



Appeal Decisions

Site visit made on 3 October 2023

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th OCTOBER 2023

Appeal A: APP/Z4718/C/23/3324181

Appeal B: APP/Z4718/C/23/3324182

Land and property at 179 Raikes Lane, Birstall, Batley WF17 9QF

- 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 A is made by Mrs Lauren Jade Eggett and Appeal B is made by Mr Gary James Eggett against an enforcement notice issued by Kirklees Metropolitan Borough Council.
 - The enforcement notice was issued on 19 May 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a two-storey side extension.
 - The requirements of the notice are a) demolish and completely remove the extension and return the land to its state prior to the unauthorised development being built, including removing the render from the host dwelling, or b) build the development in accordance with planning permission 2020/92178.
 - The period for compliance with the requirements is 120 days after the notice takes effect.
 - Appeal A is proceeding on the grounds set out in section 174(2) (a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended (the Act) and Appeal B is proceeding on the grounds set out in section 174(2) (c), (f) and (g) of the Act. In respect of Appeal A, 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.
-

Decisions

Appeal A: APP/Z4718/C/23/3324181

1. It is directed that the enforcement notice be corrected by deleting all the words in section 3 and replacing them with '*without planning permission, the erection of a two-storey side extension (including rendered walls) and rendering to the other walls of the dwellinghouse*', and varied by deleting all the words from section 5(b) and replacing them with '*build the two-storey side extension in complete accordance with planning permission 2020/92178/E and remove all render from the dwellinghouse*', and varied by deleting all the words in section 6 and replacing them with '*To complete steps 5(a) or (b) above – seven months after the notice takes effect*'. Subject to the correction and variations, the appeal is dismissed and 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.

Appeal B: APP/Z4718/C/23/3324182

2. It is directed that the enforcement notice be corrected by deleting all the words in section 3 and replacing them with '*without planning permission, the erection of a two-storey side extension (including rendered walls) and rendering to the other walls of the dwellinghouse*', and varied by deleting all the words from section 5(b) and replacing them with '*build the two-storey side extension in complete accordance with planning permission 2020/92178/E and remove all render from the dwellinghouse*', and varied by deleting all the words in section 6 and replacing them with '*To complete steps 5(a) or (b) above – seven months after the notice takes effect*'.

The Notice

3. Section 5(b) of the notice states '*build the development in complete accordance with planning permission 2020/92178*'. I have been provided with a copy of the decision notice for this planning permission and it is '*2020/62/92178/E*' and not 2020/92178. In the interests of precision, and without any injustice being caused to the main parties, I shall vary the requirements of the notice by deleting 2020/92178 from section 5(b) and replacing it with 2020/62/92178/E.
4. It is clear from the way that both the notice is drafted, and the appellant has considered the grounds of appeal, including the deemed planning application, that the breach of planning control relates to a two-storey side extension (which is rendered) and the rendering of the walls to the dwellinghouse that existed prior to the two-storey extension being erected. In this regard, no injustice would be caused to any of the main parties by correcting the breach of planning control in section 3 of the notice by deleting all the words and replacing them with '*without planning permission, the erection of a two-storey side extension (including rendered walls) and rendering to the other walls of the dwellinghouse*'.
5. Given the correction made to the breach of planning control, it is necessary that I also vary the requirements in section 5(b) of the notice by deleting all words and replacing them with '*build the two-storey side extension in complete accordance with planning permission 2020/92178/E and remove all render from the dwellinghouse*'.

Reasons

Ground (c) appeals

6. The appeal made on ground (c) is that the matters alleged do not constitute a breach of planning control.
7. The appellants make the claim under ground (c) that the two-storey side extension benefits from being permitted development given Class A (enlargement, improvement or other alteration of a dwellinghouse) of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). The appeal site is located on the corner of Raikes Lane with a highway surrounding the property on three sides. The two-storey side extension has been built off the side elevation of the original dwellinghouse. It is not permitted development as it fails to meet the limitations of A.1 (e) of Class A of Part 1 of Schedule 2 of the GPDO which states that development is not permitted '*if the enlarged part of*

the dwellinghouse would extend beyond a wall which fronts a highway and forms a side elevation of the original dwellinghouse’.

