (the Framework) which collectively seek to promote good design, appropriate to its context, having regard to matters that include scale and materials.
7. The previous Inspector also found that a past grant of planning permission for a different development at the property, that may now have lapsed, did not in any event weigh in favour of the development subject to this appeal. Again, from the evidence before me, I have no reason to take a contrary view.

Living Conditions

8. The adjacent dwelling at No 127 is situated to the south of the appeal site. Accordingly I concur with the previous Inspector's finding that the extension would not lead to harmful levels of overshadowing and light loss to the rear rooms and yard area of that property. Also, despite the scale of the extension along the side boundary, the outlook to the rear and other side from that property would remain sufficiently open not to cause a harmful sense of enclosure. There are no windows in the elevation of the extension facing towards No 127 and consequently the structure does not result in that property being overlooked. I conclude that the extension does not result in harm to the living conditions of the occupiers of No 127.
9. No 135 is situated to the north of the appeal site and taking into account the proximity of the nearest rear facing ground floor window in that property, I consider it likely that the extension would cause overshadowing and harmful loss of light to the room in question and to the rear courtyard area. Whilst the

appellant has provided a photograph showing sunlight reaching much of the rear courtyard, this only represents a single point in time. I also concur with the previous Inspector that the presence of the extension, together with the presence of a substantial structure along the opposite side boundary, result in an enclosing effect that is harmful to outlook for the neighbouring residents of that property.

10. I noted during my visit that the access arrangements to the appeal property mean that a gap has been left between the extension and the side boundary. Notwithstanding this, a side facing window and door mean that it would be possible to overlook the rear of No 135 from a relatively short distance, resulting in harm to the privacy of residents there. Whilst it would be possible to require, through a planning condition, that the window is obscure glazed, overlooking would still occur via the door if left open for ventilation. Though not determinative in itself, a degree of overlooking would therefore add to the harmful impacts I have found in terms of light loss and outlook.
11. I have considered the appellant's point that there has been a change in circumstances since the previous appeal decision, in that the neighbouring property at No 135 has now been acquired by the appellant, who accordingly has no problem with any impact of the extension upon it. I have not been provided with any evidence regarding the ownership of this property. Notwithstanding this, I must have regard to the impact of development over its lifetime, including the prospect that the occupiers of property will change over time. Accordingly the concerns I have expressed are unchanged by this consideration and continue to weigh against the development.
12. The development results in harm to the living conditions of the occupiers of No 135 Lapage Street. As such it conflicts with Policy DS5 of the CS, and with the Framework, insofar as they seek to avoid harm to the amenity of existing and prospective users and residents.

Personal Circumstances

13. The appellant states that there is need to retain the extension, as built, because of the medical circumstances and disabilities of two family members. Having regard to the sensitivity of personal medical information, I do not propose to set out the claimed circumstances of the individuals in detail.
14. However, in exercising my function on behalf of a public authority, I have had due regard to the Public Sector Equality Duty (PSED) contained in the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, to advance equality of opportunity and to foster good relations. The Act recognises that disability constitutes a relevant protected characteristic for the purposes of PSED. I have also considered the appellant's rights under Article 8 of the European Convention on Human Rights², as the notice's requirements amount to interference with those rights.
15. In essence it is claimed by the appellant that the additional space provided by the extension would allow for an improved quality of life for certain family members, in terms of providing additional ground floor accommodation for washing and studying. A supporting letter is provided by a local medical

² As set out within the Human Rights Act 1998, which states that everyone has the right to respect for their private and family life, their home and their correspondence.

practice, acknowledging the circumstances of one of the family members and indicating that the additional space and facilities provided by the extension would promote the independence and wellbeing of that individual.

