The Planning Inspectorate

Appeal Decision

Site visit made on 12 September 2023

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 01 November 2023

Appeal Ref: APP/X2410/C/22/3305974
Land at 46 Gwendolin Avenue, Birstall, Leicestershire LE4 4HD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Mehmet Sirin Sucin against an enforcement notice issued by Charnwood Borough Council.
- The notice was issued on 10 August 2022.
- The breach of planning control as alleged in the notice is: Development not constructed in accordance with the approved plans of Planning Permission ref: P/18/1682/2. Drawing Numbers 1905 received by the Local Planning Authority on 17th September 2018 and 13th November 2018.
- The requirements of the notice are to:
  1) Either
     a) Remove the ground floor extension to the rear of the dwelling and revert the property back to its condition prior to the work taking place to include reinstating the rear elevations with materials to match the existing property;
     Or
     b) Remove the current ground floor extension to the rear elevation and construct it in accordance with Planning Permission ref: P/18/1682/2. Drawing Numbers 1905 received by the Local Planning Authority on 17th September 2018 and 13th November 2018.
  2) Remove any resulting debris and materials from the site.
- The period for compliance with the requirements is: 8 (eight) months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (d) of the Town and Country Planning Act 1990 as amended (the 1990 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.

Decision

1. It is directed that the matters which appear to constitute a breach of planning control at section 3 of the enforcement notice (EN) be deleted and substituted with:

   "Without planning permission, the erection of ground floor extensions to the front, side and rear."

2. It is directed that the EN be varied by deleting the word 'Either' and deleting step '1b) Remove the current ground floor extension to the rear elevation and construct it in accordance with Planning Permission ref: P/18/1682/2. Drawing Numbers 1905 received by the Local Planning Authority on 17th September 2018 and 13th November 2018' from the requirements of the EN.

3. Subject to this correction and variation, the appeal is dismissed, and the EN is upheld. Planning permission is refused on the application deemed to have been made under S177(5) of the Act.

Matters concerning the EN

4. Section 173(1) of the 1990 Act requires an EN to state the matters which appear to the Council to constitute the breach of planning control. Established case law[1] says that an EN must tell a recipient fairly what he has done wrong and what must be done to remedy the breach.

5. I identified defects with the EN which caused me to consider the position regarding the validity of the EN or, indeed, whether it is a nullity or could be corrected. In this regard, the powers transferred to Inspectors under section 176(1)(a) of the 1990 Act include to correct any defect, error or misdescription in the EN or, under section 176(1)(b) of the 1990 Act, to vary the terms of the EN. In each case, the only test is whether the correction or variation will not cause any injustice to the appellant or the local planning authority. I wrote to both main parties setting out my concerns and invited comments. A response was received from the Council only. My concerns centred on the following matters.

6. The EN alleges the failure to comply with planning permission ref: P/18/1682/2 (the 2018 permission) which falls under s171A(1)(b) of the Act, 'failure to comply with any condition or limitation subject to which planning permission has been granted', put simply, a breach of condition. The EN specifies that this is in respect of the approved plans (condition 2). However, Part 1 of the EN references s171A(1)(a) development without the required planning permission, and this is further supported within the Council's written submissions and by a time limit of 4 years rather than 10 years referred to in the reasons for issuing the EN.

7. Having considered the approved scheme granted by the 2018 permission, at the site visit I saw that works to the building had not been carried out in accordance with the drawings referred to in condition 2 of that permission. The approved scheme, granted by notice dated 16 November 2018, permitted the erection of a two-storey side extension extending from the front to the rear of the property along its southern elevation and a separate ground floor extension to the rear, set in from each side. However, what has been constructed is a single storey extension that wraps around three sides of the house at ground floor level. To the front a mono-pitch roof provides a porch style cover to the entire width of the house, and this progresses into a single storey extension to the side and rear where the extension is both deeper and wider than approved.

8. There are significant differences in terms of the current development and the 2018 permission and consequently, the question that arose was whether the permission had been implemented. From my reading of the papers, it had not been suggested by either party that the development on site had been implemented in accordance with the 2018 permission.

