



Appeal Decisions

Site visit made on 2 August 2023

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 14 August 2023

Appeal Ref: APP/R4408/C/22/3309997 ('Appeal A')

41 Broomhead Road, Wombwell, Barnsley S73 0SA

- 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 Marcin Jeziorek against an enforcement notice issued by Barnsley Metropolitan Borough Council.
- The enforcement notice was issued on 30 September 2022.
- The breach of planning control as alleged in the notice is (1) the unauthorised construction of a rear extension to the dwellinghouse; and (2) the construction of a rear garden boundary wall which exceeds 2 metres in height.
- The requirements of the notice are (1) to demolish the rear extension and to remove all resulting waste materials; and (2) either demolish the boundary wall or reduce its height to not more than 2 metres measured from the adjoining ground level, and to remove all resulting waste materials.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.

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

Appeal Ref: APP/R4408/C/22/3309992 ('Appeal B')

41 Broomhead Road, Wombwell, Barnsley S73 0SA

- 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 Marcin Jeziorek against an enforcement notice issued by Barnsley Metropolitan Borough Council.
- The enforcement notice was issued on 30 September 2022.
- The breach of planning control as alleged in the notice is without planning permission the material change of use of the land to a mixed use comprising a residential dwellinghouse (Class C3) and use of a garden outbuilding for holiday accommodation or separate occupation not incidental to the dwellinghouse.
- The requirements of the notice are to cease the unauthorised use of the garden outbuilding for holiday occupation or for separate occupation, not incidental to the occupation of the dwellinghouse.
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Appeal A

Main Issue

1. The main issues in Appeal A, concerning the construction of a rear extension to the dwelling, are the effects of the development on the character and

appearance of the host dwelling and its environs, and on the living conditions of neighbouring residents.

Reasons

2. It is evident from the parties' submissions that two permissions for rear extensions at the dwelling have recently been granted, or confirmed. One of these concerned a more extensive permission also involving changes to the property's roof. The other was a 'prior approval' confirming permitted development rights to construct a rear extension. What is being built complies with neither of these permissions, but amounts to a combination of both, with some additional differences.
3. What is being constructed is, overall, larger than either of the permissions granted. The other principal difference is that the side walls have already been constructed, consisting of breeze blocks. The proximity of the side wall to the boundary of the property's attached neighbour at no. 43 means that there is no scope to face the extension in the brickwork anticipated by either permission. Instead, only a rendered finish could be achieved without encroaching onto the neighbour's property.
4. The appeal also concerns the construction of a boundary wall exceeding permitted development limitations; however, the remedy for that is expressed in the alternative, either of demolition or of a reduction in height, and I understand there to be no remaining dispute between the parties that compliance with the notice has been or can be achieved in that regard.
5. Planning policies for the area, specifically policies D1 and GD1 of the Barnsley Local Plan 2019, are supportive of residential extensions provided that no significant adverse effects on the living conditions of neighbours arises, and that developments are of high quality design respecting the local character. A Supplementary Planning Document ('SPD') specifically relating to house extensions was adopted in May 2019. That sets out the general principles including that extensions should be of a scale and design which harmonises with the existing building; maintain the character of the street scene, and not adversely affect the amenity of neighbouring properties. Any extension should be designed to be in keeping with the property and the character of the neighbourhood. Materials should normally be of the same size, colour and texture as to the existing house or as close a match as possible. On semi-detached dwellings, a rear extension should not project more than 4m and the eaves height should not exceed 2.5m where the extension would project beyond 3m.
6. That latter advice is to some extent superseded by permitted development rights where they arise, as here. It is said here that the development as built projects from the rear of the dwelling by 6.07m, some 7cm deeper than the 'prior approval scheme', and that its height will be less than that approved following the removal of the top course of blockwork. Overall, whilst accepting that the development being built is larger than either of the two approved schemes, in the light of the fall-back position of permitted development rights I do not find that its different dimensions lead to any significant adverse effects on neighbouring amenities, as policy GD1 seeks to prevent. The orientation of the dwelling to the east of its attached neighbour means that overshadowing beyond the mornings is unlikely, and would be negligible when compared with the permitted scheme.

