



Appeal Decision

Site visit made on 4 October 2023

by G Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 January 2024

Appeal Ref: APP/Z4718/C/23/3325479

Kelvin Villa, 1 Newsome Street, Dewsbury WF13 4HE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Mrs Sajeeda Ibrahim against an enforcement notice issued by Kirklees Metropolitan Council.
- The notice was issued on 23 June 2023.
- The breach of planning control as alleged in the notice is without the benefit of planning permission, the erection of a single storey side extension.
- The requirements of the notice are:
 - a) Demolish and remove the side extension.
 - b) Block up the door opening from the host dwelling using materials to match that of the exterior of the building.
- The period for compliance with the requirements is: 90 days.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) 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 Decision: The appeal is dismissed and the enforcement notice is upheld with a correction and variations in the terms set out below in the Formal Decision.

Formal Decision

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

1) At section 1 of the notice, the deletion of the words:

'...under Section 171A(1)(b) of the above Act...'

And their replacement with the words:

'...under Section 171A(1)(a) of the above Act....'.

2. It is directed that the enforcement notice is varied by:

1) At section 5 of the notice, the deletion of the following words:

'b) Block up the door opening from the host dwelling using materials to match that of the exterior of the building'.

2) At section 6 of the notice, the deletion of the following words:

'1) To complete step 5(a) & (b) above – 90 days after the notice takes effect.'

And replacement with the following words:

'1) To complete step 5(a) above – within 12 months of the notice taking effect.'

3. 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.

Preliminary Matters

4. An application for planning permission for a single storey front and side extension at the appeal property was submitted retrospectively in 2022¹. The application was refused in May 2023. The reasons for issuing the notice draw upon the stated reason for refusal of the planning application, the details of which have been provided to me.
5. It is stated at section 1 of the notice that the notice has been issued because it appears to the Council that there has been a breach of planning control under section 171A(1)(b) of the Act. However, this section of the Act refers to a failure to comply with any condition or limitation subject to which planning permission has been granted. As set out above, whilst an application was made, it was refused. No planning permission exists for the structure enforced against and, as such, section 1 of the notice should refer instead to section 171A(1)(a) of the Act. I shall correct the notice accordingly, satisfied that in so doing neither main party, nor other interested parties, would be disadvantaged.
6. A new version of the National Planning Policy Framework (the Framework) was published on 19 December 2023. The parts of the Framework most relevant to this appeal have not substantively changed (other than in paragraph numbering) from the previous iteration and, consequently, it has not been necessary for me to seek the further comments of the main parties in this respect. I have determined the appeal accordingly.

The appeal under ground (a)

Main Issue

7. The main issue is whether the single storey side extension preserves or enhances the character or appearance of the Northfields Conservation Area, taking account of its effect on the character of the appeal property.

Reasons

8. The appeal property is a detached stone dwelling located in a slightly elevated position at the end of Newsome Street, its side elevation fronting directly onto the pavement. The upper first floor front elevation is visible above the roofs of intervening outbuildings for much of the length of Newsome Street.
9. Newsome Street itself is largely characterised as a street that provides rear access to larger terraced properties that front West Park Street and Birkdale Road. There are a number of detached garages and outbuildings to those properties that abut Newsome Street as well as a small number of houses, some older, some newer, that are, like the appeal property, accessed from Newsome Street.
10. The rear elevation of the house, and that of the extension in question, directly abut a rear lane that serves the rear of terraced properties on West Park

¹ LPA Ref No: 2022/62/92587/E

Street. The extension is, however, largely hidden from view from Newsome Street by the various outbuildings and boundary walls and fences that flank the street itself.

