



Appeal Decision

Site visit made on 10 October 2023

by M Madge Dip TP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06/11/2023

Appeal Ref: APP/X1355/C/23/3319589

Land at 19 Oswald Close, Cornforth, Ferryhill, County Durham DL17 9LX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr David Creagh against an enforcement notice issued by Durham County Council.
- The notice, numbered EN/22/00337, was issued on 30 March 2023.
- The breach of planning control as alleged in the notice is without planning permission the operational development consisting of the erection of a single storey extension to the front elevation of the dwelling.
- The requirements of the notice are:
 - a. Dismantle and remove in its entirety the single storey brick extension erected on the front elevation (subject of planning application DM/22/01356/FPA) of the dwellinghouse including the concrete floor, damp proof course and all foundations constructed for the extension.
 - b. Restore the front elevation of the building to its condition and form prior to the development being undertaken, using bricks to match the existing and install a single window of the same style and proportions as the former in the same location on the elevation.
 - c. Reinstate the land to garden.
- The period for compliance with the requirements is 16 weeks.
- 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, and the enforcement notice is upheld with correction and variations in the terms set out below in the Formal Decision.

Matters Concerning the Enforcement Notice

1. In section 3 of the enforcement notice (Notice), the words '*the operational development consisting of*' are superfluous as '*the erection of*' clearly shows that operational development is being alleged. Furthermore, '*a single storey front extension*' more concisely describes the alleged development. I shall correct the allegation accordingly.
2. The steps required to be taken to remedy the breach of planning control seek to return the dwellinghouse to its condition before the breach of planning control occurred. The single storey front extension is constructed of brick and tile, therefore forming part of a building. Works to remove a building, or part thereof, are usually described as '*demolish*', as opposed to '*dismantle*', which is more applicable to taking a structure to pieces. For precision, Step a shall be varied to '*Demolish the single storey front extension in its entirety.*'
3. Steps b and c seek to restore the front elevation of the dwelling and its garden to their former condition. The appellant is best placed to know what their

condition was prior to the breach occurring. Steps b and c shall be combined and varied to require the restoration of the front elevation of the dwelling and its garden to their condition before the breach occurred.

4. Section 176(1) of the 1990 Act¹ provides for me to correct any defect, error or misdescription and/or vary the terms of the Notice providing I am satisfied that no injustice to the appellant or Council would arise from my doing so. My correction and variations would not change the substance of the allegation or requirements, only make them more precise. I am therefore satisfied no injustice would arise and I shall proceed on this basis.

Preliminary Matter

5. The appeal form indicates that the appeal has been made on ground (a), that planning permission should be granted for the matters alleged. However, the appellant's primary argument in support of the appeal is that the 'conservatory' is situated on the back of the property, where it constitutes permitted development. This amounts to a ground (c) appeal. The Council's case addresses the ground (c) argument, and the appellant has had an opportunity to provide comments on the Council's case. The main appeal parties were notified of my intention to address the appeal on ground (c), no objections were raised, and I shall proceed on this basis.

Ground (c) Appeal

6. An appeal on this ground is that, if the matters alleged have occurred, they do not constitute a breach of planning control. It is for the appellant to show, on the balance of probability, that the single storey front extension (the extension) is either not development, or, if it is development, it has the benefit of express or deemed planning permission.
7. S55(1) of the 1990 Act says that development includes the carrying out of building operations. There is no dispute that the dwellinghouse has been extended through the erection of the extension, which is a building operation. The corrected matter alleged is therefore development.
8. A planning application² to retain the extension has been refused planning permission. That refusal of planning permission was subsequently dismissed on appeal³. Express planning permission has not therefore been granted for the extension.
9. Article 3 and Class A, Part 1 of Schedule 2 of the GPDO⁴ grant deemed planning permission for the enlargement, improvement or other alteration of a dwellinghouse. Class A.1 sets out the circumstances when development will not be permitted by Class A. Class A.1(e) states that development is not permitted if *'the enlarged part of the dwellinghouse would extend beyond a wall which – (i) forms the principal elevation of the original dwellinghouse'*.
10. The host property is a semi-detached dwellinghouse. One side is attached to 20 Oswald Close and the other side is adjacent to 18 Oswald Close. Of the remaining elevations, one faces towards the service road and one faces

¹ Town and Country Planning Act 1990 as amended

² DM/22/01356/FPA for Retention of single storey front extension (width 3.1m x length 3.5m) was refused planning permission on 16 September 2022

³ APP/X1355/D/22/3311782 dismissed on 24 February 2023

⁴ Town and Country Planning (General Permitted Development) (England) Order 2015 as amended

towards a public open space with footways running through it. It is not therefore immediately apparent which is the principal elevation of the dwellinghouse.

11. No definition of principle elevation is provided in the GPDO, the Permitted Development Rights for Householders Technical Guidance (2019) provides the definition below:

"Principal elevation" – in most cases the principal elevation will be that part of the house which fronts (directly or at an angle) the main highway serving the house (the main highway will be the one that sets the postcode for the house concerned). It will usually contain the main architectural features such as main bay windows or a porch serving the main entrance to the house. Usually, but not exclusively, the principal elevation will be what is understood to be the front of the house.

