



Appeal Decision

Site visit made on 11 July 2023

by G Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 September 2023

Appeal Ref: APP/N4720/C/22/3308286

Land at 80 Daleside Road, Pudsey LS28 8HA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Mrs Zeinab Khan against an enforcement notice issued by Leeds City Council.
- The notice was issued on 6 September 2022.
- The breach of planning control as alleged in the notice is without the benefit of planning permission, the erection of a two storey rear extension and a dormer window to the rear.
- The requirements of the notice are to:
 - Step 1
Demolish the unauthorised two storey rear extension and rear dormer window in their entirety.
 - Step 2
Return the rear elevation and rear roof slope of the dwellinghouse to their condition prior to the unauthorised development taking place.
 - Step 3
Make good any damage caused to the dwellinghouse, or neighbouring dwellinghouses, from compliance with Steps 1 and 2.
 - Step 4
Remove from the land any resulting debris from compliance with Steps 1-3.
- The period for compliance with the requirements is:
Four months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) 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 Decision: The appeal is dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Formal Decision

1. It is directed that the enforcement notice is varied by:
 - 1) The deletion of the words 'Four months' and its substitution with the words 'Twelve months' as the period for compliance at section 6 of the notice.
2. Subject to the variation, 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 Matters

3. An application for planning permission¹ (the 2021 scheme) has previously been refused, and a subsequent planning appeal² dismissed, for a scheme to retain a two storey rear extension, rear dormer window extension and other alterations

¹ LPA Ref No: 21/03072/FU

² APP/N4720/D/21/3282740

and works at the appeal property. The Inspector in that instance noted some discrepancies between the submitted plans and what had been built in respect of the rear extension and the rear dormer window extension. The Inspector confined his consideration of the proposal to the rear extension and rear dormer, those being the elements to which the Council objected. As those are the elements targeted by the notice, so too have I.

4. A second application for planning permission³ (the 2022 scheme) for a revised scheme was also refused by the Council. The appellant stated that it was her intention to appeal against that decision but, having done so beyond the relevant time period, that appeal⁴ was turned away.
5. Section 173(3) of the Act states that an enforcement notice shall specify the steps to be taken in order to achieve, wholly or partly, any of the purposes set out in section 173(4) of the Act. The latter includes, at section 173(4)(a), remedying the breach by restoring the land to its condition before the breach took place, whilst section 173(5) states that the notice may require (a) the alteration or removal of any buildings or works to achieve the purposes of the notice.
6. The powers available under an appeal made on ground (a) allow me to consider granting planning permission for part of the matters enforced against. I have been provided with copies of the submitted plans in respect of both the 2021 and 2022 schemes, the latter as an alternative to what has been built and referred to by the appellant in the grounds of appeal under ground (f). In order to give proper consideration to these alternatives I will however deal with them under the ground (a) appeal.
7. In making her appeal submission, the appellant makes reference to the Council taking ‘...no account of the permitted development rights that are still applicable to the dwelling’. The Act provides at section 174(2)(c) that an appeal under ground (c) may be brought on the grounds that those matters (if they occurred) do not constitute a breach of planning control; examples might be that planning permission has already been granted or that the works are permitted development.
8. Although the appellant did not bring the appeal under ground (c) I am satisfied that this matter is capable of consideration as a hidden ground (c) appeal, albeit that it is not explained what these permitted development rights are and no further case is made regarding this matter. Thus, the hidden ground (c) appeal fails.

Main Issues

9. The main issues are the effects of the two storey rear extension and dormer window to the rear upon:
 - The character and appearance of the appeal property and the surrounding area; and
 - The living conditions of occupiers of neighbouring properties, with particular regard to overshadowing and outlook.