11. The appeal extension replaced an L-shaped, lean-to roofed, single storey range at the side of the building. The 'interior' angle of this range had been infilled with a UPVC-framed conservatory. Together, these had been remodelled over time to provide a dining room within part of the L-shaped range and an open plan kitchen and living area partly within the range and the conservatory.
12. From the photographic evidence supplied, although the previous conservatory was a somewhat incongruous addition to the property, the L-shaped range to which it was added was more in keeping with the character and appearance of the main house. It is evident from the appellant's submissions however that the combination of these built additions had experienced significant damage and degradation from, amongst other factors, water ingress and damp over time leading, ultimately it would seem, to their partial collapse during repair works. The collapse also appeared to include the majority of its rear wall abutting the adjacent rear lane.
13. The appeal extension broadly takes the cumulative footprint area of these structures. As a consequence, it too projects forward of the main building's front elevation, as did the conservatory and the end elevation of the L-shaped range, previously. However, unlike those structures, which read as iterative and subservient elements to the main house, albeit remodelled internally over time, the appeal extension is a single structure. As such, it loses the subtlety of the smaller and more modest individual elements of the previous structures and their incremental cumulative impacts in terms of footprint area and scale, and heights.
14. Moreover, the rendered walls, significant height above door and window openings on its front and return elevations and its flat roof and angular parapet walls give it a bulky and somewhat cumbersome appearance. The appellant may be correct, in part at least, in stating that the height of the building would remain the same as previously. However, while the appeal extension might not exceed the height of the previous structures, at their comparative highest points, it is a taller and bulkier extension in overall terms, with its front and side elevations much higher than those of the previous structures. As such, it looks a much larger and bulkier extension and, unlike the incremental additions to the property that it replaced, its width relative to that of the main house gives it a more dominant presence at the side of the house. In this sense, the extension fails to read as a subservient addition to the property and is incongruously unsympathetic to the scale, character and appearance of the main house.
15. Thus, taking these factors together, what has been built has a more strident and dominant presence at the side of the house than that previously and, in its own right, fails to respect the scale and form of the host building. As such, it relates poorly to the main house in terms of its siting and positioning, scale and appearance. Although it is not widely visible from Newsome Street itself, it is nevertheless a significant addition at the side of the house which, because of its forward projection, width and bulky elevations, dominates the front of the property in a manner that the previous additions did not.

16. The light cream-coloured render finish sets the extension clearly apart from the darker, natural stone face of the main dwelling. By virtue of its design, scale and positioning, this contrasting facing material has the effect of accentuating the width and bulk of the extension. However, I am mindful that there are a number of examples of rendered elevations and buildings in the surrounding area. Whilst I have no particular reason to question the Council's commentary on the status of the many examples of render finished properties, or elements thereof, in the surrounding area to which I have been referred, it is nevertheless undeniable that such finishes are part and parcel of the area's character and appearance. The use of render is not therefore harmful, per se, but it does accentuate the harmful elements of the extension that I have identified above.
17. For the reasons I have set out therefore, the extension as built fails to secure the good design and high-quality form of development that Kirklees Local Plan (KLP) Policy LP24 seeks to secure. Specifically, its scale, form, layout and relationship with the main building has failed to result in an extension subservient to, or in keeping with, the original building. As such, a large flat roofed, slab-sided extension such as that built at the appeal property fails to respect the character or appearance of the host property. The appeal extension is contrary to KLP Policy LP24 and fails to align with the guidance and principles set out within Key design principles 1 or 2 of the '*Kirklees House Extensions & Alterations*' Supplementary Planning Document.
18. Consistency in the planning process is important, otherwise public confidence in it may be undermined. I have considered carefully the appellant's point that the Council, in previously considering the application for planning permission for the retention of the extension, concluded that the extension had a neutral effect on the character and appearance of the Northfields Conservation Area (the CA), yet in respect of the appeal now conclude that it would neither preserve nor enhance the character or appearance of the CA. Whilst it is clear that this is a matter of frustration to the appellant, and is a matter with which I have some sympathy, I am nevertheless obliged to consider the Council's case as it is made in respect of the matters at appeal, namely the notice and not the previously refused application for planning permission.
19. In the absence of a CA character appraisal, the appellant usefully describes the CA and its features of note. A series of historic maps show the evolution of the appeal property and the long-standing but modest form of the L-shaped range at the side of the appeal property. The Council have not, for its part, sought to describe the CA's character in any detail or to challenge the appellant's assessment, and I have not been presented with any further evidence to lead me to question that assessment.
20. The appeal scheme is however an altogether more substantial structure that lacks the almost discrete, and more modest scale of the distinct elements of the now removed L-shaped range and conservatory. Thus, as a consequence of the appeal extension's scale, design, appearance and siting relative to the main dwelling, it is a significant departure from the modest scale of the appeal property and its attached range of L-shaped outbuildings. Whilst these have, over time, been incorporated into, and added to, the accommodation provided by the dwelling, their replacement with a large extension as a single entity undermines the traditional features, scale and hierarchy of buildings that the appeal property previously held.