7. Where the different dimensions do matter is in relation to the effect of the works on the host property's character and appearance. The effective combination of the earlier permitted schemes have resulted in a development that extends to the rear from the whole width of the house, including from the existing side extension. Whilst the extra depth of the extension protrudes from a point beyond the existing original rear wall of the house, the combination of this deep (6m+) rear extension, for the most part, and the additional side element of nearly 4.5m depth results in a development that overwhelms the house and does not meet the first design principle found in the SPD that an extension should be of a scale and design which harmonises with the existing building.
8. As noted above, the location of the building works to date mean that it is not possible to face the surface to the neighbouring side in anything other than render; and it is proposed to render the surfaces of the extension. The existing house, a modest semi-detached dwelling, is like its neighbours constructed of red brick. The proposal to render the extension, in whatever colour, would result in a development that is not in keeping with the existing house or the local area, and would not meet the expectation of the SPD to achieve matching materials.
9. Therefore I am unable to find that the development complies with the provisions of the development plan for the area, and no material considerations have been brought to my attention that would indicate a different decision. For these reasons I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Appeal B

Background

10. Appeal B concerns the provision of a 'holiday let' within the grounds of the dwellinghouse, described by the Council as resulting in a mixed use of the relevant planning unit of both a residential dwellinghouse and the use of the garden building for holiday or separate accommodation. This characterisation of the use is not contested by the appellant, and nor is the need for planning permission. I shall however remove reference to 'Class C3' from the description of the deemed application, because that use class would not apply to what is identified as a mixed use.
11. The property lies in a large corner plot, accessed from a shared driveway with no. 39 and backing onto a playing field to its eastern side. The land available to no. 41 is relatively extensive for the neighbourhood. At the time of my site visit, I saw it was essentially occupied in three ways. The first is the dwellinghouse itself, currently the subject of the building works discussed in Appeal A. To the south of the plot, but still accessed via the shared driveway and across the dwellinghouse's garden, lies an 'annex' building that I understand to be permitted for occupation by dependant relatives. To the east, taking up much of the length of the garden, a separate area is fenced off. Within this, an outbuilding lying to the north of the property and consisting of a bedroom, bathroom and kitchen facilities can be accessed. Beyond that, to the south, is a garden area with seating, and the gate leading to the adjoining playing field. To the south of this part lies a further unenclosed building housing a hot tub.

12. Access from the highway is again communally obtained, although once inside the grounds of the property this eastern section is divided off from the main area of retained garden.

Main Issues

13. The Council do not take issue with either of the buildings per se, but the notice here is concerned with what is described as a material change of use. The main issues arising from the Council's reasons for issuing the notice arise from the increase in people and vehicular traffic using the property with, say the Council, deleterious effects on neighbouring living conditions and highway safety.

Reasons

14. The Council cite policies GD1, relating to general development principles, Poll1, relating to pollution control, and T4, relating to highway safety, in support of their reasons for issuing the notice. Additionally the appellant draws to my attention policy E5 which is supportive of tourism and the growth of the tourism business sector. The Council's statement refers to policy D1, concerning design, but its relevance is not explained and there is no requirement to remove any buildings but only to cease the unauthorised use.
15. The Council specifically refer to an upsurge in the number of comings and goings at the property; the increase in persons calling; vehicular traffic associated with the activity; the parking of vehicles at the front of the property and the general increase in vehicular parking on the highway outside the host property as a result of the short term lets.
16. Several neighbour representations have been received, and these raise matters including noise, from wheeled suitcases and from the outdoor use of the accommodation, smoke drifting onto washing lines from a fire pit, strangers peering in through windows, unneighbourly parking including blocking in residents, elderly residents feeling unsafe as a result of traffic by strangers, and a potential risk to the accessibility of properties by emergency services as a result of the parking problems.
17. Additional matters have been raised which do not relate to the Council's reasons for issuing the notice, such as the potential difficulties to house sales in the area or devaluation that may arise; an incident of a sewage overflow at the property; damage to a neighbouring wall; and disquiet at the development having gone ahead prior to any planning permission having been granted. These additional matters do not raise planning considerations that are relevant to my decision.
18. The semi-detached house at no. 41 lies at the end of a small cul-de-sac away from the main Broomhead Road, itself a quiet residential thoroughfare in Wombwell, to the south east of Barnsley. Several, but not all, of the nearby properties have private driveways, but I saw some evidence of on-street parking in the vicinity, where no parking restrictions apply. The dwellinghouse itself has, realistically, two parking spaces available to it; one at the front, accessed directly from the cul-de-sac, and one at the side accessed from the shared driveway with no. 39. A small second car could possibly fit at the side, but only by blocking in any car already parked.