12. The Highways Act 1980 defines a highway as 'the whole or a part of a highway other than a ferry or waterway'. A highway is not only where vehicles have the right to pass and repass. The footways on Oswald Close are therefore highways in the context of Class A.1(e). While Oswald Close sets the postcode for the property, this does not necessarily assist in identifying the principal elevation of the appeal property.
13. The housing estate containing the appeal property is designed so that pedestrian and vehicular traffic are predominantly separated. This design concept has the principal elevations of dwellinghouses fronting areas of public open space containing pedestrian footways. Garden land located between the dwellings' principal elevation and the open space are usually open plan. Rear elevations of dwellinghouses in this design concept back onto service roads. Applying this concept to the appeal property, its principal elevation is that facing the public open space, where the extension has been erected.
14. The dwellinghouses as originally erected on this part of Oswald Close had their main entrances in the elevation facing the public open space, with a secondary access door to the side. Some of these properties have been extended to the side and doors facing the service road have been installed. The appeal property has such a side extension, which has unadorned white doors facing the service road and the public open space. It also retains the original main entrance, where the door is coloured red and contains door furniture, such as letter box, door knocker and house number. I find the retained main entrance to be a main architectural feature.
15. Furthermore, while several properties adjacent to the appeal property have been extended towards the service road, there is a noticeable lack of domestic extensions or other alterations to property elevations facing the public open space. The main noticeable change to the properties adjacent to the public open space is that some garden areas have been fenced, including the appeal property's.
16. Taking all these factors together, and having regard to the original design concept, I find the host dwelling's principal elevation to be that facing the open space. I saw during my site visit that the original design concept outlined above has been diluted to a limited degree. This dilution does not however affect my identification of the appeal property's principal elevation.

17. For the reasons set out above, I find the extension extends beyond a wall forming the host dwelling's principal elevation. As such it does not constitute permitted development having regard to Class A.1(e). Deemed planning permission for the single storey front extension is not granted by Article 3 and Class A, Part 1 of Schedule 2 of the GPDO. The appellant has therefore failed to show, on the balance of probability, that the single storey front extension does not constitute a breach of planning control.

18. The appeal on ground (c) fails.

Ground (a) Appeal and the deemed application for planning permission

19. The main issues are the effect of the development on:

- The character and appearance of the area; and
- The living conditions of the occupiers of 20 Oswald Close (No 20), with regard to outlook, daylight/sunlight and privacy.

20. Planning permission for the retention of the single storey front extension has been refused and recently dismissed on appeal. In that appeal, the Inspector concluded that the development was harmful to the character and appearance of the area, and harmful to the living conditions of neighbouring occupiers. The development was therefore found to conflict with policies 29 and 31 of the County Durham Local Plan (2020) (CDLP).

21. The development was also found to conflict with the Residential Amenity Standards Supplementary Planning Document (2020) which advises that large scale extensions that extend beyond a clearly defined building line will not normally be acceptable. It was also found to be contrary to the provisions of the National Planning Policy Framework (the Framework) at Section 12 in relation to the need to achieve well designed places and a high standard of amenity.

22. There has been no change to relevant local or national planning policy since the previous appeal was dismissed. I accept that the mature trees located within the public open space area will affect daylight/sunlight levels at No 20. However, the detrimental effect on daylight/sunlight levels will be exacerbated by the close proximity of the extension to No 20's ground floor window.

23. Loss of privacy due to the proximity of the extension's window to the main ground floor window of No 20 could be addressed through the installation of obscure glazing. However, in the absence of a specific scheme giving details of the proposed obscure glazing, its effectiveness cannot be assessed. Also, this would not address the harm to outlook identified in the previous appeal.

24. Furthermore, I find the extension to be visually prominent and incongruous in the street scene. It projects significantly forward of the principal elevation, unbalancing the former symmetry of the pair of semi-detached houses, and creating a bulky addition to an otherwise consistent building line. These factors taken together, disrupt the harmonious character and appearance of the area.

25. I have considered the other examples of ground floor extensions, of which there are several, and therefore a feature of the wider area. As previously identified, they are however notably absent from principal elevations, where the appeal development is located. The examples provided are on different

streets and are not directly comparable, having different contexts to the proposal before me. As such, these other examples are neutral matters in the determination of this appeal.

26. For the reasons given above, the development causes significant harm to the character and appearance of the area, and the living conditions of occupiers of 20 Oswald Close. The development therefore conflicts with policies 29 and 31 of the CDLP, and guidance in the RASSPD and the Framework, which amongst other things, require proposals to achieve well designed buildings that contribute positively to an area's character, and provide high standards of amenity for occupiers of adjacent properties.
27. The appeal on ground (a) fails and the deemed application for planning permission shall be refused.

Formal Decision

28. It is directed that the enforcement notice is corrected and varied by:

In section 3. THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL, the deletion of all the words and the substitution of the words 'Without planning permission, the erection of a single storey front extension.'

In section 5. WHAT YOU ARE REQUIRED TO DO delete steps a, b and c, and substitute steps 'a. Demolish the single storey front extension in its entirety. And b. Restore the front elevation of the dwelling and its garden to their condition before the breach of planning control occurred.'

29. Subject to the correction and variations, 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.

M Madge

INSPECTOR