
Appeal Decision

Site visit made on 30 May 2023

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 27 July 2023

Appeal Ref: APP/M4320/C/22/3303565

64 Thornfield Road, Thornton, Liverpool L23 9XZ

- 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 Karim Ben-Allal against an enforcement notice issued by Sefton Metropolitan Borough Council.
- The enforcement notice was issued on 16 June 2022.
- The breach of planning control as alleged in the notice is alterations from a hipped to gable end roof to incorporate a rear dormer extension and erection of a single storey extension to the side and rear of the dwellinghouse.
- The requirements of the notice are:
 1. Remove the gable end roof and rear dormer extension and reinstate the hipped roof as previously existing.
 2. Demolish the single storey side and rear extensions as shown cross hatched on the attached plan and remove all materials arising as a result of the demolition works.
- The period for compliance with the requirements is 4 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld.

Application for costs

1. An application for costs was made by Mr Karim Ben-Allal against Sefton Metropolitan Borough Council. This application is the subject of a separate Decision.

Procedural Matters

2. S172(1) of the 1990 Act as amended provides that a local planning authority may issue an enforcement notice where it appears to them that there has been a breach of planning control; and that it is expedient to issue the notice, having regard to the provisions of the development plan and any other material considerations. The local planning authority does not have to be certain that a breach of planning control has occurred or there are no grounds of appeal; it is for an appellant to establish such grounds. But it must appear to the local planning authority that the alleged matters have taken place.
3. The courts have held¹ that any challenge as to whether it was 'expedient' for the Council to issue the enforcement notice must be pursued by way of judicial review. Inspectors have no jurisdiction to determine whether the local

¹ Britannia Assets v SSCLG & Medway Council [2011] EWHC 1908(Admin)

planning authority complied with s172. Therefore, arguments regarding whether or not it should have been expedient for the Council to issue an enforcement notice in this case are not addressed in this decision.

The appeal on ground (c)

4. The ground of appeal is that there has not been a breach of planning control. The appellant does not contend that the single storey extension to the side and rear of the dwellinghouse is permitted development, but it is contended that the hipped to gable end roof to incorporate a rear dormer extension is permitted development. That falls on whether the development is permitted under Class B, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO) and, more specifically, whether it meets condition B.2 (a) which requires the materials used in any exterior work must be of similar appearance to those used in the construction of the existing dwellinghouse.
5. According to Permitted development rights for householders Technical Guidance September 2019 "*existing*" means a building as it existed immediately before the permitted development (for example a house extension) is undertaken. The existing house will include previous development to the house, whether undertaken as permitted development or as development resulting from a planning permission from the local authority. The materials used in the exterior of the original dwellinghouse are brick work with pebble dash and a red tiled roof.
6. The roof extension has been built with rendered walls and blockwork with composite dark grey cladding. These are not of similar appearance to the materials used in the construction of the exterior of the existing building and therefore the hipped to gable end roof to incorporate a rear dormer extension are not permitted development as they fail to meet the requirements of condition B.2 (a).
7. The appellant argues that the materials are similar to the modern materials that will (my underlining) give the host dwelling its external appearance but that not mean they are of similar appearance to the existing dwellinghouse, which is the condition that must be met for the development to be considered as permitted development under the terms of the GPDO.
8. I have taken account of the appellant's representations on this matter, including other examples of development in the area and other appeal decisions, but conclude that there has been breach of planning control because the development is not permitted by Class B, Part 1, Schedule 2 of the GPDO. Therefore, the appeal on ground cannot succeed.

The appeal, on ground (a)

9. The ground of appeal is that planning permission should be granted. The main issues are the effect on the character and appearance of the area and the effect on the living conditions of the occupants of neighbouring residential dwellings with particular reference to overlooking, privacy and outlook.

Character and appearance

10. The appeal property is a semi-detached two storey dwelling situated in a predominantly residential part of Sefton. It is situated along a street with

similar semi-detached houses, but some have been altered and extended in various ways, including hipped to gable roof extensions and other roof alterations.