19. There were two cars parked at the property at the time of my visit, during which time the holiday accommodation was unoccupied. Given the size of the existing extended main house (and the fallback proposals to exercise permitted development rights discussed above) and the existing residential annex to the rear of the property, it is unlikely that the off-street parking spaces available to the property would be usually able to accommodate both the existing residents' cars as well as those of any holiday accommodation guests.
20. Whilst accepting the truth of the representations made about inconsiderate parking by visiting guests, there appears no reason why safe on-street parking could not be achieved where needed, whether by the appellant or by his guests. Whilst many of the surrounding houses have laid off-street driveways to the front, several of them have not, meaning that on-street parking can readily be found without blocking in anyone else. Broomhead Road is, apart from this small cul-de-sac part, a straight stretch of road with good visibility and amply capable of accommodating two-way traffic.
21. Although the Council have cited the highway safety policy T4 in support of their reasons for issuing the notice, they have not expressly identified any conflict with that policy and nor have they provided any views from the local highway authority.
22. The policy requires new development to provide all transport users within and surrounding the development with safe, secure and convenient access and movement. Whilst the development is likely to result in the presence of one additional car parking on the street (the limited size of the sleeping accommodation, consisting of a double bed, is unlikely to mean more than that) I am unable to identify any insurmountable parking problem that would arise as a result.
23. I accept that an additional car seeking to park close to no. 41 might mean that other residents could not park directly outside their own homes; but additional unrestricted on-street parking spaces are available a very short way away and it is unlikely that anyone would be unduly inconvenienced. Whilst I accept that parking has taken place inconsiderately and that neighbours have been blocked in on occasion, there is no good reason for this to happen because there is ample parking available in the area without having to inconvenience anyone else. Therefore I find no conflict with policy T4.
24. Turning to the other matters arising, policy E5 is supportive of tourism initiatives in the area, including encouraging the growth of the tourism business sector. The site lies close to the Transpennine Trail, near to the links between Brampton and both Worsborough and Wortley, and not far from several nature and RSPB reserves in the Dearne Valley. Thus although in the middle of a residential area, it is well-placed as a tourist accommodation offer and supported by policy E5.
25. Although supported by the Council's tourism policy, general development and pollution control policies apply to discourage such developments where significant adverse or unacceptable impacts result. GD1 requires any development to avoid significant adverse effects on the living conditions and residential amenity of existing and future residents. Poll1 expects development to demonstrate that it is not likely to result in unacceptable pollution, including by noise, which would unacceptably affect or cause a nuisance to others.

26. The usual use of the holiday accommodation, as evidenced by the Airbnb reviews attached to the notice, would be by couples seeking to relax and unwind. The average length of stay, or the usual number of pedestrian or vehicular traffic movements resulting from the holiday use, have not been given. However it does accommodate only two people at a time, and I consider that any such movements are unlikely to be so excessive as to significantly adversely affect any nearby neighbours.
27. As to noise, the appellant lives on the site, about as close to the holiday accommodation building as any other neighbour. Thus it would be in his interests to ensure that any visitors avoid making loud noises or engage in any other anti-social behaviour. Although accepting that people on holiday are less likely than others to be affected by the strictures of an alarm clock, I do not find the prospect of unneighbourly behaviour, through the emission of late noise or barbecue smoke, to be significantly greater than would arise from the normal use of the property as a dwellinghouse.
28. I accept that the use of the building by holidaymakers will result in some changes to the character of the cul-de-sac, arising from the periodic arrival and temporary accommodation of strangers, but I do not find that the impacts of holidaymakers would affect the living conditions of the adjoining neighbours to any unacceptable degree, or amount to a nuisance. Therefore I find no conflict with the policies cited by the Council when issuing the notice, and I find support for the development in policy E5 of the Local Plan. Therefore, as the development complies with the development plan for the area, permission will be granted for this aspect.
29. I sought the Council's input on the question of any planning conditions that ought to attach to any permission granted, but their response was to say that because they find the development unacceptable they would not entertain any conditions being imposed. It appears to me that none are necessary. The change of use having already begun, there is no need to impose the standard time limiting condition, and no others arise from any representations made.

Conclusions

Appeal A

30. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Appeal B

31. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted.

Formal Decisions

Appeal A

32. The appeal is dismissed and the enforcement notice is upheld.

Appeal B

33. The appeal is allowed, the enforcement notice is quashed, and planning permission is granted on the application deemed to have been made under

section 177(5) of the 1990 Act as amended for the development already carried out, namely the use of the land at 41 Broomhead Road, Wombwell, Barnsley S73 0SA for a mixed use consisting of a residential dwellinghouse and use of a garden outbuilding for holiday accommodation or separate occupation not incidental to the dwellinghouse.

Laura Renaudon

INSPECTOR