



Appeal Decision

Site visit made on 4 July 2023

by K A Taylor MSC URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24TH AUGUST 2023

Appeal Ref: APP/J4423/C/22/3312922

35 Calvert Road, Sheffield S9 5EU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended ("The Act"). The appeal is made by Mrs Sameena Khan against an enforcement notice issued by Sheffield City Council.
 - The notice was issued on 8 November 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a front dormer roof extension (shown within the photo attached to the notice).
 - The requirements of the notice are to:
 - (i) Remove the dormer extension; and
 - (ii) Reinstate the roof to its former condition prior to the breach.
 - The period for compliance with the requirements is: six months from the date the notice comes into effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d), (f), (g) of the Act. 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.
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Decision

1. The appeal is dismissed, and the enforcement notice upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

Preliminary Matter

2. The appellant has raised the matters that there is an extant planning permission for the breach of planning control as alleged in the notice. This relates to a permission granted in 2006 under reference 05/04749/FUL ("the 2006 permission"). The appellant relies on this contention in several aspects of the evidence and the grounds on which the appeal is made. However, I have dealt with this matter under ground (c).

The appeal on ground (c)

3. Section 174(2) of the Act sets out the scope for an appeal on ground (c). It is, 'that those matters (if they occurred) do not constitute a breach of planning control'. The burden of proof is on the appellant and the relevant test of the evidence is made on the 'balance of probabilities'.
4. Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (GPDO). Permits development for the enlargement of a dwellinghouse consisting of an addition or alteration to its roof, subject to conditions and limitations. At B.1 (c) development is not permitted by Class B if any part of the dwellinghouse would, as a result of the works, extend beyond the plane of any roof slope which forms the principal elevation of the dwellinghouse and fronts a highway. The resultant

development therefore conflicts with Class B of the GPDO and express planning permission is thereby required for its lawful retention.

5. The appellant contends that planning permission had been granted in 2006 to build a front dormer, which was not limited to any scale / form / size. The evidence before me, and the planning history of the site indicates that an application was refused¹ in 2005 for a *'Two-storey rear extension, erection of a rear conservatory, single storey side extension to form garage and erection of front dormer windows to dwellinghouse'*. The Council acknowledge that this refused application showed 3 individual dormer windows to the front of the property.
6. The 2006 permission was for a *'Two-storey rear extension, single-storey side extension to form garage and erection of front dormer windows to dwellinghouse (resubmission of application 05/02575/FUL)'* at Nos. 33-37 Calvert Road. The permission was granted in accordance with the application deposited on 28 December 2005 together with the relevant plans, including any amendments agreed and was subject to several conditions. The relevant plans do not show a dormer, and I have not been presented in the evidence with any amendments agreed showing a dormer for the 2006 permission.
7. The appellant in support of their ground (c) has included a letter² relating to an application seeking building regulations approval for *'alterations to 3 dwellings to form 1 including two storey rear extension, single storey side extension, front dormer windows to dwellinghouse. (Resubmission Application)'*. Although, the letter may indicate that the appellant had an intention to commence development it does not confirm that any development had commenced or that it had been substantially completed. Furthermore, this evidence does not provide with any certainty it is the same development as the 2006 permission as it is not accompanied by any detail or plans.
8. The application form which accompanied that application is signed and dated 9 December 2005. This identifies it was a resubmission of 05/02575/FUL and it set out a description of the proposal as *'Two storey & Single Storey Rear Extensions + a Detached Garage'*. The planning officer report on the planning application indicates that the application proposed the erection of front dormer windows, however there is no assessment of the front dormer windows or mention of a roof extension or alteration in the report.
9. Turning to the plans that accompanied the 2006 permission, the site plan (red line) identifies the properties to be Nos. 35-37 Calvert Road. Therefore, it appears that the site plan and decision notice do not specifically relate to No.35, and even if a dormer had been approved it does not relate solely to No.35 which is now the appeal site. There are also several existing and proposed elevations and floorplans. Most notable are the proposed plan Nos. 05-06A and 05-05, which show the elevations and roof floor plan. There is no front dormer roof extension shown on these plans. The plans, however, show 3 rooflights on the elevations and annotated on the floorplan.
10. The Council contend that the description of development in the 2006 permission incorrectly stated front dormer windows and was a clerical error on their behalf.