16. However, the supporting information is lacking in detail as to whether and how the personal health circumstances of the individuals serve to justify the scale of extension that has actually been built, or whether a smaller development would have been suitable. Indeed, I noted during my visit that part of the extension appears to be utilised as a kitchen and dining area, and it is not therefore clear how this would be justified by claims of disability experienced by certain family members.
17. Notwithstanding this I am concerned to note from the Council's representations that it concedes an Occupational Therapy assessment of the extension has not yet been made, despite the Council being approached by the appellant about this. I am not therefore satisfied that a meaningful assessment of the need for the extension has been undertaken, having regard to PSED and the appellant's Human Rights.
18. I concur with the previous Inspector that the provision of additional space, in what is a very modestly sized dwelling, must be of benefit to the family. I am not satisfied that the standard of medical evidence presented to date is sufficiently compelling to outweigh the harmful impacts that I have found above, and to justify the extension in its current form. For the avoidance of doubt I would have reached the same conclusion had the harm been limited to visual impact on the character and appearance of the area, rather than on living conditions as well.
19. It follows that the ground (a) appeal, and the deemed planning application arising from it, cannot succeed in these circumstances. However, I consider that the absence of an Occupational Therapy assessment justifies an extension of time for compliance with the notice, so that the question of whether there is a robust medical case for the extension, and if so in what form, can be properly explored. This matter is considered further in relation to the ground (g) appeal.

Other Matters

20. A number of further supporting representations have been made by the appellant. Firstly it is argued that the extension, though large, is similar to what could potentially be allowed as 'permitted development' in certain circumstances, which should serve to reduce the amount of weight afforded to any policy conflict on grounds of scale. However, the appellant does not seek to argue that the extension is 'permitted development' and indeed concedes that they were wrongly advised that planning permission would not be required. Furthermore, the development is within a prominent location, viewed from the public domain. Many extensions that are 'permitted development' are not so prominent. Whilst it is regrettable that the appellant was incorrectly advised, these points do not mitigate the considerations that I have made above.
21. Secondly, I have been referred to nearby properties, located in Killinghall Road, where it is claimed that large extensions have been permitted by the Council. Whilst I noted large two-storey or upper floor extensions at the properties in question, I am uncertain from the evidence before me about the detailed circumstances of those cases. Planning applications and appeals must be

determined on their individual merits and as such the presence of those developments does not weigh positively in favour of the appeal.

22. Finally, concerns have been expressed by the neighbouring occupier regarding the safety of the extension that has been constructed. No evidence has been presented to support the concerns raised. However, in any event, concerns of this nature would be a matter for building regulations, and as such are outside my remit for consideration in this case.

The appeal on ground (g)

23. The appeal on ground (g) is that the time given to comply with the notice is too short. The appellant requests a 24-month compliance period, in order to allow time to prepare, submit and implement an alternative scheme. I am mindful of the importance of striking a balance between enforcement that is intended to be remedial rather than punitive, in the context of PSED and the appellant's human rights, whilst maintaining public confidence in the planning system.
24. As set out above, it seems to me possible that the need for an extension in some form may gain Council support, following an Occupational Therapy assessment. Accordingly, there would be justification to lengthen the time for compliance with the enforcement notice. I consider that a twelve-month compliance period would be proportionate, providing a reasonable opportunity for further assessment work; for the appellants to make a planning application to the Council, for a scheme consistent with its findings, should this be deemed appropriate; and for any necessary amendments to be made, should the application prove successful.
25. On the basis of the information before me I do not consider the requirements of the notice and the period for compliance with the notice, as varied, would result in a disproportionate burden, when balanced against the harm that I have identified. The ground (g) appeal therefore succeeds to this extent.

Conclusion

26. For the reasons given above, I conclude that the ground (a) appeal should not succeed. I shall uphold the enforcement notice, with a variation, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Formal Decision

27. It is directed that the enforcement notice is varied by the deletion of the words "Two calendar months" in Schedule 6 of the notice, and the substitution of the words "Twelve calendar months" instead.
28. 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.

R Merrett

INSPECTOR