



Appeal Decisions

Site visit made on 1 August 2023

by R Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 August 2023

Appeal A: APP/Z4718/C/22/3309271

Land at 1 Thornville Walk, Scout Hill, Dewsbury WF13 3SB

- 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 M Khalil against an enforcement notice issued by Kirklees Metropolitan Borough Council.
- The enforcement notice was issued on 12 October 2022.
- The breach of planning control as alleged in the notice is Without the benefit of planning permission, the erection of a building affixed to the side elevation of 217 Huddersfield Road, Scout Hill, Dewsbury WF13 3SF.
- The requirements of the notice are a) Dismantle/demolish the building from the site; b) Dismantle/break up base and foundations of the building at the site; c) Remove all dismantled resulting material from the site; d) Following demolition, erect a stone boundary wall to the same height, length that existed prior to the erection of the building (wall shown on Photo 1 attached between the x marks).
- The period for compliance with the requirements is 60 days.
- The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended.

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.

Appeal B: APP/Z4718/W/22/3309236

217A Huddersfield Road, Scout Hill, Dewsbury WF13 3SF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Mohammed Khalil against the decision of Kirklees Metropolitan Borough Council.
- The application Ref 2022/62/91883/E, dated 28 May 2022, was refused by notice dated 25 August 2022.
- The development proposed is Erection of Extension to Form new Barbers Shop.

Summary of Decision: The appeal is dismissed.

Preliminary Matter

1. With regard to Appeal B I have taken the description of development from the Council's decision notice, as agreed on the appeal form, and which I consider accurately describes the development.

Appeal B – Main Issues

2. The main issues are the effect of the development on i) the character and appearance of the street scene and ii) the living conditions of the occupiers of Nos 1 and 3 Thornville Walk, having particular regard to outlook and privacy in

relation to both properties, as well as external amenity space in relation to No 1.

Reasons

Character and Appearance

3. The surroundings of the appeal site are characterised by short lines of terraced dwellings on streets running perpendicular to Huddersfield Road (A644). These dwellings are constructed in a combination of stone, with contrasting red brick forming the rear elevations. On the opposite side of the road to the appeal site is a stone boundary wall, with dense tree planting behind.
4. The appeal building, together with an adjoining commercial unit both front onto Huddersfield Road and are situated between the rear elevations of end of terrace dwellings, at 1 Thornville Walk and 2 Thornville Street. The principle of siting a small commercial unit between terraces in this way is not alien to the surrounding urban form and layout, with a similar form of development having taken place between the rear of the end terraced dwellings in the next group of streets to the southwest.
5. However, although the appeal building, like its neighbour, is of single storey height and contained beneath an apex roof, the glazing and framework of the shop frontage are offset to one side and not centrally positioned on the front elevation. This results in an asymmetrical design which appears contrived and does not sit comfortably with the adjoining unit. Furthermore the frontage of the building is finished in reconstituted stone, in a noticeably brighter shade when compared with the local stone predominating on the nearby terraced properties. Collectively these design attributes serve to draw attention to the building as somewhat conspicuous and incongruous in its surroundings.
6. I conclude that the building results in harm to the appearance of the street scene. It conflicts with Policy LP24 of the Kirklees Local Plan 2019 (LP) and the National Planning Policy Framework (the Framework) insofar as they seek to promote good design which respects and enhances the character of the townscape.
7. I acknowledge that the Council previously granted planning permission in 2018¹ on the appeal site for an extension to the existing commercial unit. However that development incorporated different design features, compared to what has now been constructed. Notably it was smaller in scale, not extending to the same width, with the fenestration centrally positioned. That permission does not therefore weigh in favour of the grant of permission in this case.

Living Conditions

8. The appeal building fills the entire width of the rear yard area serving No 1 Thornville Walk. It is undisputed that the building is some 6.6 metres in width. This is around 1.6 metres greater than the aforementioned previously approved extension, an increase of approximately one third. The development has left a gap of only a little more than 3 metres between the side of the building and the rear elevation of No 1 Thornville Walk.

¹ Planning permission 2017/62/93773/E – granted 24 May 2018.