¹ 05/02575/FUL

² Sheffield City Council Environment & Regulatory Services, Application reference number: 06/01761, dated 9 June 2006

The Council also assert that in 2007, and in 2012 doubt was raised regarding extensions at the property and argued these were not in accordance with the planning permission. Nevertheless, the matters relating to other extensions at the property are not attacked by the notice. However, I note that in 2010, planning permission was granted for No.33 to be separated from No.35 and No.37 to form a separate residential unit which commenced in 2011 and the 2006 permission related to only one property Nos. 35-37.

11. Therefore, on the basis of the evidence before me the plans do not show front dormer windows and the application form which accompanied the application does not confirm at that time the application sought a front dormer roof extension. As such, I am not satisfied that planning permission for front dormer windows was granted in 2006, or that an extant permission exists for the alleged breach of planning control that being a front dormer roof extension.
12. Even if, I was to consider that the description of development on the granted planning permission was not a clerical error, the appellant has not provided any evidence of plans showing a front dormer roof extension. Despite what the decision notice says, I do not accept the Council could grant planning permission for something that had not been applied for. A development should comply with the plans and conditions on a planning permission and in this case, the front dormer roof extension is operational development as defined by s55 of the Act, and the development requires planning permission.
13. The matters relating to the alignment of the dormer, materials and that it is not in keeping with the surroundings are relevant to ground (a), and I shall deal with these later in my decision.
14. Since the front dormer roof extension requires planning permission, but none has been granted, it thereby constitutes a breach of planning control by virtue of s171A(1) of the Act. The appeal on ground (c) therefore fails.

The appeal on ground (d)

15. In order for an appeal on ground (d) to succeed it has to be shown that at the time of the notice was issued it was too late for enforcement action to be taken. In particular it has to be shown that the front dormer roof extension was substantially completed more than 4 years before the date on which the notice was issued. The relevant date therefore is 8 November 2018.
16. For this legal ground of appeal, the Courts have established that the onus of proof falls to an appellant³, with the test of the evidence being on the balance of probabilities⁴. Also, an appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted⁵.
17. The appellant has provided evidence to support their ground (d) appeal. The first is an invoice from B&Q, this is dated 1 June 2006 and a second invoice from B&Q dated 10 June 2006. These show a variety of materials purchased. Although the invoices show who purchased the materials and the delivery address, it does

³ *Nelsovil v SSE* [1962] 13 P&CR 151

⁴ *Thrasyvoulou v SSE & Hackney LBC (No1)* [1984] JPL 732

⁵ *Gabbitas v SSE & Newham LBC* [1985] JPL 630, *Ravensdale Ltd v SSCLG & Waltham Forest LBC* [2016] EWHC 2374 (Admin)

not identify what those materials were used for. Moreover, this evidence does not establish that these itemised materials were for any purpose in the actual construction or completion of the development. Having regard to the invoices submitted by the appellant, I find that while they are not inconsistent with their case, they do not add any positive evidential weight in support of it.

