



Appeal Decisions

Site visit made on 12 September 2023

by **K A Taylor MSC URP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 14th December 2023

Appeal A Ref: APP/P4415/C/23/3314998

Appeal B Ref: APP/P4415/C/23/3314999

Land at 35 East Avenue, Rawmarsh, Rotherham S62 7AA

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended ("the Act"). The appeals are made by Mr Brian Oxley (Appeal A) and Mrs Joyce Oxley (Appeal B) against an enforcement notice issued by Rotherham Metropolitan Borough Council.
- The notice was issued on 12 January 2023.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised erection of two storey side and rear extension and single storey front extension, in breach of Condition 2 (approved plans) of planning permission RB2014/0930.
- The requirements of the notice are: Reduce the first floor extension from 3.8m to 3m and incorporate a hipped style roof, set down the side extension, and demolish the front extension and rebuild, all in accordance with planning permission granted under reference RB2014/0930 (Elevations plan 2012-02-ID-A-004 Rev D).
- The period for compliance with the requirement is: 6 months, from the date the notice comes into effect.
- The appeals are proceeding on the grounds set out in section 174(2)(a), (d), (f), (g) of the Act as amended. Since appeals have been brought on ground (a), applications for planning permission are deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeals are dismissed and the enforcement notice is upheld with variations in the terms set out below in the Formal Decision.

Appeal C Ref: APP/P4415/W/23/3314969

35 East Avenue, Rawmarsh, Rotherham S62 7AA

- The appeal is made under section 78 of the Act.
- The appeal is made by Mr Brian Oxley against the decision of Rotherham Metropolitan Borough Council.
- The application Ref RB2021/0952, dated 6 May 2021, was refused by notice dated 1 December 2022.
- The development proposed is two storey side and rear extension and single storey front extension.

Summary of Decision: The appeal is dismissed.

Preliminary Matters

1. Appeal A and Appeal B are on grounds (d), (a), (f) and (g) against the enforcement notice, this relates to the two storey side, rear extension and single storey front extension. The two storey side, rear extension and single storey front extension are proposed to be retained in the appeal against the Council's refusal of planning permission RB2021/0952 in Appeal C. As such, I will deal with Appeal A, B, and Appeal C where necessary together.
2. The description of development in Appeal C, in the banner heading above is taken from the Council's decision notice for clarity as the application form and appeal form state "as built design alterations to the approved householder design

detailed in householder application reference (RB2014/0930)", which are not a description of development. Therefore, I have dealt with Appeal C on this basis.

3. The notice as drafted in Appeals A and B, at Section 5 states "*Reduce the first floor extension from 3.8m to 3m and incorporate a hipped style roof, set down the side extension, and demolish the front extension and rebuild, all in accordance with planning permission granted under reference RB2014/0930 (Elevations plan 2012-02-ID-A-004 Rev D)*". In the interests of natural justice, the main parties were given an opportunity to make representation on suggested amended wording of the requirements in light of the evidence presented. I have taken these comments into account in coming to my decision and will return to this in the ground (f).
4. I note that the appellant's evidence seeks to argue the nature, validity, and determination of a 2020 planning permission reference RB2020/0775. However, that is not a matter for me to deal with in these appeals. The appeals relate to an enforcement notice and the planning application which was refused in Appeal C.

Appeals A and B, on ground (d)

5. In order for an appeal on ground (d) to succeed it has to be shown that at the time of the notice was issued it was too late for enforcement action to be taken. In particular, the notice confirms that it was issued in respect of a breach of planning control within s171A(1)(b) of the Act, which is "failing to comply with any condition or limitation subject to which planning permission has been granted". In accordance with s171B(3) of the Act, it has to be shown that the development in breach of condition 2 of planning permission RB 2014/0930 granted 12 August 2014 ('the permission') began on or before 12 January 2013, 10 years before the date on which the notice was issued. In addition, it must be shown that the breach of condition continued such that at any time during a continuous 10-year period the Council could have taken enforcement action.
6. For this legal ground of appeal, the Courts have established that the onus of proof falls to an appellant¹, with the test of the evidence being on the balance of probabilities². Also, an appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted³.
7. Condition 2 of the permission states: "*The permission hereby granted shall relate to the area shown outlined in red on the approved site plan and the development shall only take place in accordance with the submitted details and specifications as shown on the approved plans (as set out below) (Drawing numbers corrected plan 2012-02-ID-A-004 Rev D)(received 04.08.14)*".
8. Much of the appellants' evidence suggests that the relevant immunity period for the development should be 4-years as set out in s171B(1) of the Act. The appellants had previously applied for a lawful development certificate⁴ (LDC) for determination by the Council on the basis that the extensions as now constructed were erected and completed more than 4 years before the date the application

