



Appeal Decision

Site visit made on 9 January 2024

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01st February 2024

Appeal Ref: APP/Q4625/C/23/3321640

9 Crophorne Road, Shirley, SOLIHULL, B90 3JW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Kulwant Singh Chana against an enforcement notice issued by Solihull Metropolitan Borough Council.
 - The notice was issued on 3 April 2023.
 - The breach of planning control as alleged in the notice is 'Without planning permission, the carrying out of unauthorised operational development consisting of the erection of two storey side and rear extensions, hip-to-gable and rear dormer extension, front porch/canopy extension and ground floor rear extension'.
 - The requirements of the notice are to:
 - i) demolish the unauthorised rear ground floor extension in the approximate position shown in blue on the enclosed plan in its entirety
 - ii) remove all equipment and materials arising from step i) from the land.
 - The period for compliance with the requirements is: 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c) 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.
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Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of two storey side and rear extensions, hip-to-gable and rear dormer extension, front porch/canopy extension and ground floor rear extension at 9 Crophorne Road, Shirley, Solihull B90 3JW.

Preliminary and Procedural Matters

Policy position

2. On 19 December 2023 the Government published a revised version of the National Planning Policy Framework (the Framework). In the interests of natural justice both of the main parties have had the opportunity to submit comments on the relevance of the Framework to this case. I have taken any comments received into consideration and in reaching my decision I have had regard to the revised Framework.
3. The Enforcement Notice makes reference to Policy P14 of the Solihull Local Plan [2013] (the SLP). It is the appellant's position that as this predates all but the first iteration of the Framework, the policy is out of date. However, having regard to Paragraph 225 of the Framework, and the common aims of protecting high standards of amenity for existing and future users of development, I find Policy P14 of the SLP is entitled to substantial weight.

Plans

4. There are a number of discrepancies between the 'as built' development shown on the submitted plans and that constructed on the site. For the avoidance of doubt, the appeal is determined on the basis of the development as constructed.

Ground (c)

5. An appeal on this ground is that the matters stated in the Notice do not constitute a breach of planning control. It is common ground between the main parties that planning permissions¹ and a Certificate of Lawfulness for Proposed Use or Development² (LDC) have been granted in relation to various extensions to the original dwelling. Furthermore, there is no dispute that the development that has taken place is different to that shown on the respective approved and certified plans.
6. The plans submitted with the LDC show a hip to gable loft conversion with rear dormer and roof lights. As the actual works that have taken place do not correspond to the details shown on the plans accompanying the LDC, it has little standing under the ground (c) claim.
7. Moreover, the works to the main roof have been integrated with other development and, according to the Council, took place simultaneously. This is not contested by the appellant.
8. Even when allowing for inconsistencies in the amended plans associated with planning permission ref.PL/2015/51534/MINFHO, and the significant number of departures from the detail of development shown on the approved plans, the integration with other works as a single operation renders the entirety of the materially different works without planning permission. The appeal on ground (c) therefore fails.
9. It is the appellant's position that the referencing of the entire works as part of the alleged breach was procedurally incorrect. However, pursuant to my finding that the whole operation was unlawful, I find the appellant's claim that the Notice was a nullity on that basis is unfounded. It follows that no alteration to the description of the alleged breach of planning control is necessary or appropriate.
10. In contrast to the appellant's contention, given the effect of s173(11) of the TCPA 1990, the Notice did not prejudice the regularisation of the works beyond its requirements. No injustice was therefore imposed by the Council's approach.

Ground (a) – the deemed application for planning permission

11. An appeal on ground (a) is that, in respect of any breach of planning control which may be constituted by the matters stated in the Notice, planning permission ought to be granted.
12. The development stated in the Notice is the entirety of the extensions to the dwelling at 9 Crophorne Road. The Council's reason for serving the Notice

¹ 2012/272 & PL/2015/51534/MINFHO

² PL/2021/00506/CLOPUD

refers to policy P14 of the SLP and the effect of the single storey rear extension upon the amenity of the adjacent property at 7 Cropthorne Road.

13. Pursuant to the previous grants of planning permission, the provisions for roof extensions under the Town and Country Planning (General Permitted Development) (England) Order 2015 and the policies within the SLP, the Council have sought action only in relation to the rear ground floor extension. There is no dispute between the main parties that the 2-storey side and rear extensions, roof alterations and front canopy are acceptable development. Accordingly, the Notice does not seek to enforce against those matters.

Main Issue

14. The main issue is the effect of the rear ground floor extension on the living conditions of neighbouring occupiers at no.7.

Reasons

15. The northern elevation of the single-storey rear extension is in similar alignment to the common boundary fence dividing the plot from the attached semi at no.7. The neighbour has an extended kitchen served by rear-facing patio doors with side-lights. The height and length of the subject extension's side elevation results in a substantially plain brick wall along the initial part of the boundary close to the glazed opening.
16. Although the extension replaced a previous conservatory in a similar position, it has a greater overall length. It has an eaves level marginally above the rear extension of no.7. It extends a similar length to a patio area immediately to the rear of the neighbouring dwelling. However, the full height of the side wall reduces at its furthest extent to incorporate a side window with part frosted glazing to prevent direct overlooking of the neighbouring property. Beyond that, deeper glazed units sit on a low wall angling away from the boundary.
17. The length of the wall provides a degree of enclosure alongside the patio and will be visible from within the neighbouring kitchen area. However, the inclusion of the lighter construction of the side glazed area reduces the perception of its length with the wall dropping to a similar height as the garden boundary treatment. In the context of the wider outlook, it will neither unduly dominate or overbear on occupiers using the room or the outside area.
18. Some loss of direct sunlight to the neighbouring property will result due to the extension. However, this would only affect a minor part of the outside area and be for a limited period during the morning.
19. The effect on the glazed openings of no.7 would be marginal compared to that of the previous extension. A glazed lantern light centred in the flat roof of the extension is set in from the eaves such that any effect of its increased height is also limited. Accordingly, I find the loss of direct sunlight or daylight would not be significant. It would not cause material harm to the living conditions of neighbouring residents.
20. For the reasons above and absence of any other identified harm to neighbours' living conditions, I find that the development aligns with the requirements in Policy P14 of the SLP as it seeks the protection of amenity of existing and potential occupiers of housing.

Other Matters

21. In support of the appellant, a letter from a neighbour, dated 23 April 2023, indicates that he intends to seek planning permission for a rear extension. This would incorporate part of the wall built on or close to the boundary with no.7. However, there is little to indicate that this process has commenced and therefore it is a matter of negligible weight in the appeal.

Conditions

22. As works substantially completed, the Council have indicated that no conditions are necessary to make the development acceptable in planning terms. Earlier permissions were only subject of time limits, reference to the relevant plans and the use of matching materials without ongoing requirements. In the circumstances where the development has been substantially completed in materials to match those of the original building, I find no reason to disagree with the Council's stance.

Conclusion

23. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the extensions as described in the notice.
24. The appeal on ground (g) does not therefore fall to be considered.

R Hitchcock

INSPECTOR