The Planning Inspectorate

Appeal Decision

Site visit made on 31 May 2023

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 4th July 2023

Appeal Ref: APP/P4605/C/22/3313152
126 Stoney Lane, Birmingham, B12 8AQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Shakil Ahmed against an enforcement notice issued by Birmingham City Council.
- The notice was issued on 17 November 2022.
- The breach of planning control as alleged in the notice is Without planning permission, the unauthorised erection of a single storey rear extension in the approximate position marked in green on the attached plan.
- The requirements of the notice are
  i. Demolish the single storey rear extension in its entirety and remove all demolished materials from the Premises
  ii. Restore the boundary fence as existing prior to the breach taking place.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the ground set out in section 174(2)(a) 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

Decision

1. It is directed that the enforcement notice is varied by deleting in full the wording of requirement ii in paragraph 5 of the notice.

2. Subject to that 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.

Preliminary Matters

3. The deemed planning application under ground (a) derives from the allegation which is the erection of an extension which is operational development. Any use of the extension that is now taking place is not a matter for consideration under ground (a) as use is not part of the allegation.

4. The Council has referred to plans not being accurate in comparison to what has been built. However, as this is an enforcement appeal made under ground (a), I am assessing what has been built on site rather than any plans.

The Notice

5. The notice contains a requirement to restore the boundary fence as existing prior to the breach taking place. However, there is no reference in the allegation to any boundary treatment. The Council has subsequently indicated that the requirement relating to the fence can be deleted. As the allegation relates to the extension only and the other requirement is to remove the

extension, I do consider that the requirement can be deleted without causing injustice to any party. I will therefore delete requirement ii. from the notice.

Main Issue

6. The main issue is the effect of the development on the living conditions of occupiers of No 1 Beach Avenue with particular regard to outlook and a sense of enclosure.

Reasons

7. The appeal building is a two storey terrace property located on the corner of Stoney Lane and Beach Avenue. There is a 1 bedroomed flat on the first floor and the ground floor has been used as a retail unit. At the time of my site visit, the ground floor was enclosed in boarding due to building works. Stoney Lane is largely made up of shops and businesses.

8. The development consists of a single extension to the side of the original building with white render and a pitched roof. The development now has two units with signage for a barbers and a fashion house and fronts onto Stoney Lane. Roller shutters covered the front of the two units at the time of my site visit although reference is made by the appellant to shop fronts and doors.

9. The remainder of the terrace is made up of a row of dwellings on Beach Avenue with modest outdoor space and the appeal site shares a side boundary with No 1 Beach Avenue. The development is located along the bulk of the length of the side boundary with a gap between the development and the boundary wall which provides access to a rear door in the extension and the first floor flat. In assessing the length of the extension as 9.4 metres, the appellant has allowed for an original outbuilding. However, there is no evidence externally of the original outbuilding remaining and the development is a new structure. The widest part of the development is just over 3 metres. The Council indicates that the height of the development is 4 metres and the length of the extension was measured on site at 11.73 metres.

10. Part of the original outside space of No 1 has been taken up by an extension with a side window and door facing the rear of the development. The view along the boundary from No 1 is of a large expanse of white render and a pitched roof above the boundary wall. Even allowing for the ground level at No 1 being higher than at the appeal site, the length, height and position of the development does create a sense of enclosure and is in my view harmful to the occupiers of No 1 Beach Avenue with particular regard to outlook. The presence of a gap between the development and the boundary wall, particularly given the height of the boundary wall which is made up of breeze blocks does not reduce to any significant extent the sense of enclosure or loss of outlook from the rear of No 1.

11. I have been provided with a copy of an earlier appeal decision[1] relating to the refusal of a planning application for the proposed erection of a single storey rear extension to accommodate 2 Class A1 retail shops at the appeal site. The appeal was dismissed on the 24 January 2020.

12. The appellant considers that the extension as built with a gap up to the boundary wall and the addition of the rear extension at No 1 overcomes the

[1] APP/P4605/W/19/3237937

previous finding of that appeal with regard to harm to living conditions of occupiers of No 1. The previous Inspector was considering a different proposal of a different length, design and height with a flat roof and I have to assess this development upon its own merits. However, the reduction in the amount of outdoor space at No 1 does not in itself make the development acceptable in terms of outlook particularly when there are internal views from the new extension. I have already addressed the issue of the gap.

13. I therefore conclude that the development does harm the living conditions of the occupiers of No 1 Beach Avenue in relation to outlook and creation of a sense of enclosure. The development also conflicts with the requirements of paragraph 130 of the National Planning Policy Framework (the Framework) refers to development providing high standards of amenity for seeks to ensure good standards of living conditions.

14. The development is also contrary to Policy DM2 (Amenity) of the Development Management in Birmingham Development Plan Document and the Birmingham Design Guide September 2022 which refer to all development needing to be appropriate to its location and not resulting in unacceptable adverse impacts on the amenity of neighbours including outlook. It is also in conflict with Policy DM10 of the Development Management in Birmingham Development Plan Document refers to separation distances between buildings preventing undue enclosure. I find Policy PG3 of the Birmingham Development Plan to be less relevant than the other documents relied upon which specifically refer to adverse impacts on neighbours.

Other Matters

15. The appellant has referred to a number of extensions in the vicinity of the development which he considers are comparable to the development. Whilst No 1 now has a single storey rear extension built, it was built under permitted development rights and retains around 22 square metres of garden. Nos 11 and 15 Beach Avenue and No 128 Stoney Lane do have extensions but are located on the opposite side of Beach Avenue to the appeal site. These properties all benefit from a more open character at the rear compared to the appeal site side due to the presence of a wide access beyond the rear boundaries. I do not find any of the examples referred to by the appellant to be comparable to the development in terms of length, height, design or siting.

16. Whist the appellant may have intended to build the extension pursuant to permitted development rights, the appellant refers to the increased size during construction taking the development outside permitted development.

17. Whilst the use now taking place within the extension is not part of the deemed planning application, the arguments made by the appellant with regard to permitting retail units outside a defined centre with no sequential test were advanced in the previous appeal decision.

18. There is no appeal under ground (g) which relates to the period of compliance with the notice which is 6 months. I have limited details of the occupants or any agreements that were entered into. However, 6 months does appear to be a reasonable time to serve any required notices in the absence of any details of occupiers or formal agreements.

Conclusion

19. I have found that the development is in conflict with the stated policies of the development plan and there are no material considerations to justify determining the appeal other than in accordance with the development plan.

20. For the reasons given above, I conclude that the 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.

E Griffin

INSPECTOR