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## Appeal Decisions

Site visit made on 8 August 2023

**by David Jones BSc (Hons) MPlan MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 11 September 2023**

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**Appeal A Ref: APP/G4620/C/22/3313235**

**Appeal B Ref: APP/G4620/C/22/3313265**

**The site of 21 Lily Street, West Bromwich B71 1ED**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by Mrs Jasvir Kaur and Appeal B by Mr Satinder Singh against an enforcement notice issued by Sandwell Metropolitan Borough Council.
  - The notice was issued on 14 November 2022.
  - The breach of planning control as alleged in the notice is the construction of single storey front extension shown edged red on the attached plan ("the unauthorised development").
  - The requirements of the notice are:
    - 5.1 To remove the unauthorised development.
    - 5.2 Once the unauthorised development has been removed, the opening created shall be replaced with a bay window, of same design and dimensions as was originally in place, prior to the unauthorised development taking place.
    - 5.3 Remove from the land all materials, debris arising from the aforementioned requirement of the notice.
  - The period for compliance with the requirements is: 5 months.
  - The appeals are proceeding on the grounds set out in section 174(2)(e), (f), and (g) of the Town and Country Planning Act 1990 as amended.
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### Decision

1. It is directed that the enforcement notice is corrected by:
  - In section 2 deleting the word "Lilly" and substituting instead the word "Lily".
  - In section 5.1 the deletion of the word "to", and after the word "development" the insertion of the words "and restore the property to its previous condition prior to the unauthorised development taking place".
  - The deletion of the requirements in sections 5.2 and 5.3 in their entirety and replacing it with "5.2 Remove from the land all materials and debris arising from compliance with requirement 5.1 above".
2. Subject to these corrections, the appeals are dismissed and the enforcement notice is upheld.

### The Notice

3. There is a typographical error in section 2 of the notice in relation to the property address. There is also a grammatical error at the beginning of section 5.1 caused by the inclusion of the word "to". These are minor errors which can be corrected without causing injustice to either party.

4. Although I am satisfied that the requirements set out in section 5.2 of the notice are clear, in the interests of conciseness it could be shortened and amalgamated with the requirement under section 5.1. There is also ambiguity with the use of the words "originally in place", whilst "previous condition" is precise and provides clarity for the appellant. I shall therefore delete section 5.2 in its entirety and amend section 5.1 so that it reads "Remove the unauthorised development and restore the property to its previous condition prior to the unauthorised development taking place". I have also made minor changes to the wording of the requirement set out in section 5.3, which following the above corrections now becomes section 5.2.
5. These corrections do not fundamentally change the requirements of the notice. As such, they would not cause injustice to the appellants or the Council.
6. The appellants have highlighted other errors contained within the notice. These include the covering letter which referred to "321 Lily Street", and in the "What happens if you do not appeal" section of the notice it was erroneously stated that the notice would take effect on 14 November 2022 and not 12 December 2022 as stated in paragraph 7.1. Notwithstanding these errors, the appellants are clearly aware of the land to which the notice relates and were able to make their appeals within the specified period. Accordingly, these errors have not resulted in any injustice or prejudice to the appellants.

### **Ground (e)**

7. An appeal under ground (e) is made on the basis that copies of the enforcement notice were not served as required by section 172 of the Town and Country Planning Act 1990. Section 172(2) of the Act says that a copy of an enforcement notice shall be served:
  - a) On the owner and on the occupier of the land to which it relates; and
  - b) On any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.
8. The appellant says that the notice was not served on National Westminster Bank PLC (Nat West) who hold a mortgage on the property, and therefore have an interest in the land.
9. The Council state that a notice under Section 330 of the Act was hand delivered to the property in September 2022 in order to obtain information regarding those with an interest in the land. As this notice was not responded to, the Council carried out a Land Registry search and checked Council Tax records to obtain the names of the owners. Following these inquiries, copies of the enforcement notice were served on the two appellants, as well as the 'owner(s)' and 'occupier(s)' of 21 Lily Street, West Bromwich B71 1ED.
10. I have been provided with a copy of the Land Registry details which clearly shows that Nat West has a registered charge on the property. As this charge was entered in December 2017 it will have existed when the Council carried out its land registry search on the property. As a copy of the enforcement notice was not served on Nat West, the Council has clearly failed to serve a copy on all persons with an interest in the land.

11. However, where an enforcement notice has not been properly served on everyone with an interest in the land, the test is whether anyone with an interest in the land has been substantially prejudiced by the failure to serve a copy of the notice on them. Section 176(5) of the Act affords me power to disregard non-service, provided that neither the appellant nor the person concerned has been substantially prejudiced by the failure to serve him or her.
12. The appellants have made their appeals within the specified period and therefore they have not been substantially prejudiced. Although Nat West have not been served and no representations have been received from them, in my experience I consider that it would be highly unlikely that they would have appealed against the notice. In any event, given that the planning merits of the unauthorised development have already been tested and dismissed at appeal<sup>1</sup> in April 2022, realistically there is little they could have said in addition to the appellants submissions. The appellants have also not demonstrated why Nat West would be substantially prejudiced in this case.
13. It therefore follows that no party has been substantially prejudiced by the Council's failure to properly serve a copy of the notice on all persons with an interest in the land. Accordingly, by way of discretion under section 176(5), the appeals on ground (e) fail.

### **Ground (f)**

14. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the Act sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) to remedy the breach of planning control that has occurred, or (b) remedying any injury to amenity which has been caused by the breach. In this case, the requirements of the notice are to remove the unauthorised development in its entirety and return the property to its previous condition. The purpose of the notice must therefore be to remedy the breach of planning control.
15. The appellants have suggested lesser steps which they consider would reduce the visual impact of the extension. These steps consist of reducing the overall size of the extension as detailed on the drawing<sup>2</sup> provided by the appellants. These though are arguments which relate to planning merits.
16. However, as there is no appeal under ground (a) consequently there is no deemed application for planning permission, as such there can be no arguments about the planning merits of the development under ground (f). The only consideration is whether the requirements exceed what is necessary to achieve the identified purpose of the notice, which in this instance is to remedy the breach of planning control.
17. Since the purpose of the notice is to remedy the breach of planning control, no lesser steps other than those set out in the notice would achieve that purpose. Therefore, the appeals on ground (f) fail.

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<sup>1</sup> APP/G4620/D/21/3292056

<sup>2</sup> Drawing No: D-02

### **Ground (g)**

18. The appeal on ground (g) is that the time given to comply with the requirements of the notice is too short. The notice specifies a period of five months after the notice takes effect.
19. The appellants argue that the compliance period of five months is insufficient due to shortages in labour, difficulty in sourcing the necessary materials, and the potential for adverse weather conditions during the winter. The appellants have suggested a compliance period of nine months.
20. The remedial works are likely to be relatively straightforward for a suitably experienced building contractor and are also likely to be of limited duration. There is no firm evidence to suggest that there would be any serious difficulties in securing the services of appropriate building contractors or in sourcing any necessary materials. Given the location of the appeal site and the scale of the works, they are also unlikely to be significantly affected by adverse weather conditions.
21. I therefore find that five months is a sufficient and reasonable period of time to comply with the requirements of the notice. Accordingly, the appeals on ground (g) fail.

### **Conclusion**

22. For the reasons given above, I conclude that the appeals fail. I shall therefore uphold the enforcement notice with corrections.

*David Jones*

INSPECTOR