9. A response to my concerns was received from the Council which agreed that the allegation should refer to development without the required planning permission (s171A(1)(a)) rather than a breach of condition as it was considered that, due to the significant deviation from the approved plans, the 2018 permission had indeed not been implemented. Condition 1 requires that the development be commenced within 3 years, that is by 16 November 2021. Because what was built was not authorised by the 2018 permission, the works

[1] *Miller-Mead v Ministry of Housing and Local Government* [1963] 1 A11 ER 4592

carried out could not be considered as beginning the development and therefore the permission has now expired due to failure to comply with condition 1 of the 2018 permission.

10. In these circumstances, I consider that under the powers transferred to Inspectors under section 176(1) of the 1990 Act, the allegation can be corrected to reflect the true nature of the breach of planning control. In doing so, I consider that no injustice would be caused to either party.

11. However, by correcting the EN as such, and in consideration of the expired 2018 permission, it would not be possible to remedy the breach of planning control as required by the EN[2], by giving the appellant the option to make the development comply with the terms (including conditions and limitations) of the 2018 permission. It would therefore be necessary to delete the requirement '1b) Remove the current ground floor extension to the rear elevation and construct it in accordance the planning permission ref: 18/1682/2. Drawing Numbers 1905 received by the Local Planning Authority on 17th September 2018 and 13th November 2018'.

12. I am conscious that removing the requirement would narrow the options to comply with the EN and thus the step remaining would be to 'Remove the ground floor extension to the rear of the dwelling and revert the property back to its condition prior to the work taking place to include reinstating the rear elevations with materials to match the existing property'. While I have considered whether this would cause injustice, the EN cannot be regarded as keeping the planning permission alive and the option to build out the 2018 permission was never a valid one considering the permission had expired. For the reasons outlined above, I am satisfied that by varying the terms of the EN as described, no injustice will arise to either of the main parties.

13. Although there is no appeal under ground (g), the period for compliance with the EN is eight months and this should allow the appellant time, should he wish, to seek planning permission for an alternative scheme of development for an extension to the rear.

Preliminary Matters

14. The ground floor extensions to the side and to the front are considered acceptable by the Council and this is reflected in the requirements of the EN which do not seek their removal. Where an EN in respect of any breach of planning control could have required any buildings or works to be removed or any activity to cease, but does not do so and all the requirements of the EN have been complied with, then, so far as the EN did not so require, planning permission shall be treated as having been granted by virtue of s73A of the 1990 Act in respect of development consisting of the construction of the buildings or works or, as the case may be, the carrying out of the activities[3].

15. Therefore, the breach of planning control which remains in contention is the ground floor addition which extends from the wall of the rear elevation of the property as originally built.

16. From the appellant's submissions it seems that there is a ground (d) appeal. This is where it is considered that, at the date when the EN was issued, no

[2] Section 173(4)(a) of the Town and Country Planning Act 1990
[3] Section 173(11) of the Town and Country Planning Act 1990

enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. I note the Council has responded to this matter in its appeal papers and consequently, I consider that there would be no injustice to either main party in dealing with this matter under ground (d).

The appeal on Ground (d)

17. An appeal on this ground is based on the claim that at the date the EN was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. S171B(1) of the 1990 Act sets out that where there has been a breach of planning control consisting in the carrying out, without planning permission, of building operations on land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed. In this appeal, therefore, the appellant needs to show that on the balance of probability what has been built had been substantially completed by at least 10 August 2018, that is 4 years before the EN was issued. In legal grounds of appeal such as this, the burden to make the case rests with the appellant.

18. While there is no specific evidence to show when the development was substantially completed, the appellant refers to a Council representative who inspected the appeal property in April 2020 during which time work was reported as being ongoing. I also note the aerial image provided by the Council dated 29 March 2019 which shows that the property had not been extended to the rear.

19. There is an absence of precise and unambiguous evidence, and the appellant has not been able to show on the balance of probabilities that the development was *substantially complete* for the required four years. Consequently, the Council was able to take enforcement action against the breach of planning control alleged in the notice and therefore the ground (d) appeal cannot succeed.