8. The appellants comment that they were under the impression that the construction of a hip-to-gable roof would be permitted development. There is no evidence before me to indicate that the side extension was not built as one single act of development. In other words, there is nothing before me to indicate that the two-storey side extension was built with a hipped roof, in accordance with planning permission 2020/62/9217/E for a two-storey side extension, and a gabled roof built thereafter. The evidence is that the gable roof enlargement was part and parcel of the erection of a two-storey side extension which includes rendered walls. Hence, this part of the breach of planning control does not benefit from Class B of Part 1 of Schedule 2 of the GPDO permitted development rights.
9. The evidence is that the dwellinghouse had brick walls prior to the breach of planning control taking place. The rendering of the brick walls of the dwellinghouse has materially altered the external appearance of the property. This amounts to an act of development considering s55(2)(a)(ii) of the Act which exempts from the definition of development the maintenance, improvement or alteration of any building of works that do not materially affect the external appearance of the building.
10. Neither the render to the two-storey side extension, nor the render that has been applied to the walls of the original dwellinghouse, is permitted development. Indeed, such development does not meet condition A.3 (a) of Class A of Part 1 of Schedule 2 of the GPDO which states that development is permitted by Class A subject to *‘the materials used in any exterior work (other than materials used in the construction of a conservatory) must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse’*. In terms of its colour, texture and finish, the rendering is not similar in appearance to the brick walls of the dwellinghouse prior to the breach of planning control taking place. Consequently, the rendering is not permitted development and requires planning permission.
11. The appellants raise several other matters as part of their ground (c) appeal, but these are planning merits matters which I have addressed as part of the ground (a) appeal below. For the reasons outlined above, I conclude that the ground (c) appeals fail.

Ground (a) appeal and the deemed planning application

Main issue

12. I have considered the reasons for issuing the enforcement notice and the main issue is the effect of the development on the character and appearance of the area.

Reasons

13. The appeal property falls within a residential environment which includes a mixture of mainly semi-detached and detached dwellinghouses. It is located on a prominent corner plot in Raikes Lane. Raikes Lane is positioned to the front and back of the appeal property which is a two-storey semi-detached dwellinghouse. There are some rendered dwellinghouses in the locality, particularly on the lower section of Raikes Lane, but these are the exception

rather than the norm when Raikes Lane is considered as a whole. To the passer-by, Raikes Lane is appreciated as being characterised by mainly brick built dwellinghouses, particularly on the higher part of Raikes Lane which 'fronts' the appeal property. Where semi-detached dwellinghouses exist, there is a predominantly and pleasing sense of design symmetry in terms of the use of the same roof design, window detailing and use of brick walls. Collectively, these attributes add positively and distinctively to the character and appearance of the area.

14. As detailed above, planning permission has been approved for a two-storey side extension to the appeal property. Such an extension was to be built using brick walls to match those of the original dwellinghouse, and the roof was to be 'hipped' to suitably reflect the adjoining semi-detached property. The breach of planning control includes the use of a light-coloured render for the original dwellinghouse and the two-storey side extension, and the roof of the two-storey side extension is gabled. Owing to the finish, texture, and colour of the render, coupled with the provision of a gabled roof, I find that the development fails to assimilate well into this urban landscape.
15. Indeed, to the passer-by, the development is experienced as being incongruous in the street-scene, particularly when viewed from the highway in the vicinity of No. 72 Raikes Lane. Furthermore, owing to the use of render and the construction of a gabled roof, the development fails to maintain an acceptable design balance and symmetry to the pair of semi-detached dwellinghouses and hence constitutes poor design.
16. I acknowledge that there are some rendered properties elsewhere in the area including to the 'rear' of the appeal property. I do not know the exact circumstances which led to these properties being rendered, although the local planning authority comment that the use of render for No. 183 Raikes Lane is unauthorised. Furthermore, the rendered properties to the rear are not as prominent as the appeal property and are mainly single storey in height. In any event, the existence of a very small number of rendered properties does not justify granting planning permission for harmful development. Similarly, I recognise that not all roofs are the same in the area. However, the existence of different roofs in the area does not justify granting planning permission which materially harms the design balance and symmetry of the pair of semi-detached dwellinghouses.
17. I find that the breach of planning control causes material harm to the character and appearance of the area. I have no reason to doubt the claim made by the appellant that in opting for a gabled roof, as distinct from a 'half' hipped roof allowed by the 2020 planning permission, it means that more space is available in the property which would be of assistance if children were to be fostered in the future. Furthermore, and while not substantiated with objective evidence, I have no reason to doubt the comment made by the appellant that the rendering has kept energy bills down. Nonetheless, there is nothing before me to indicate it would not be possible to explore alternative options to improve the insulation of the appeal property.
18. I also acknowledge that a child occupies the appeal property who has specified disabilities. I do not doubt that if planning permission were to be refused, and the enforcement notice upheld, it would have the potential to lead to some distress for the child. I deal with this matter further as part of the ground (g)

appeal, but in considering the ground (a) appeal, I have had due regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it.

