



Appeal Decision

Site visit made on 22 August 2023

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 September 2023

Appeal Ref: APP/M4320/C/23/3314378

9 Park Avenue, Lydiate, Liverpool L31 0BT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mrs Diane Robinson against an enforcement notice issued by Sefton Metropolitan Borough Council.
- The notice was issued on 13 December 2022.
- The breach of planning control as alleged in the notice is without planning permission and within the last four years the erection of a dormer extension to the rear, replacement of existing front dormer flat roof to a dual pitch roof and removal of hipped roof to provide a gable with a dual pitch roof.
- The requirements of the notice are to:
 1. Demolish/remove the hip to gable conversion and reinstate the roof to match existing as previously existing
 2. Demolish/remove the dormer to rear of dwellinghouse
 3. Demolish/remove dual pitch roof to front dormer and reinstate dormer flat roof as previously existingRemove all resulting debris from the dwellinghouse and make good as per the original dwellinghouse prior to the above points 1-3.
- The period for compliance with the requirement is: 3 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. 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.

Summary of Decision: 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 Matter

1. Since the appeal was submitted, a revised version of the National Planning Policy Framework (the Framework) has been published and this is a material consideration which should be taken into account from the date of its publication. I have therefore determined the appeal in light of the revised Framework. As there is no change in the revised Framework relevant to the appeal, it has not been necessary to seek comments from the parties on the revised version.

The ground (a) appeal and the deemed planning application

Main Issue

2. The main issue is the effect of the development on the living conditions of the residential occupants of 7 Park Avenue, with regard to outlook, sunlight and daylight.

Reasons

3. The appeal property is a single-storey with loft conversion, semi-detached dwelling. A relatively narrow gap divides the appeal property from the adjacent property, 7 Park Avenue. No 7 has a window facing the side elevation of the appeal property, 9 Park Avenue. This window is the sole window that serves a dining room and therefore is considered to serve a habitable window.
4. Prior to the hip to gable extension on the appeal property, the outlook from this neighbouring window would have been restricted to some extent by the side elevation of No 9. Nevertheless, due to the hipped roof of No 9, there would have been a reasonable portion of skyline visible. Similarly, the amount of sunlight and daylight serving No 7s habitable room window would have been limited somewhat by the side elevation of No 9, although it would have been sufficient to ensure the room it serves would not have been excessively gloomy.
5. As a result of the hip to gable extension, the outlook from this window is now significantly dominated by the extension, to the extent that there would be very little skyline visible. Moreover, the amount of sunlight and daylight serving the room has been significantly diminished. The External Daylight and Sunlight Study, undertaken by Base Energy, confirms that the Vertical Sky Component has been reduced from 23.4% to 11.2%, which is considered to be a major impact in terms of daylight.
6. With regard to Annual Probable Sunlight Hours, the study identifies that this has been reduced from 65% to 37%. This meets the minimum BRE requirements. However, in terms of winter hours, this has been reduced from 8% to 2%, which fails to meet the BRE requirements for winter sunlight hours.
7. Given the above, the loss of outlook from the neighbouring habitable room window and the reduction in the amount of sunlight and daylight serving it has resulted in the room it serves being gloomy and oppressively confined, to the detriment of its usability and the occupants of the property.
8. I find therefore, the development significantly harms the living conditions of the occupants of No 7, with regard to outlook, sunlight and daylight. As such, it is contrary to Policy HC4 of the Sefton Council Local Plan 2017, which seeks to ensure house extensions do not result in a significant reduction in the living conditions of the occupiers of neighbouring properties. In addition, it would also conflict with the Sefton Council House Extensions Supplementary Planning Document 2018, which states extensions should not overshadow neighbouring habitable rooms to an unreasonable degree. Furthermore, it would fail to accord with the design objectives of the National Planning Policy Framework.
9. The Council also refers to conflict with the Lydiate Neighbourhood Plan (LNP) 2019. However, I have not been directed to any policies with which the development conflicts. Accordingly, I find no conflict with the LNP.

Other Matters

10. The appellant argues that a similar development was permitted at 19 Silver Birch Way¹. The Council confirms that the windows facing in the adjacent property, 17 Silver Birch Way, do not serve habitable rooms and therefore the

¹ Council ref: DC/2022/00196

effect on the living conditions of the neighbouring occupants are not the same as the appeal development. I find no reason to conclude otherwise. Therefore, whilst the development at 19 Silver Birch Way may be similar to the appeal development, the effect it has on the neighbouring occupants is not.

11. The appellant also refers to a similar development at 97B Liverpool Road². However, there is no evidence before me of any windows in the neighbouring property and the rooms they serve. Therefore, I cannot be certain there are any direct comparisons with the appeal development that weighs in its favour.
12. I have had regard to the sustainability costs of having to comply with the requirements of the enforcement notice (the notice). However, these do not outweigh the harm I have found to the living conditions of the neighbouring residents.
13. I acknowledge the appellant's argument that the development only just exceeds the permitted development threshold. However, I do not consider that this justifies the harm to the living conditions of the occupants of No 7.

Conclusion on the ground (a) appeal and the deemed planning application

14. For the reasons given above, having considered the development plan as a whole and all material considerations, I conclude that planning permission should not be granted in response to the ground (a) appeal against the enforcement notice and the deemed application. Therefore, the ground (a) appeal fails.

The hidden ground (f) appeal

15. This ground is that the notice requirements are excessive. Depending on the purpose of the notice, this can be assessed against the question of whether the requirements exceed what is necessary to remedy the breach of planning control; or, any injury to amenity.
16. The appellant contends that if the front dormer extension is altered so that it has a flat roof and its size is reduced so that it would not exceed 50m³ then permission would be granted. It is not explicitly clear what the appellant is referring to; however, it is assumed they are stating that it would be permitted development. Nevertheless, there are no details before me as to what the resultant size and design of the dormer would be. Therefore, there would be no certainty as to what any such variation to the requirements of the notice would be.
17. I therefore conclude that the ground (f) appeal must fail.

Formal Decision

18. 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.

Alexander Walker

INSPECTOR

² Council ref: S/2012/0688