The appeal on Ground (a) and the deemed planning application

Main Issues

20. Having regard to the Council's decision to under enforce, as explained above under my preliminary matters, the main issues are the effect of the ground floor extension to the rear on i. the character and appearance of the immediate surroundings and ii. the living conditions of the occupants of the neighbouring properties in terms of outlook and light.

Reasons

Character and appearance

21. The appeal relates to a two-storey, semi-detached dwelling on the west side of Gwendolin Avenue, a residential suburban street. There are limited public views of the rear extension, and while there will be private views towards the rear of the appeal property, these too will be limited to near neighbours either side and perhaps to the rear. Nevertheless, the extension is a substantial addition to a modest semi-detached house. Its scale is disproportionate with the house, and this is due to the width and depth of the extension. Furthermore, the

overhang of the shallow-angled and gable-ended roof is an anomaly within the setting and this design feature jars with the style of the surrounding area which is predominantly 1930s/1940s housing. The extension appears unduly bulky and is an insensitive form of development. It is visually harmful and neither enhances or respects the character of the original dwelling or the immediate surrounding area.

22. In this respect the development conflicts with Policy CS2 of the Charnwood Local Plan Core Strategy (2015), saved policy EV/1 and H/17 of the Borough of Charnwood Local Plan (2004) and the adopted Design Supplementary Planning Document 2020. These, amongst other things, seek to ensure that new development respects the shape, proportions and size of the existing property, retaining its dominance and remaining compatible in scale, mass and design and also enhance the character of the area.

Living conditions

23. The Council's Appeal Statement[4] states that the extension projects from the original rear elevation of the appeal property by approximately 8m. The appellant's statement refers to the size difference between what had been approved in 2018 (6m x 6.6m) and what has been built (7m x 7m). Notwithstanding this disparity between the parties, I was able to view the development at my visit from the rear garden and the first floor of the appeal property to understand its relationship with its neighbours.

24. The development consumes the entire width of the garden, extending beyond the side elevation of the original dwelling and just falling shy of the common neighbouring boundaries on either side. Due to the local topography, the ground level of the neighbouring property, No. 44, is said to be approximately 30cm lower. This is apparent with the extent of the side wall of the extension which extends above the fence line. No. 48 is the other half of the semi-detached pair, and its ground level appears comparable with the appeal site and the wall plate of the extension projects above the fence line on that side to a lesser degree.

25. While there is no impact on privacy, the extension is of a significant scale that is likely to have a negative effect in terms of the loss of light on the occupants of the neighbouring properties on either side. The neighbouring properties sit to the north and south of the appeal site. While their position means that there would be less impact on No. 44 to the south, the extension would have an adverse effect on No. 48 to the north in terms of a loss of light experienced inside what appear to be habitable rooms in the rear of the property at ground floor level. The extent of the impact I consider to be material and harmful to the living conditions of the occupiers of these properties, particularly those residing at No. 48 due to the proximity with the common boundary and the height and depth of the extension. In addition to its impact upon light entering the neighbouring properties, I have no doubt that the bulk of the extension to the rear has an overbearing impact when viewed from the neighbouring properties leading to an undesirable feeling of enclosure and harm to the outlook from the properties. This I consider to be less so for the occupants of No. 44 due to the separation distance between the properties.

[4] Paragraph 6.10

26. Overall, I find that the rear extension is unacceptable in terms of the impact on the living conditions of the occupants of both neighbouring properties due to its overall scale and massing and its proximity to the common boundaries. In this respect, the development conflicts with Policy CS2 of the Charnwood Local Plan Core Strategy (2015), saved policy H/17 of the Borough of Charnwood Local Plan (2004) and the adopted Design Supplementary Planning Document 2020. These, amongst other things, seek to ensure that new development is acceptable by protecting the amenities of occupiers of nearby properties by reason of overshadowing, dominance or substantial loss of light.

Conclusion

27. The development conflicts with the Development Plan read as a whole and there are no material considerations that indicate that the decision should be made other than in accordance with the Development Plan. Therefore, for the reasons given, I conclude that the appeal on ground (a) should not succeed. I shall uphold the corrected EN and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

S A Hanson

INSPECTOR