19. In respect of the above, a refusal of planning permission is a proportionate and necessary approach to the legitimate aim of ensuring good design and safeguarding the character and appearance of the area from harmful development.
20. The appellant asserts that if they had to demolish the extension it would no longer be possible to live in the property as it would be too small for the requirements of the family. I do not know what happened in terms of occupation of the dwellinghouse when the two-storey side extension was built. The requirements of the notice provide an 'either or' option for the appellant and this includes the erection of a two-storey extension in accordance with planning permission 2020/92178/E. It is not, therefore, the case that a refusal of planning permission, and upholding the enforcement notice, would mean that the house could not be lawfully enlarged.
21. None of the other matters raised, including the personal circumstances of the appellant's child, are sufficient to outweigh the harm caused to the character and appearance of the area.
22. For the reasons outlined above, I conclude that the development does not accord with the design, character and appearance requirements of policy LP24 of the Kirklees Local Plan 2019, key design principle 1 of the Kirklees Council House Extensions and Alterations SPD 2021 and chapter 12 of the National Planning Policy Framework 2023.

Ground (a) appeal conclusion

23. For the reasons given above, I conclude that the breach of planning control does not accord with the development plan for the area taken as a whole and there are no material considerations, including supportive comments from the occupiers of No. 181 Raikes Lane, that indicate the decision should be made other than in accordance with the development plan. Therefore, the ground (a) appeal fails.

Ground (f) appeals

24. An appeal on ground (f) makes the claim 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.
25. The claim made by the appellants under ground (f) is that a lesser step would have been to allow them to have applied for retrospective planning permission rather than issuing an enforcement notice. However, the evidence is that the local planning authority advised the appellants, prior to the notice being issued, that planning permission would be unlikely to be approved for the breach of planning control.

26. The purpose of the notice is either to remedy the breach of planning control by demolishing the two-storey side extension and removing the render from the original dwellinghouse, or by remedying the injury caused to amenity by ensuring that the development accords with planning permission 2020/92178/E including the removal of all render from the dwellinghouse. An appeal under ground (a) has been considered above and such an appeal has failed. Therefore, a deemed planning application has, in any event, been determined as part of this enforcement notice appeal.
27. There are no lesser steps than those required by the notice to either remedy the breach of planning control or to remedy the injury caused to amenity which has been caused by the breach of planning control. I therefore conclude that the ground (f) appeals fail.

Ground (g) appeals

28. An appeal on ground (g) makes the claim that the period specified in the notice in accordance with s173(9) of the Act falls short of what should reasonably be allowed.
29. The appellants claim that one of their children has disabilities and that compliance with the requirements of the notice would lead to distress which could exacerbate symptoms. In this context, it is requested that more time be allowed to comply with the requirements of the notice. The appellants do not, however, specify a particular timeframe which would be acceptable in terms of minimising distress caused to the child.
30. The compliance period in the notice is 120 days. The appellants state that they have been told that the original contractors have said that it would be '*almost impossible to remove render as new as ours and could significantly damage/weaken the structure underneath*'. This comment is not reasonably substantiated with professional/objective evidence, and while the original contractor may have indicated an unwillingness to undertake works to ensure compliance with the requirements of the notice, there is no reasonable evidence before me to indicate that it would not be possible to secure a different contractor and carry out either of the said requirements within 120 days.
31. Notwithstanding the above, the appellants state that they have used their life savings and that the requirements of the notice would leave them in financial difficulties. I have some sympathy with the appellants in this regard and have no reason to doubt what they say about their financial position. It is in this respect, that I have decided that I will vary the compliance period from 120 days to 7 months. While the case made by the appellants is not detailed in terms of a timescale needed to reasonably minimise stress caused to the disabled child, this variation would no doubt also assist in terms of undertaking works in a slower or more phased manner thereby minimising stress caused to the disabled child and ensuring that the family can make arrangements to either live on the site or elsewhere while required works are carried out.
32. For the above reasons, I conclude that the period specified in section 6 of the notice will be varied from 120 days to 7 months. I find that this variation is reasonable and justified considering the PSED contained in section 149 of the Equality Act 2010. In reaching this conclusion, I have considered Article 8 of the European Convention on Human Rights as incorporated into the Human

Rights Act 1998 which states that everyone has a right to respect for private and family life, their home and correspondence. This is a qualified right, whereby interference may be justified in the public interest, but the concept of proportionality is crucial.

33. In this case, the planning harm that I have identified is of such weight that a refusal of planning permission is a proportionate, legitimate, and necessary response that would not violate those persons rights under Article 8. I find that the protection of the public interest cannot therefore be achieved by means that are less interfering of the rights of the family, subject to a variation to the compliance period.
34. For the above reasons, and, to the extent that the compliance period in the notice is varied, I conclude that the ground (g) appeals succeed.

Conclusions

Appeal A: APP/Z4718/C/23/3324181

35. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with the correction and variations and refuse to grant planning permission on the deemed application.

Appeal B: APP/Z4718/C/23/3324182

36. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with the correction and variations.

D Hartley

INSPECTOR