



Appeal Decision

Site visit made on 13 November 2023

by Elizabeth Jones BSc (Hons) MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 February 2024

Appeal Ref: APP/P4605/C/23/3319357

75 Ventnor Avenue, Birmingham, B36 8EF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Hafsa Majid against an enforcement notice issued by Birmingham City Council.
- The notice, numbered 2020/0777/ENF, was issued on 24 February 2023.
- The breach of planning control as alleged in the notice is without planning permission the unauthorised erection of a single storey rear extension.
- The requirements of the notice are to:
 - (i) Demolish the unauthorised single storey extension in its entirety and return the ground floor rear elevation to the condition it was before the breach took place; and
 - (ii) Remove all the demolished building materials and rubble from the premises arising from compliance with requirement (i) above.
Or alternatively
 - (iii) Carry out remedial works to ensure the development conforms to drawings 01- Existing and Proposed Plans and Elevations @ 1:200 & Site Plan @ 1:500 & Location Plan @ 1:1250" ('the approved plans') attached to the planning approval 2019/07275/PA; and
 - (iv) Remove all the demolished building materials and rubble from the premises arising from compliance with requirement (iii) above.
- The period for compliance with the requirements is 3 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 Decision: The appeal is dismissed and the enforcement notice is upheld in the terms set out below in the Formal Decision.

Procedural Matters

1. A revised National Planning Policy Framework (the Framework) came into force in December 2022. This replaces the former version referred to in the submissions by the parties. Apart from a change in paragraph numbers, the revision does not materially alter the national planning policy approach in respect of the main issues raised in this appeal and therefore the main parties have not been prejudiced by its publication.
2. Having been invited by the Planning Inspectorate, the Council has subsequently confirmed that although the address on the submitted drawing¹ is incorrect it is the correct drawing approved under planning permission Ref: 2019/07275/PA.
3. The address on the appeal form is incorrect. I have therefore used the correct address as shown on the other appeal documentation.

¹ Drawing No 1 Appendix A of the Council's Statement.

Main Issue

4. The main issue is the effect of the development on the living conditions of neighbouring residents in terms of outlook and light.

Reasons

5. The appeal property is a two-storey semi-detached dwelling located in a residential area. The appeal development has been built close to the rear side boundary with the neighbouring property No 73 Ventnor Avenue. The appeal development is higher than the intervening boundary treatment.
6. Policy DM10 of the Council's Development Management in Birmingham Development Plan Document (2021) (DMB) states that development will need to ensure adequate outlook and daylight to dwellings, in line with the approach of the '45 Degree Code' incorporated into City Note LW-4 of the Birmingham Design Guide (2022) (BDG). Development should not cross the line from an angle of 45 degrees from the nearest window providing the main source of natural light to a 'habitable room' of dwellings that could be affected. It states that there is some flexibility where it can be robustly demonstrated with appropriate evidence that adhering to the standards is not feasible due to physical constraints or financial viability issues. Any reduction in standards as a result must demonstrate that residential amenity will not be significantly diminished.
7. No 73 Ventnor Road has several windows to the front, side and rear elevations including a side extension with rooflights. The nearest window providing light to a habitable room is a rear living room window adjacent to patio doors. I have been provided with no evidence that the window does not serve a habitable room. Notwithstanding the intervening boundary treatment, given its height, depth, and close proximity to the common boundary, it is likely that the appeal development significantly reduces the amount of light reaching this rear window and has an overbearing effect on No 73. As such, the appeal development adversely affects the living conditions of the occupiers of No 73.
8. Thus, I conclude that the appeal development has an unacceptably harmful effect on the living conditions of the occupiers of No 73 with regard to loss of light and outlook. As such it conflicts with Policy PG3 of the BDP and Policies DM2 and DM10 of the DMB which state that all development will need to be appropriate to its location and not result in unacceptable adverse impacts on the amenity of occupiers and neighbours. It also conflicts with the BDG which seeks to ensure that development does not have an unacceptable impact on existing residential amenity. Furthermore, it would fail to accord with the design objectives of the Framework.

Other Matters

9. The appellant has drawn my attention to a householder prior approval notification Ref: 2023/02026/PA regarding a single storey rear extension at No 73. No detailed drawings are before me, thus I am unable to compare this possible development arising out of permitted development rights with the appeal development, which the appellant acknowledges is not permitted development. In any event there is no guarantee that this extension will be built. I therefore give this matter little weight. The comment regarding the lack

of objection from the occupants of No 73 is noted but is insufficient to influence my decision.

10. My attention has been drawn by the appellant to a number of rear extensions at several properties in various locations. I have been provided with no evidence that the 45 Degree Code was not applied in all instances as stated by the Council. Moreover, the Council submits that there may have been mitigating circumstances when approving these extensions. In any event, the location and context in which each of these extensions is seen are not directly comparable with the appeal development. Notwithstanding, I have determined the appeal before me on its own merits in relation to the development plan, the Framework, and any other material considerations.
11. Whilst I acknowledge the benefits the additional accommodation provides for the appellant's family; I am mindful that the identified harm would be permanent and is not outweighed by the appellant's particular circumstances.

Conclusion

12. There are no material considerations that indicate the deemed planning application should be determined other than in accordance with the Development Plan. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the notice and refuse to grant planning permission on the deemed application.

Appeal on ground (g)

13. The ground of appeal is that the time given to comply with the requirements of the notice falls short of what should reasonably be allowed. In this respect, three months has been given. The appellant seeks six months to comply with the notice in order to finance the work and source contractors.
14. In the public interest, the steps should be executed in a timely manner to overcome the harm identified by the Council in its reasons for issuing the notice. I consider that a period of 3 months represents a reasonable length of time for compliance and strikes the appropriate balance between the legitimate interests of enforcing planning control and the interests of the appellant. The Council has suggested that if this reasonably proves not to be the case, the appellant can ask the Council to extend the period specified in accordance with s173(9) in the notice using their powers under s173A(1) of the 1990 Act as amended. The response to such a request would be a matter for the Council, in the light of all the circumstances at the time. Therefore, the appeal on ground (g) fails.

Formal Decision

15. The appeal is dismissed, and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Elizabeth Jones

INSPECTOR