³ LPA Ref No: 22/02989/FU

⁴ APP/N4720/D/22/3308307

The appeal under ground (a)

Reasons

Character and appearance

10. The appeal property is a recently refurbished and extended two-storey semi-detached dwelling, set back from the roadside behind a wide grass verge as part of a row of similar properties. Backing on to an area of open land, the appeal site lies in a predominantly residential area.
11. The two-storey extension extends across almost the full width of the property's rear elevation, leaving only a very small gap between it and the adjoining property at 82 Daleside Road. It is also of a significant depth. As such, it is a substantial and dominant addition to the rear of the otherwise modest semi-detached property.
12. The extension's extensive flat roof, itself an uncharacteristic feature within the wider street, also intersects the rear roof eaves and fascia level in an uncomfortable manner which fails to consider the extension's context and its relationship with the character and proportions of the appeal property. The inappropriate scale of the rear two storey extension is further compounded by the awkwardly proportioned and sited fenestration pattern to its rear elevation which combine to create a disruptive, unsympathetic and incongruous extension at the rear of No. 80.
13. These harmful effects of the two storey element of the extension are compounded by those of the large box-dormer window that occupies almost all of the rear facing roof plane. With minimal insets from ridge, eaves and sides of the property, it is an ungainly, incongruous, excessively large and dominant addition to the roof in its own right. When combined with the two storey rear extension, the effect is deeply disruptive to the modest proportions, form and massing of the original property.
14. Although this elevation is not widely visible from public vantage points to the front, these elements are together nevertheless an incongruous feature along the rear of the plain, and largely unaltered, rear elevations of properties on the western side of Daleside Road. This makes the extensions as detailed in the notice harmfully at odds with the character and appearance of the appeal property and the surrounding area. As such, I concur with the Council's conclusions that the development attacked by the notice is contrary with Policy P10 of the Leeds City Council Core Strategy (as amended by the Core Strategy Review 2019) (CS), saved Policies GP5 and BD6 of the Leeds Unitary Development Plan Review (UDP) (2006) and Policy HDG1 of the Householder Design Guide: Supplementary Planning Document 2012 (SPD). It is also contrary to the National Planning Policy Framework's (the Framework) aims and provisions of achieving well-designed places.

Living conditions

15. There is only a very small gap between the two storey extension's flank and the adjoining half of the semi-detached property at No. 82. The depth and height of the extension is an imposing and dominant feature and its proximity to the neighbouring property has a significant and harmful effect on the outlook from the rear of that property. This would, I conclude, be harmful to the

amenities of occupiers of No. 82 and in this respect, I concur with the previous Inspector's conclusions.

16. There is a larger gap between the side of the extension and the adjacent neighbouring property at No. 78. However, neither the gap from the extension to the boundary, or from the extension to the rear elevation of No. 78 is particularly great, and the extension would still have a significant and harmful effect on the outlook from the rear of that property. The extension's harmful effect upon No. 78 would also be compounded in terms of its effect on daylight and sunlight as, being located due south and in proximity to the rear of No. 78, it is also likely to result in overshadowing to an extent not felt by No. 82.
17. A drawing accompanying the 2021 scheme and submitted during the course of this appeal shows the application of a 45(DEGREE) line from the rears of Nos. 78 and 82. The two storey extension is shown not to intersect either line. Nevertheless, neither party has provided a commentary upon the application of a 45 degree line, and this does not alter my conclusions with regard to the harmful effect of the two storey rear extension upon the living conditions of occupiers of Nos. 78 and 82. For these reasons, the retention of the two storey rear extension is contrary to CS Policy P10, UDP Policy GP5 and SPD Policy HDG2. As the Framework seeks to secure high quality design and a high standard of amenity for existing and future users, it is also contrary to the Framework's aims and provisions in this respect.

Whether planning permission should be granted for any part of the matters stated in the notice

The 2022 scheme

18. An appeal on ground (a) seeks planning permission for the matters stated in the notice as the breach of planning control; namely the development which has actually been built. However, section 177(1)(a) of the Act enables me to grant planning permission for the whole "or any part" of the matters stated in the notice.
19. It was the appellant's intention to appeal against the refusal of the 2022 scheme, and indeed the appeal was turned away as having been made outside the relevant time period. However, I have been provided with the details of that scheme as part of the appeal submissions and the appellant's grounds of appeal under ground (a) make reference to the 2022 scheme as an alternative scheme. Within the scope of section 177(1)(a) of the Act I turn now to whether the 2022 scheme may constitute part of the matters stated in the notice.
20. The 2022 scheme would retain the ground floor element of what has been built in terms of both its width across the rear elevation of the appeal property and its overall projection from the rear elevation. A portion of the first floor element adjacent to No. 78 would also be retained to the depth as built, leaving an inset between its 'new' flank elevation and the adjoining property at No. 82. An area of hipped roof would cover the ground floor element. Notwithstanding the discrepancies noted earlier, there would be no apparent alteration to the rear dormer window extension.
21. Notwithstanding the new elements of construction required for implementation of the 2022 scheme – the first floor flank wall and ground floor hipped roof, together with any structural works required to support the upper floor above

the ground floor patio door opening – I am satisfied that the 2022 scheme can be properly regarded as being part of the matters stated in the notice.