21. I accept that the extension is relatively well concealed from ground levels along Newsome Street by intervening boundary treatments and other outbuildings. It is however likely to be visible from elevated positions of neighbouring properties from where the character and appearance of the CA is also appreciated and from where the harsh juxtaposition of the extension with the main building would also be seen. At the rear, the abrupt transition from the main building's stone elevation to the stark render finish of the extension is also clearly visible and contributes to the extension's overall harmful effect. Taking these matters together, the extension fails to preserve or enhance the character or appearance of the CA and, as such, I concur with the case made at appeal by the Council and that its effect goes beyond the neutral to one of failing to preserve or enhance. The degree to which the extension is concealed is not sufficient to overcome the harm that otherwise arises.
22. A scheme that neither preserves nor enhances the character or appearance of a CA results in harm, albeit that in this instance that harm would be less than substantial. Where less than substantial harm arises, the Framework sets out a balancing exercise whereby that harm should be weighed against the public benefits of the proposal. The Council have not however shown that it has carried out the balancing exercise incumbent upon it as set out in the Framework². I am, however, required to do so but I have not been expressly directed by the appellant to the matter of whether any public benefits exist in relation to the appeal scheme.
23. Thus, whilst the private benefits are clear; the poor condition of the previous structure, damp and rodent infestations and, ultimately, the collapse of significant portions of the previous structure whilst the appellant attempted to shore it up and repair it, the layout of that space as a means to provide a spacious, modern open-plan kitchen and living area to an otherwise modest dwelling, no public benefits have been identified. I do not doubt the extent of the private benefits set out or the appellant's genuine desire to address the documented shortcomings of the previous structure. However, as there are no public benefits to balance against the harm that I have identified, the appeal extension is contrary to KLP Policy LP35 and the approach to the historic environment set out within the Framework.
24. Reference has also been made to the possibility of permitted development rights for the construction of a boundary wall to the rear elevation a manner akin to a fallback position. This could, it is argued, result in a less attractive structure that would cause greater harm to the character or appearance of the CA. However, I have no further details of what it is that the appellant might propose in such circumstances and as such, such a vague and unsubstantiated risk is not sufficient to justify the retention of the extension and the resulting harm to the character or appearance of the CA. Nor am I persuaded that the painting of the render would mitigate the harm that I have identified.

Other Matters

25. I have considerable sympathy for the appellant's frustrations with the apparent length of time it took the Council to determine the previous application for planning permission. The appellant's agent elaborates on this with anecdotal experience of involvement with the Council on other sites and other schemes.

² Paragraph 208 – National Planning Policy Framework, December 2023

However, neither these experiences nor the appellant's concerns regarding wider issues surrounding the Council are matters to which I give weight to in the context of an appeal under ground (a).

Conclusion on the appeal under ground (a)

26. For the reasons set out, and having considered all other matters raised, I conclude that the appeal under ground (a) should not succeed.