¹ *Nelsovil v SSE* [1962] 13 P&CR 151

² *Thrasyvoulou v SSE & Hackney LBC (No1)* [1984] JPL 732

³ *Gabbitas v SSE & Newham LBC* [1985] JPL 630, *Ravensdale Ltd v SSCLG & Waltham Forest LBC* [2016] EWHC 2374 (Admin)

⁴ RB2023/0049

was submitted. The date on the enforcement notice shows that this was issued before the appellants made the LDC application. However, the Council refused to issue an LDC and determined that the development had been carried out in breach of condition 2. The Council say that the LDC application had failed to provide sufficient evidence to demonstrate on the balance of probability that the breach had occurred on a continuous basis for a 10-year period prior to the submission of the LDC application on 16 January 2023.

9. I have been provided with the evidence presented in that LDC case, at paragraph 3.9 of Appendix B of the appellants' evidence they state that the permission '*RB2014/0930 was already a live permission, ...*' and that a sworn statutory declaration was presented that the extensions as now constructed were completed 23 December 2016. The planning application which forms Appeal C is signed and dated, stipulates that the development started on 1 January 2015 and were completed without consent on 1 June 2016. The original description of the proposed works in Appeal C was identified "as built design alterations to the approved householder design detailed in householder application reference (RB2014/0930)".
10. In addition, the appellants' statement accompanying Appeal C is clear at paragraph 3.4 that the appellants had taken advice from the builder during construction to make the design changes to simplify the build.
11. As such, even if I considered the appellants' arguments, the requirement for ground (d) in the case of building operations, the whole of the alleged development must be substantially completed more than 4 years before the date on which the notice was issued. The appellant's own evidence is not clear or substantive on when it was substantially completed as Appeal C and the LDC application differ with the completion dates.
12. Therefore, from the evidence before me the permission was granted in 2014 and that work commenced at the property in accordance with the permission which was granted. The permission was implemented, it then appears to me that the appellants' chose to deviate from the permission. Thus, at that point in time once the appellants' deviated from those approved plans which were granted consent and stipulated on the decision notice it clearly resulted in the breach of condition 2. Furthermore, it appears to me from the evidence there is nothing to suggest the Council did not act accordingly in seeking to distinguish what the deviation had been from the permission. Nevertheless, these matters are not relevant as the enforcement notice relates to the breach of planning control being the breach of condition 2 of the permission.
13. For these reasons, I conclude, that the appellants' evidence is not sufficiently precise and unambiguous to demonstrate, on the balance of probabilities, that the breach of condition 2, occurred for a period of 10 or more years prior to the date of the enforcement action. In addition, there has not been a period of 10 years or more since the permission was granted, including whenever the breach of condition began. Accordingly, it was not too late for the Council to take enforcement action. Therefore, the appeals on ground (d) fail.

Appeals A and B, on ground (a) and the deemed planning application (DPA) and Appeal C, the s78 appeal

Main Issue

14. The main issue is the effect of the development on i) the character and appearance of the host property and surrounding area; and ii) the living conditions of the occupiers at No.37 East Avenue (No.37), with particular regard to outlook.

Reasons

Character and appearance

15. The appeal site relates to a semi-detached dwelling within a predominantly residential area which is characterised by mostly two-storey dwellings of varying design. However, most dwellings retain the same character and features including window proportions and limited front alterations which positively contribute to the character and appearance of the area. The development as built has resulted in various extensions to the property to the front, side and rear. Appeal C and ground (a) seek to retain as currently built.
16. The Council's Supplementary Planning Document: Residential Design Guidance, 2016 (SPD) at section 2.4, sets out that front extensions are eye catching and can significantly alter the appearance of a building and single storey extensions that extend across the entire frontage will normally be refused. Front extensions should not harm the character and appearance of the host property or be of a design out of keeping with others in the street. The SPD at section 2.5, requires that two storey extensions should generally be set back by a minimum of 0.3 metres at first floor level on the front elevation, with the roof set down and set back from the main body of the house. Such extensions should be subservient to prevent it unbalancing semi-detached properties.
17. The front extension as built is of an excessive width which spans the full width of the front elevation of the property. This combined with its overall footprint, roof design being both dual pitch and lean to exacerbates its stark appearance to the front of the property and within the street scene. Thus, the front extension appears incongruous and is a dominant, overpowering addition due to its height, length and width along the front elevation to the detriment of the host property and immediate area. In addition, its excessive size further detracts from the appearance of the neighbouring property resulting in an unbalanced and negative design to the pair of semi-detached properties.
18. Regarding the two-storey side extension, this is attached to the front extension and results in a further increase to the width of the property. It also integrates with the two-storey rear extension. The two-storey side extension is not set back nor set down from the main roof ridge which results in the extension being of an additional dominant feature particularly to the front elevation. It does not appear subservient to the main elevation or that of the host property as it adds further mass and bulk of an excessive scale.
19. Taken cumulatively with the other additions which are disproportionate in scale the development is to the detriment of the character and appearance of the host property. This includes that the two-storey side and front extension are clearly visible in the wider street scene and are not tucked in or screened from boundary