11. The extensions that have been built significantly increase the overall bulk and massing of the property which is currently being modernised and renovated. The development significantly alters its appearance which would be materially different from the original appearance which is similar to others in the immediate vicinity, the wider street and the area, generally. Some other local properties have undergone extensive extensions and alterations and I observed some of these at my site visit and I acknowledge that there is some diversity in the scale and appearance of residential properties in the area, but the overall character remains relatively uniform. The development is discordant with the established pattern of the development which would be seen from the rear, in particular, from where it would have a significant harmful visual effect, being at odds with existing houses.
12. The visual effect would be exacerbated by the hip to gable extension which would change the property's relationship to the house it is attached to, disrupt the visual balance between the two houses, conflict with the established roofscape along the street and appear as an overly bulky addition, very much at odds with its surroundings. Although I am aware that in some circumstances a hipped to gable roof alteration may be acceptable, in this case when it is combined with the rear large flat roof dormer extension, the development has a significant harmful visual effect; materially altering the overall scale, massing and appearance of the property to an unacceptable degree. The roof form fails to respect the original roof form of the house and detracts from its attractive semi-detached balanced appearance in relation to the property it is attached to.
13. Given the position of the host property, the alterations would be clearly visible in the street scene and in the context of the row of properties which it forms part of. The materials used would draw additional attention as a consequence of their contrast with other dwellings in the area and the overtly modern appearance created which is at odds with the surroundings.
14. The single storey rear extension is higher than neighbouring rear extensions and incorporates a very large flat roof. Its contribution to the cumulative bulk, scale and massing of the development is significant, resulting in a disproportionate development in relation to the host, failing to be subservient to the host property.
15. The appellant agrees that the appearance of the host property would change significantly, but that it would not result in an awkward design or create a building that would not relate to others. I disagree with this summary because in my judgement the overall development and its individual elements unacceptably alter the appearance, constituting an awkward set of extensions and alterations to the property which, when combined, create a property which relates poorly to the property to which it is attached, others in the locality, the street scene and wider area, more generally.
16. Therefore, on this issue I conclude that the development is harmful to the character and appearance of the area and conflicts with Policies HC4 and EQ2 of A Local Plan for Sefton Adopted April 2017 (the LP), advice in the House Extensions Supplementary Planning Document June 2018 (the SPD) and the

National Planning Policy Framework (the Framework). Among other objectives, these seek to ensure that extensions and alterations are of a high quality design that matches or complements the style of the dwelling and surrounding area and are of a size, scale and materials in keeping with the original dwelling and surrounding area.

Living conditions

17. The Council's first main concern with respect to living conditions is the effect of the rear dormer on properties to the rear of the appeal site, along Ronaldsway and, overlooking of their rear gardens. The rear dormer meets the interface distance of 21 metres set out in the SPD to ensure that privacy is maintained. However, there is concern that the design and size of the dormer with large French doors facing rearwards, results in a perception of overlooking when compared to a dormer with more traditional windows.
18. I noted at my site visit that there are existing trees situated close to the shared boundary of the appeal site and properties to the rear and these provide a degree of screening. This screening when combined by the considerable separation distance is, in my judgement, sufficient to ensure that any potential unacceptable harm from overlooking and loss of privacy, is adequately mitigated.
19. Secondly, there is concern regarding the effect on outlook of the side elevation of the single storey flat roof rear extension along with side boundary with the adjacent residential property. The height of the flat roof single storey rear extension is approximately 3.4 metres and it would be clearly visible from the neighbouring property, no. 66 Thornfield Road at relatively close quarters. The side wall would have a rather stark appearance from the rear garden of no. 66 above the existing boundary wall. However, I have taken account of the appellant's observations that an extension of similar height may be constructed under permitted development rights. Therefore, although there would be some effect on the outlook of the neighbouring property, I do not consider it to be sufficiently harmful to justify a refusal for that reason alone.
20. On this issue I conclude that the development is not harmful to the living conditions of the occupants of neighbouring residential dwellings with particular reference to overlooking, privacy and outlook. As such it does not conflict with Policies HC4 of the LP, the SPD and the Framework which, among other objectives seek to ensure that there is no significant reduction in the living conditions of the occupiers of neighbouring properties.
21. I have taken account of the range of evidence submitted by the appellant including examples of other development that has taken place in the locality, including those at 48 Ronaldsway, 67 Ronaldsway and 5 Berkely Road, Crosby. I recognise that consistency and fairness is an established principle of the planning system but that does not mean that the Council has accepted a particular type of development or that in taking enforcement action the Council has somehow over-reacted to the development in question. Each case should be determined on its own merits and each is different in terms of specific details and circumstances. I have adopted that approach in determining this appeal.

22. I also understand that the development would allow the appellant to provide additional living space for his family but that does not outweigh the harm I have identified, above.
23. Therefore, although I have found no harm to living conditions, I have found that the development is harmful to the character and appearance of the area. Consequently, the appeal on ground (a) does not succeed and the application deemed to have been made is refused.

The appeal on ground (f)

24. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve the purpose. The purposes of an enforcement notice are set out in s173 of the Act and are to remedy a breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). Since the notice requires the removal of the gable end roof and rear dormer extension and reinstatement of the hipped roof and the demolition of the single storey side and rear extensions, the purpose is to remedy the breach. Leaving any part of the development in place would not achieve that purpose. In this respect the appeal on ground (f) fails.
25. Nonetheless, I am mindful that enforcement action is intended to be remedial and not punitive. With a ground (a) included in the appeal it would be possible to grant planning permission for part of the development. The appellant has suggested the single storey element is a separate built structure and could be granted permission either alongside the former extension or as a stand-alone element.
26. I have found that the hipped to gable end roof to incorporate a rear dormer extension does not benefit from permitted development rights and have also found that the development as a whole as well as its individual elements, is harmful to the character and appearance of the host property and the area. Therefore, I do not consider the requirements exceed what is necessary to remedy the breach of planning control. The appeal on ground (f) does not succeed.

Conclusions

27. For the reasons I have given above, 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) of the 1990 Act as amended.

A A Phillips

INSPECTOR