The appeal under ground (f)

27. An appeal under ground (f) may be brought if it is felt 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. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control which has occurred. The second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach.
28. In this case, the notice requires the removal of the extension in its entirety. This is consistent with the purpose of remedying the breach of planning control in accordance with (s173(4)(a)), the breach being comprised of the erection of the extension in its entirety. The appellant has not set out a coherent alternative scheme under ground (a), whilst the stated grounds of appeal under ground (f) essentially amount to justification in support of an appeal under ground (g). Given that the purpose of the notice is to remedy the breach of planning control this can only be achieved by the removal of the unauthorised development. Other factors raised by the appellant, such as potential effects upon property value, the loss of floorspace and the habitability of the resulting dwelling are not considerations that would alter my conclusion in this respect.
29. However, the second of the notice's requirements (at 5(b)) requires the blocking up of the door opening from the main part of the dwelling into the extension. The removal of the extension would remedy the breach. The subsequent blocking up of the doorway opening would have no further bearing on the breach itself, whilst denying the appellant a secondary point of access and egress from the house to the outside space. As the appellant correctly notes, the implication of this would be to remove direct access from the house to the private outdoor amenity space, notwithstanding any potential replacement extension that the appellant may choose to pursue and which may also require a point of access from the house.
30. For these reasons, I conclude that the appeal on ground (f) should succeed, in part at least, with regard to the second part (b) of the notice's requirements as that part of the notice's requirements (b) exceed what is necessary to remedy the breach of planning control. I shall therefore correct the notice accordingly but the appeal in respect of ground (f) otherwise fails.
31. It is claimed on the appellant's behalf that, in relation to the appeal under ground (f), the appellant's human rights under Articles 1, 8 and 14 of the

European Convention on Human Rights³ have been breached. However, human rights considerations do not arise in relation to ground (f), where the issue is strictly whether the requirements are excessive to remedy the breach, not whether they are excessive in terms of their impacts upon the individual. Whilst I have concluded that there is partial success under ground (f) in the terms set out above, I consider the matter of the appellant's convention rights below, in relation to the appeal under ground (g).

The appeal under ground (g)

32. The notice sets out a 90-day compliance period with its requirements. Those requirements entail the demolition of the extension in its entirety, within which the appellant's kitchen is located. Having taken the opportunity of viewing the interior of the appeal property during the course of my site visit, the existing layout of the main dwelling does not appear to be particularly conducive to accommodating, even on a temporary period, relocated kitchen and dining facilities whilst the required works are carried out.
33. Moreover, a 90-day period does not seem to credibly take into account the logistics of making such alternative arrangements, let alone the procurement of trades to undertake the required works, and the subsequent disruption to family life that would entail. I am satisfied, having viewed the internal and external layout of the appeal property, that the appellant has accurately described the day-to-day challenges that would be faced while carrying out the notice's requirements. Whilst a longer compliance period would not remove those challenges it would allow greater time and opportunity to explore, and secure permissions for, possible alternative schemes. The notice's compliance period therefore seems to me to be unduly harsh and unreasonably and excessively restricted.
34. Whilst the Council have expressed concern that a 12-month period would be tantamount to a temporary planning permission, it seems to me to be a more realistic and reasonable period given the disruption that the required works will no doubt elicit. And even if the appellant were to be able to construct a replacement extension under permitted development rights, getting sufficient confirmation that that is indeed the case is not necessarily the work of a minute, or indeed 90 days as in this instance. A 12-month period provides a more realistic and reasonable period within which, at the very least, to implement the requirements of the notice, and more widely, to explore and implement a more appropriate replacement scheme.
35. I do not agree that a 12-month period would be tantamount to a temporary permission, and of course, the implications of not complying with the notice or its requirements are significant and potentially serious, even with a 12-month compliance period. As a consequence of my conclusions in respect to the other grounds of appeal, the notice's implications amount to interference with the appellant's convention rights under Articles 1, 8 and 14 of the European Convention on Human Rights⁴.
36. In reaching my conclusions in respect of the appeal under ground (g), I have been particularly mindful of these rights and provisions. However, given the

³ as set out within the Human Rights Act 1998

⁴ as set out within the Human Rights Act 1998

harm identified in the reasons for issuing the notice and my conclusions in respect of the appeal under ground (a), I am satisfied that the requirements appropriately pursue the legitimate aim of regulating the use of land in the public interest. Nevertheless, a longer compliance period in the manner sought by the appellant is justified and proportionate and the appeal under ground (g) therefore succeeds.

Conclusion

37. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and with variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

G Robbie

INSPECTOR