treatments. Neither does the development seek to enhance visual quality of the site, or to positively contribute to the locality and by the appellants removing any complicated roof structure to create a more seamless building line or vernacular detailing has resulted in a poor design.

20. For the above reasons, I conclude that the development has caused unacceptable harm to the character and appearance of the host property and surrounding area. It does not accord with Policy CS28 of the Rotherham local plan, Core Strategy 2013-2023 (CS) and Policy SP55 of the Rotherham local plan, Sites and Policies, 2018 (LPSP). These policies taken together amongst other matters require developments to be of high-quality sustainable design, respect and enhance, be visually attractive as a result of good architecture, and design should improve the character and quality of an area.
21. The development also conflicts with the SPD design guidance, and the National Planning Policy Framework 2023 (the Framework) at chapter 12 achieving well designed places, which advises that development, which is not well designed should be refused, especially where it fails to reflect local design policies including supplementary planning documents.

Living Conditions

22. The two-storey rear extension is of a significant projection at both ground floor and first floor level at some 3.8m. It is directly sited next to and along the boundary with No.37. The property at No.37 has first floor windows and a ground floor opening near to the shared boundary.
23. The SPD advises at section 2.6 that rear two-storey extensions should be designed so as not to come within a 45° angle of the neighbouring rear elevation habitable room windows. It further advises that an extension should not in general exceed 3m if close to a shared boundary.
24. Given that the two-storey rear extension has an imposing scale and excessive projection it appears as a dominant and overpowering addition along the rear elevation and shared boundary with No.37. This is further exacerbated by the design of the roof being dual pitch which results in a significant blank gable wall facing the garden of No.37. Thus, it appears as an overbearing addition, which would be particularly notable when viewed from the windows and openings of No.37 to an unacceptable degree. Moreover, given the proximity of openings at No.37 it would clearly be at odds with the 45° requirement of the SPD.
25. In terms of the single storey front extension, it is sited within close proximity to the shared boundary and front windows of No.37. It features a window on the side elevation which is directly positioned at an angle towards No.37. Although as I saw there are blinds erected these would not serve to assist in protecting the living conditions of No.37, and when looking out of this window it is likely to result in some loss of privacy and vice versa from within No.37. Furthermore, the occupiers of No.37 when looking from their front windows would clearly see the significant projection and height of the front extension and this window to the detriment of restricting their outlook.
26. Although I find no harm to the living conditions of neighbouring properties in respect of the two-storey side extension due to its siting on the property, this does not outweigh the other harm I have identified above. Whether a balcony

has been omitted or not is irrelevant as I have determined the appeals on the scheme as built, and that which is before me.

27. For the reasons given, I conclude the rear extension and front extension has resulted in a material loss of privacy and unacceptable loss of outlook for the occupiers of No.37. Therefore, the development does not accord with the amenity requirements including privacy and outlook of Policy CS28 of the CS, Policy SP55 of the LPSP and the SPD guidance. Moreover, it would not conform with the Framework, chapter 12 in that development is inclusive and accessible and which promotes health and wellbeing, with a high standard of amenity for existing and future users.

Other Matters

28. Although there have been no representations from neighbouring occupiers on East Avenue, and that materials are similar to the 2014 permission are neutral matters that weigh neither for nor against the proposal. The appellants also consider that the Council has applied retrospective guidance in the form of the SPD, design criteria. However, the SPD is a material consideration in this case, and at the time of the planning application this was adopted guidance. In addition, the development was refused inline with development plan policies.
29. The appellants' have referred to the condition 2 of the permission being discharged, however it is clear that the development is in breach of this condition and thus cannot be discharged. The matter of any future s73 application is one for the appellants and is not the appeal before me. Furthermore, I have dealt with the matters of the 4-year immunity period in ground (d) above.
30. The appellants' have drawn my attention to their individual circumstances of wanting the extensions, albeit limited evidence has been provided. I do not consider that the front extension as built is the only way to achieve suitable arrangements for the appellants. It is clear from the evidence, and as I saw that there is existing alternative ground floor space. Furthermore, the Council had regard to the appellants' circumstances in coming to their decision and to take enforcement action within the delegated report of permission RB2021/0952. Nonetheless, from the evidence and plans submitted the ground floor bedroom of the original permission incorporates large windows and downstairs facilities.
31. I have had due regard to Article 8 of the Human Rights Act 1998 (HRA) and the Public Sector Equality Duty (PSED) under the Equality Act 2010. The appellants who intend to occupy the property have protected characteristics for the purposes of the PSED. However, after having regard to all material considerations, I am satisfied that the aim of avoiding unacceptable harm to the character and appearance of the area and the living conditions of neighbouring occupiers can only be adequately addressed by dismissal of the appeal. Any interference with the human rights of the appellants, their family and potential occupants of the property is therefore necessary and proportionate.

