



Appeal Decision

Site visit made on 18 April 2023

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 June 2023

Appeal Refs: APP/V2635/C/22/3299806

Land at 21 Broadlands, The Street, Syderstone, King's Lynn, Norfolk PE31 8ST

- 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 Mrs Kristy Chapman against an enforcement notice issued by King's Lynn and West Norfolk Borough Council.
 - The enforcement notice was issued on 20 April 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a single storey rear extension.
 - The requirements of the notice are to:
 - (1) Ensure the single storey rear extension extends beyond the rear wall by no more than 5.7metres, and the maximum height to not exceed 3 metres, with a maximum height of 2.7 metres to the eaves.
 - (2) Ensure the materials used in the construction match as closely as possible to the materials of the existing dwelling.
 - The period for compliance with the requirements is four months from the date this Notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b) and (c) of the Town and Country Planning Act 1990 as amended.
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Formal Decision

1. It is directed that the enforcement notice be corrected by deleting Requirement (ii). Requirement (i) is also deleted and is instead reworded to read:

"Modify the section of the rear extension running parallel to the common boundary with no 20 Broadlands so that it does not exceed a maximum height of 3m. The external materials used shall match those of the existing extension".

Subject to this correction 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.

Background

2. In 2018, following receipt of an application under the Prior Notification procedure (ref 18/00402/PAGPD) proposing a single-storey rear extension, the Council determined that no prior approval would be required. It was shown that the L-shaped extension's eaves would be to a height of 2.7m with the roof having a maximum height of 3m, and it would extend beyond the dwelling's rear wall by no more than 5.7m. A decision notice was issued, accordingly, which effectively confirmed that the proposal would, if built as described,

constitute permitted development under the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (GPDO).

3. Whereas GPDO Class A allows for semi-detached dwellinghouses such as this to be extended with single storey additions to a maximum of 3m depth, the Prior Notification procedure permits extensions up to 6m in depth providing that there are no objections received from neighbour consultees. In this particular instance the depth of 5.7m was specified and accepted by the Council as no such representations were received.
4. In instances where applications are made as to whether Prior Approval is required for householder developments, and it is found that there is no such need, Condition A.4 (11) of Class A stipulates that the development shall be carried out in accordance with the details approved by the local planning authority. The reasoning for this takes in the possibility that had the extension's actual dimensions, as built, been specified at the outset neighbour objections might have been raised. In such instances, Condition A.4 (7) states that:

'... the prior approval of the local planning authority is required as to the impact of the proposed development on the amenity of any adjoining residents.'
5. In this particular case an extension of similar profile has since been erected but the furthestmost section which projects along the boundary with no 20 (the adjoining dwelling) is to a height some 0.3m greater than that which was specified, and on which basis the 2018 application was assessed and determined. Council officials confirmed this by taking measurements at a site visit carried out on 24 August 2021.
6. As the development was built differently to that described on the decision notice for 18/00402/PAGPD there is, in effect, no consented scheme. On this basis, and given that the Council regards the extension's additional height as having resulted in an unneighbourly form of development, the Council saw it expedient to issue an enforcement notice.

The appeal on ground (b)

7. An appeal on this ground is to show that the alleged breach, at the time the enforcement notice was served, had not occurred as a matter of fact.
8. The onus of proof on matters of fact is on the appellant, and rests on the balance of probabilities.
9. The allegation refers to a single storey rear extension having been erected without planning permission and, for the reasons I have set out above, this describes exactly the current planning position at the appeal site.
10. As at 20 April 2022, the date the notice was issued, the breach of control alleged must have occurred as a matter of fact and, accordingly, the appeal under ground (b) must fail.

The Appeal on ground (c)

11. The appeal on this ground is that the matters alleged in the notice do not constitute a breach of planning control. Again, the onus of proof is on the appellant to properly demonstrate this and is on the balance of probabilities.

12. Ground (c) assumes the fact of the original development as it occurred at the time of the enforcement notice's issue, so it can only succeed on this basis if that original development does not now amount to a breach of planning control due to a change in the planning control situation.
13. Once again, given my reasoning above, the extension as built does constitute a breach of planning control as it did not benefit from planning permission. In such instances the Council may use its powers to issue an enforcement notice where it considers expedient to do so.
14. The ground (c) appeal must similarly fail.

The appeal on ground (a); the deemed planning application (DPA)

Main Issue

15. The main issue is the effect of the development on the living conditions of the occupiers at the adjoining property.

Reasons

16. At my site visit I noted that the sloping roof overlying the rear section of the extension running alongside and very close to the boundary with no 20 rises considerably beyond the height of the fence divide. In this respect I have noted the representations of the occupier of no 20 who states:

"Had we known the height was going to be above 3m and using concrete blocks and clad we would have definitely raised objections at the initial submission of the proposal."
17. As mentioned earlier, had this happened, such an objection would have meant that application ref 18/00402/PAGPD would have been assessed by taking into account an additional issue, being the effect on the living conditions at no 20. Given the circumstances I have described, on the basis of the information supplied accompanying the application, this did not occur.
18. Of course, just because the Council made no such assessment at the application stage, does not mean that the development, as built, is unacceptable. However, given the extension's height, exacerbated by the overlying coping stone, and its location relative to no 20, I consider the section of wall rising above the fence to be an unduly visually intrusive form of development and I agree with the Council's view that it is overbearing and unneighbourly.
19. I have had regard to the points raised by the appellant in support of the appeal but none of these points are so significant as to affect my conclusions. Accordingly, I consider that the extension should be modified to ameliorate its impact on the neighbouring property, and a maximum height of 3m would be appropriate in the circumstances. To this end I have seen no compelling reasons nor constructional difficulties as to why the roof height cannot be lowered.
20. I thereby conclude that the development is harmful to the living conditions of the neighbouring occupiers and it conflicts with the aims and requirements of policy CS08 of the Council's Local Development Framework Core Strategy, policies DM1 and DM15 of the Council's Site Allocations and Development

Management Policies Plan, and relevant advice within paragraphs 130 and 134 of the National Planning Policy Framework.

21. At my site visit I noted that the extension is brick-faced, and I am not certain what has been indicated in representations as it being inappropriately clad. Instead, I am satisfied that the type of brickwork used is appropriate in appearance. Also, the enforcement notice requires that the extension be altered to reflect the dimensions put forward at the application stage. However, I have no reason to believe that the total depth from the original dwelling's rear elevation exceeds 5.7m, and I have gauged the eaves height, as built, is less than the 2.7m cited, measuring approximately 2.5m. It is only the extension's ridge height that is unacceptable in planning terms, and I shall correct the enforcement notice taking into account my findings.
22. The appeal is dismissed and the enforcement notice is upheld, but with corrections.

Timothy C King

INSPECTOR