22. However, whilst that may be so, the 2022 scheme does not overcome the harm I have identified above. The dormer window would remain unaltered and therefore would continue to be an incongruous and disruptive roof-level feature on the appeal property and within the surrounding area. The rear extension, whilst altered, would still appear as an incongruously bulky addition at the rear, both in isolation and cumulatively with the rear box dormer window. Moreover, the attempts to minimise its direct impact upon, and proximity to, No. 82 result in a contrived form that would fail to respect the modest scale and plain form of the host building.
23. Although reduced in width, the considerable depth of the rear extension, including the partially retained first floor element, would continue to have the same effect upon the outlook from the rear of No. 78 as does the current extension. Nor would the changes proposed by the 2022 scheme materially reduce the extent of overshadowing arising from the two storey element and its proximity to No. 78. The removal of the first floor element of the flank elevation facing towards No. 82 may have some benefit in opening up upwards outlook from the rear of that property and reducing the extent of overshadowing experienced, but it would only do so to a limited extent, and not sufficient to overcome the harm already identified.
24. For these reasons, whilst the 2022 scheme is capable of being considered as part of the matters stated in the notice, the changes it proposes are limited and do not overcome the harm I have identified. The 2022 scheme is contrary to CS Policy P10, UDP Policies GP5 and BD6 and SPD Policy HDG1 and HDG2 with regard to both character and appearance, and the living conditions of occupiers of Nos. 78 and 82.

Other Matters

25. I have some sympathy with the appellant's frustrations regarding the advice and feedback on progress on the build that she was being provided with by the builder and contractors. I note too that the appellant exercised her rights regarding the submission of an application retrospectively to retain the works carried out and, subsequently, of the appeal process. However, these are not matters to which I give any weight in the consideration of the appeal under ground (a).
26. Frustration is also expressed with regard to the advice, guidance and timing of the local authority's involvement in the matter. It is not clear at what point the local authority became aware of the works carried out or what advice was provided and when but, in any event, I have determined the appeal on its merits and on the basis of the available evidence.

The appeal under ground (f)

27. An appeal under ground (f) may be brought if it is considered that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. A breach of planning control may be remedied by making development comply with the terms of any planning permission granted in

respect of the land or by restoring the land to its condition before the breach took place.

28. In this case, the notice requires the removal of the rear two storey extension and rear dormer window extension in their entirety. This is consistent with the purpose of remedying the breach of planning control in accordance with (s173(4)(a)), the breach being comprised of the extensions in their entirety. I have dealt with the suggested 'lesser steps' as part of the ground (a) considerations.
29. Given that the purpose of the notice is to remedy the breach of planning control, in the absence of planning permission this can only therefore be achieved by the removal of the unauthorised development and consequently the restoration of the building 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.

The appeal under ground (g)

30. The notice specifies a period for compliance with its terms of four months. As the appeal is dismissed in relation to the ground (a) and (f) appeals, the required works as set out within the notice are extensive. It is stated by the appellant that the works would render the property uninhabitable and place the appellant and her family in a situation of homelessness.
31. I agree that for the scope of works required, a period of four months would be wholly inappropriate. In reaching this conclusion, I am mindful not only of the difficulties in sourcing suitably competent and available tradespeople but also in terms of the likely disruption to the appellant's family life. In this respect, I am particularly conscious therefore of the appellant's convention rights under Article 8 of the European Convention on Human Rights⁵ as the notice's requirements amount to interference with those rights.
32. The extended period of 12 months sought by the appellant would adequately allow appropriate logistical and construction arrangements to be made to ensure implementation of, and compliance with, the requirements of the notice. The appeal on ground (g) therefore succeeds to that extent and I shall vary the notice accordingly.

Conclusion

33. For the reasons give above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with the variation set out in my formal decision and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

G Robbie

INSPECTOR

⁵ As set out within the Human Rights Act 1988