Conclusion

32. The development would be contrary to the development plan and the Framework taken as a whole. There are no other material considerations that would indicate that the development should be determined other than in accordance with the development plan.

33. For the reasons set out above, and having regard to all other matters raised, I conclude that planning permission should be refused, the ground (a) appeals fail, and Appeal C should be dismissed.

Appeals A and B, on ground (f)

34. This ground of appeal is that the steps required to be taken by the notice exceed what is necessary to achieve its purpose. The purposes of an enforcement notice are set out in section 173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). Since the notice requires the removal of the unauthorised parts of the development, and for the extensions to accord with Condition 2 of the permission the purpose is clearly to remedy the breach.
35. However, the wording of the requirements at Section 5 of the notice as drafted stipulates that the rebuild of the front extension must follow the demolition *"Reduce the first floor extension from 3.8m to 3m and incorporate a hipped style roof, set down the side extension, and demolish the front extension and rebuild, all in accordance with planning permission granted under reference RB2014/0930 (Elevations plan 2012-02-ID-A-004 Rev D)"*.
36. The appellants' assert that there would be disruption to their personal life, family circumstances and financial implications with the requirements. The matters of planning merits and the SPD are pursuant to the ground (a) appeals, and I have dealt with these separately. However, there is nothing from the Council's evidence which clarifies why the appellants would need to rebuild the front extension once it is demolished. As once the unauthorised front extension is demolished it would achieve the purposes of the enforcement notice. The Council have confirmed in writing that provided the development is in accordance with the plans originally approved, with or without the approved front extension they would have no objections.
37. Notwithstanding the appellants' comments that it would leave the front of the dwelling open and exposed. This would still be the case with the requirements at the point of demolition for the front extension. As set out above the requirements are not excessive to remedy the breach and in order to achieve the purpose of the notice, the front extension must be removed.
38. Nevertheless, I consider a lesser step would be appropriate to require the appellants to demolish the unauthorised front extension and after that, the appellants could build the approved front extension if they wish, but the notice cannot reasonably force them to do so; it remains the right to decide whether to carry out what they have permission for. Moreover, this would still achieve the purposes of the enforcement notice with less cost and disruption to the appellants.
39. For the above reasons, I conclude that the appeals on ground (f) succeed only to the limited extent set out above, and I shall vary the requirements of the notice accordingly.

Appeals A and B, on ground (g)

40. An appeal under ground (g) is made on the basis that any period specified in the notice in accordance with section 173(9) of the Act falls short of what should reasonably be allowed. The notice requires compliance within 6 months of it coming into effect.

41. The appellants seek a period of between 12 – 18 months to comply with the notice. This stated in the context that there has been a long passage of time between completion of extensions and enforcement action being undertaken. In addition, they state availability of builders is limited and issues of finances to be raised by the appellants.
42. Nevertheless, the suggested alternative of 12-18 months would be harmful, having regard to my conclusions on the appeals on ground (a) and Appeal C. In contrast, a 9-month period would acknowledge the practicalities faced by the appellants while reflecting the expediency of enforcement action and would be a proportionate response to the appellants personal circumstances.
43. On this basis, the appeals on ground (g) succeed and the notice should be varied accordingly.

Appeals A and B - Formal Decisions

44. It is directed that the enforcement notice is varied by:
- In Section 5 deleting all the words and substituting with "Reduce the first floor rear extension from 3.8m to 3m and incorporate a hipped style roof, set down the side extension, all in accordance with the planning permission granted under reference RB2014/0930, and demolish the unauthorised front extension".
 - In Section 6 deleting the words "6 months" and substituting with "9 months".
45. Subject to the variation, the appeals are 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 Act as amended.

Appeal C – Formal Decision

46. The appeal is dismissed.

KA Taylor

INSPECTOR