9. I am in no doubt that the close proximity of the appeal building results in an overbearing effect on the rear of No 1, such that the direct outlook from the kitchen window of that property, and from the little remaining rear yard area have been rendered gloomy and oppressive. It is also the case that the rear yard serving No 1 has become very restricted in area and does not readily lend itself to outdoor relaxation or play.
10. In reaching these conclusions I have considered that the Council previously granted planning permission for the aforementioned extension. However I note the Council consider the previous extension to have been the maximum permissible and I concur that the additional scale involved in this case would result in a disproportionate impact.
11. I have also taken into account that the appellant is also the owner of No 1, and as such may be more tolerant of the effect of the development on living conditions there. 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 rear elevation of No 3 is offset from the appeal building. In addition it is enclosed by fencing, relatively low in height, to the rear and opposite side boundaries. This means that the occupiers of No 3 would continue to enjoy a relatively open outlook from the rear of elevation window and rear yard area of their property in these directions. Accordingly I do not find that the development harms the living conditions of the occupiers of that property in this regard.
13. The appeal building incorporates two obscurely glazed top hung windows directly facing the rear elevation of No 1, and also two rooflights in the respective roof slopes. However, it was evident from my inspection that the design of the side facing windows, including the obscurity of the glazing, and the positioning of the roof lights, which are intended to increase internal lighting, do not allow for any substantive overlooking of nearby properties. I am therefore satisfied that these windows do not result in harm to privacy. Furthermore I am satisfied that the opacity and orientation of the windows is such that the notion of them resulting in a perception of being overlooked would not be a sustainable concern. This however does not overcome the harm I have identified above.
14. For the above reasons I conclude that the development results in harm to the living conditions of the occupiers No 1 Thornville Walk, having regard to outlook and amenity space. Accordingly it conflicts with Policy LP24 of the LP and with the Framework insofar as they seek to achieve a high standard of amenity for future occupiers.

Other Matters

15. The occupiers of No 3 Thornville Walk have raised further objections to the development. No 3 is situated to the southeast of the appeal site. Accordingly, taking into account the sun path and also the limited scale of the appeal building, I am not persuaded that the rear of No 3 would suffer any significant impact in terms of the availability of natural light.

16. From my visit there seemed to be no shortage of on-street parking available within easy walking distance, such that provision for visitors to the premises would not be a sustainable concern. Also the orientation of the unit onto Huddersfield Road and the apparent small scale of the business, leads me to conclude that any noise arising from comings and goings associated with it would not be significant. I conclude the development does not result in any significant harm to the enjoyment of property by the occupiers of No 3, and therefore to any interference with their Human Rights.
17. No evidence has been presented to support the concern raised that the building is structurally defective. 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.

Appeal A on ground (f)

18. 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 the breach of planning control (s173 (4) (a)) or to remedy injury to amenity (s173 (4) (b)). The Act sets out that the breach may be remedied by making the development comply with the terms of any planning permission granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place.
19. With regard to the unauthorised development, the objectives of the notice are to secure the demolition of the building and foundations, the clearance of resultant materials and the reinstatement of a pre-existing boundary wall and therefore to restore the land to its condition before the breach took place. It follows that the purpose of the notice is to remedy the breach of planning control.
20. The appeal is that the requirements of the notice should be varied, so that rather than securing demolition they should seek the development to be amended in accordance with the previously granted planning permission. However, the previously approved planning permission was evidently not implemented and, given that it was granted in 2018, would no longer appear to be extant. These points are not disputed by the appellant. Therefore, given that the purpose of the notice is to remedy the breach of planning control, this can only be achieved by removing the unauthorised development and reinstating the boundary wall, thereby restoring the land to the condition it was in before the breach took place. To require this does not, therefore, exceed what is necessary and the appeal on this ground must fail.

Appeal A on ground (g)

21. The appeal on ground (g) is that the time given to comply with the notice is too short. The appellant requests a period of 24 months, in light of concerns regarding financial hardship and a desire to secure alternative accommodation in the local area.
22. Whilst I agree with the Council that such an extension of time would be excessive, the appellant was entitled to assume that his appeal in relation to the related grant of planning permission would be successful. Accordingly, the argument that the appellant could have used the time already elapsed during

the appeal procedure to have found alternative premises does not attract weight. Furthermore, it seems to me, in light of the previous grant of planning permission, there may be an opportunity to redevelop the site in future with a more modest building, in the event that planning permission is forthcoming.

23. Accordingly, there would be justification to lengthen the time for compliance with the enforcement notice. I consider that an eight-month compliance period would be proportionate, providing a reasonable opportunity for the appellant to make a planning application to the Council, should this be deemed appropriate; and for any necessary amendments to be made, should the application prove successful. The appellant refers to the impact of the enforcement action on a number of employees of the business. Whilst I acknowledge this concern, the possibility of those staff being employed elsewhere, reduces the weight I attach to it.
24. 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.

Conclusions

Appeal A

25. For the reasons given above, I conclude that the ground (f) appeal should not succeed. I shall uphold the enforcement notice with a variation.

Appeal B

26. For the reasons given above I conclude that the appeal should be dismissed.

Formal Decisions

Appeal A

27. It is directed that the enforcement notice is varied by the deletion of the occurrences of the words "60 days" in Schedule 6 of the notice, and the substitution of the words "eight months" instead.
28. Subject to the variation, the appeal is dismissed and the enforcement notice is upheld.

Appeal B

29. The appeal is dismissed.

R Merrett

INSPECTOR