18. The Council say that they received a complaint in April 2022 of the appeal development under construction. They also say that an 'Officer' initially visited the site in May 2022 and following this a 'member' of the Council's Building Control Team. The Officer had noted that the roof was in the process of being extended and the brickwork appeared completed but the build was not watertight, no windows were complete, and scaffolding was erected. The member noted on the case file that the dormer was in the process of being built at that time, and the owner was advised of their concerns and outcome.
19. Although a copy or timed and date record of that complaint or Officer / member visit has not been provided for me to examine, it has not been disputed by the appellant and I have no reason to doubt that a complaint and visits were made.
20. The Council have provided a photograph image⁶, I note that this has a date added on the page. However, the replicated image is not dated, so I cannot be certain from this evidence of the exact date timeline, but this clearly shows that construction of the dormer had commenced at the appeal site and was not substantially completed at some point in May 2022, long after the relevant date. I have also been provided with 2 Google Streetview images⁷. I note that these have date timelines of September 2021 and September 2022. From this evidence it clearly shows that construction of the dormer commenced between September 2021 and September 2022. Therefore, it could not have been substantially completed on or before the relevant date.
21. Overall, I find that the invoices supplied by the appellant do not attract weight either for or against allowing the appeal. The appellant's case is however contradicted by the Council's evidence in respect of the dates given for the project, dormer works, the complaint and the Council's investigations made.
22. In addition, the requirement for ground (d) in the case of building operations, the whole of the alleged development must be 'substantially completed' more than 4 years before the date on which the notice was issued. The photo attached to the notice clearly shows that the front dormer roof extension was not substantially completed on the date which the notice was issued and the appellant accepts in the evidence they have not been able to finish the works.
23. For these reasons, I conclude, on the balance of probabilities, that the development was not substantially completed more than 4 years before the notice was issued. Therefore, it was not too late for the Council to take enforcement action and the appeal on ground (d) fails.

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

Main Issue

24. The main issue is the effect of the development on the character and appearance of the host property and surrounding area.

⁶ Appendix 2; Image 1

⁷ Appendix 2; Image 2 and Image 3

Reasons

25. The appeal site relates to a mid-terraced property within a predominantly residential area which is characterised by mostly brick two-storey dwellings of varying design and form. There are no other front roof extensions along Calvert Road with the only additions to front roof slopes being limited rooflights and chimneys.
26. Several properties have been extended in the vicinity of the appeal site including the addition of dormer roof windows. However, those I saw were rear dormers, the scale appropriate to the roof form and context. The appearance of those were small in scale, set significantly higher above the eaves line and below the ridge of the roof and many were likely to have been constructed a considerable long time ago. Despite some variation in form, the properties in the area present a discreet arrangement that appreciably contributes towards local character.
27. The development has resulted in the addition of a substantial sized dormer roof extension constructed of brick to the front elevation. The dormer roof extension has an excessive length spanning across the roofline of No.35 with limited setback from the eaves. The width and height of the dormer roof extension has resulted in it sitting just above the ridge height of No.35, albeit the roof appeared to be wholly unfinished. Given this, the materials and positioning on the roof it appeared as almost an additional floor to the property. This results in a bulky and dominant feature, overpowering the roof form of the host property and that particularly of No.33 and the wider terrace row.
28. In addition, the negative and unbalanced appearance is further exacerbated by the position of the large openings in the front. These openings, which would likely be for future glazing did not align with the proportions or replicate any fenestration details of the existing host property nor those within the terrace row the property sits within, adding to its harmful appearance.
29. As I saw, given the excessive scale of the dormer roof extension there were clear views of the development from along Calvert Road and from approach at Clipstone Gardens. The varied ridge heights of No.37 and No.39 did little to prevent the views or the negative appearance and bulkiness of the front dormer roof extension. The dormer is a substantial addition to the roof and appears as an incongruous addition to the host property when viewed from Calvert Road and the wider area. It is therefore detrimental to the character and appearance of the area.
30. I conclude the development has caused unacceptable harm to the character and appearance of the host property and surrounding area. It does not accord with Policy CS74 of the Sheffield Development Framework Core Strategy, 2009 and Policies BE5 and H14 of the Sheffield Unitary Development Plan, 1998. Amongst other matters, these policies taken together expect high quality development and that extensions are well designed and would be in scale and character with neighbouring dwellings; contribute to creating attractive, sustainable and successful neighbourhoods, and all extensions should respect the scale, form, detail and materials of the original building.
31. Moreover, the development is also contrary to the National Planning Policy Framework, paragraphs 130 and 134, of which seek well designed places and states development that is not well designed should be refused.

