



Appeal Decision

Site visit made on 18 July 2023

by M Madge Dip TP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 December 2023

Appeal Ref: APP/N4720/C/22/3313200

71 Willans Avenue, Rothwell, Leeds LS26 0NF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Shelton Dube against an enforcement notice issued by Leeds City Council.
- The notice, numbered 20/00719/UHD3, was issued on 22 November 2022.
- The breach of planning control as alleged in the notice is without planning permission the increase in wall height of an existing extension to rear and creation of a flat roof.
- The requirements of the notice are:
 - Step 1: Dismantle the unauthorised first floor development in its entirety.
 - Step 2: Restore the extension to its previous state prior to the unauthorised works taking place in line with Existing Plan Drawing No 003 dated 24.08.2000 of refused planning application 21/07764/FU.
 - Step 3: Remove all debris and detritus arising from Steps 1 and 2.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) 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 of Decision: The appeal is dismissed, and the enforcement notice is upheld with variation in the terms set out below in the Formal Decision.

This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the decision issued on 9th August 2023.

Matters concerning the enforcement notice

1. It is incumbent upon me to put the Notice in order. The steps required to remedy the breach of planning control or, as the case may be, the injury to amenity, should reflect the wording of the allegation. In this case, the steps required to be taken aim to remedy the breach of planning control. The allegation identifies the development as "the increase in wall height of an existing extension to rear and the creation of a flat roof". This reflects the fact that a two-storey rear extension with a mono-pitched roof previously existed.
2. I saw during my visit that the external alterations to the two-storey rear extension have facilitated internal alterations which have provided for the ground 'external store' to be incorporated into the kitchen with a standard ceiling height. The roof alterations have also allowed full height first floor accommodation to be retained. Requiring the "unauthorised first floor development" to be dismantled in its entirety, and the restoration of the extension "in line with Existing Plan Drawing No 003 dated 24.08.2000 of refused planning application 21/07764/FU" would include returning the internal arrangement to the external store and a lower floor level to Bedroom 3. Such

requirements do not reflect the breach that has occurred and go beyond what is required to remedy that breach of planning control.

3. I shall vary the requirements by replacing Steps 1 and 2 with '*Step 1: Remove the flat roof and increased wall height, and restore the walls and roof of the rear extension to their condition before the breach took place*'. Step 3 will be renumbered Step 2 and the words "Steps 1 and 2" shall be replaced with "Step 1". The internal arrangements and layout, once these steps have been taken, is a matter for the appellant.

Background

4. Planning permission to change a pitched roof to a flat roof (1st floor) was refused on 12 November 2020¹. An appeal against that refusal was not pursued. A retrospective planning permission for change of first floor pitched roof to a flat roof was then refused on 23 March 2022². A subsequent appeal³ was dismissed due to policy conflict arising from the unacceptable design causing harm to the character and appearance to the host dwelling and its immediate surroundings (the 2022 Appeal). The enforcement notice (Notice) was subsequently issued.

Appeal on ground (a) and the deemed application for planning permission

5. An appeal on this ground is that planning permission should be granted for the matters alleged, namely the increase in wall height of an existing extension to rear and the creation of a flat roof. The **main issue** is the effect of the development on the character and appearance of the dwelling and the area.
6. This development is the same as that considered in the 2022 Appeal. No changes in circumstance since it was dismissed have been brought to my attention.
7. Notwithstanding the existing single storey rear flat roof extension, the design and appearance of the development has previously been found to be out of keeping with the main hipped roof, which diminishes the character of the host building. This high-level incongruous feature is visible in glimpses from the street and is obvious from nearby gardens and properties. While there are other examples of first floor flat roofed extensions, these are not located within the immediate setting and are not visible within the same views and do not justify further harm to the area.
8. The desire for fully useable accommodation on the ground and first floors is understandable, as is the desire to create better balance to the rear windows. As with the 2022 Appeal, there is nothing before me to show that this could only be achieved with a flat roof. Indeed, there are examples of other two storey extensions that incorporate pitched or hipped roof extensions, which do not appear bulky or dominant, and remain subservient to the host dwelling.
9. Those pitched or hipped roof forms represent high-quality design, that accords with guidance in the Householder Design Guide SPD (2012) (SPD). While I have not been made aware of any proposal to replace the flat roof with a pitched or hipped roof, an application for such a proposal could be pursued by

¹ 20/05963/FU

² 21/07764/FU

³ APP/N4720/D/22/3297627

the appellant. This Notice would cease to have effect in so far as it would be inconsistent with any subsequent grant of planning permission.

10. For these reasons, the development unacceptably harms the character and appearance of the host dwelling and the area. The development does not accord with policy P10 of the Leeds Core Strategy (Review 2019) and saved policies GP5 and BD6 of the Leeds Unitary Development Plan Review (2006) which seek to achieve development that respects its context and is of a high-quality design. In addition, it is contrary to the SPD and the National Planning Policy Framework which aim to achieve well designed places.

Appeal on ground (g)

11. An appeal on this ground is that the period to comply with the requirements falls short of what should reasonably be allowed. The appellant argues that he does not have the money to cover the cost of the works and a longer, unspecified, period is requested.
12. There would not be any complex building operations required to dismantle the flat roof or increased wall height. I therefore find that the 6-month period afforded by the Notice does not fall short of what is reasonable.
13. The appeal on ground (g) fails.

Overall Conclusion

14. For the reasons given above, I conclude that the appeal on ground (a) shall not succeed and that the requirements of the notice are excessive to remedy the breach of planning control. I shall vary the enforcement notice prior to upholding it and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Formal Decision

15. It is directed that the enforcement notice is corrected by:

In section 5. WHAT YOU ARE REQUIRED TO DO, delete Step 1 and Step 2 and substitute 'Step 1: Remove the flat roof and increased wall height, and restore the walls and roof of the rear extension to their condition before the breach took place'.

Renumber Step 3 as Step 2 and delete the words 'Steps 1 and 2' and substitute the words 'Step 1'.

16. Subject to the correction, 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