Other Matters

32. The appellant's evidence relies heavily on a fallback position for the development, and that it was not limited to any scale / form / size. However, I consider there is no extant planning permission at the property for a dormer roof extension, as I have already set out above in ground (c). The planning permission granted in 2006, showed 3 rooflights in the front elevation and did not show a front dormer roof extension. Moreover, I have not been presented with any alternative plans showing the development. As such I do not consider there to be a realistic fallback position and have given this matter no weight.
33. Although the development does not cause any harm to the living conditions of neighbouring properties on Calvert Road, this is a neutral matter that weighs neither for nor against a proposal.
34. The appellant has drawn my attention to their individual circumstances of wanting additional living space within the property, delays with architects, builders, materials and Covid-19. However, there is nothing before me that alternative living space could not be found at the property and a loft conversion with front dormer is the only solution. I have not been provided with any substantive evidence to support those other concerns. As such these matters do not outweigh the harm identified above, nor justify granting planning permission for the development before me. In any event, I have dealt with the appeal on the basis of the evidence and my own site observations.
35. I have had due regard to Article 8 of the Human Rights Act 1998 (HRA) and the Public Sector Equality Duty (PSED) under the Equality Act 2010. The appellant's family, who intend to occupy the property have protected characteristics for the purposes of the PSED. However, after having regard to all material considerations, I am satisfied that the aim of avoiding unacceptable harm to the character and appearance of the area can only be adequately addressed by dismissal of the appeal. Any interference with the human rights of the appellant, their family and potential occupants of the property is therefore necessary and proportionate.

Conclusion

36. Therefore, for the reasons given above, I conclude that the appeal under ground (a) should fail and that planning permission should be refused in respect of the DPA in full.

The appeal on ground (f)

37. This ground of appeal is that the steps required to be taken by the notice exceed what is necessary to achieve its purpose. The purposes of an enforcement notice are set out in section 173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). Since the notice requires the removal of the front dormer roof extension and reinstatement of the roof to its former condition the purpose is clearly to fully remedy the breach. Consequently, the notice's requirements at Section 5 cannot be excessive.
38. The appellant's case is that the development had been constructed lawfully and relies in part on the claimed fallback position. However, I have discussed this in the ground (c) appeal. With regard to this ground (f) appeal it is clear that the breach of planning control would not be fully remedied if the front dormer roof

extension were allowed to remain on site, and the appellant has not provided sufficient evidence, to show that any lesser steps as those suggested, including size and scale would remedy the breach. For the above reasons, I conclude that the ground (f) appeal fails.

The appeal on ground (g)

39. An appeal under ground (g) is made on the basis that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed. The notice requires compliance within six months of it coming into effect.
40. The appellant seeks a reasonable extension time to the six months but has not specified what extent a reasonable timeframe would be. However, the appellant has set out that this is due to the current climate, increasing costs, raising funds, and personal circumstances of their family. The appellant also noted that the builder had now run away, and the time would be to seek assistance to understand the full costs and building time scales.
41. The Council has made comment and considers that six months is sufficient time to arrange for a builder to complete the works in accordance with the notice.
42. The appellant has not provided any substantive evidence to support their ground (g) appeal. Nevertheless, there appear to be inconsistencies throughout the evidence in that the appellant also states '*I have now started buildings and prepped for building which was delayed due to Covid and is now further delayed due enforcement letter..*'. Therefore, I am not satisfied that any assistance and builders cannot be found, and the works commissioned within six months by that of a builder or as the appellant further suggests by them. Furthermore, given that the appeal 'stops the clock' and the period for compliance does not start until the date of the appeal decision, I consider that six months is a reasonable period.
43. Moreover, the reasons why the Council issued the notice are that the unauthorised development is causing significant harm to the character and appearance of the surrounding area and fails to reinforce local distinctiveness. Therefore, it is in the public interest for the breach of planning control to be remedied as soon as reasonably possible. This provides a further reason not to extend the compliance period beyond the current specified period.
44. I do not consider there are implications arising from the compliance time period on the notice that affect the protected characteristics of the occupiers or the ability to access the rest of their home and enjoy their home safely. Therefore, the appeal on ground (g) fails.

Conclusion

45. 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 application deemed to have been made under section 177(5) of the Act.

KA Taylor

INSPECTOR