



Appeal Decisions

Site visit made on 13 November 2023

by Elizabeth Jones BSc (Hons) MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 March 2024

Appeal A Ref: APP/P4605/C/23/3325038

Appeal B Ref: APP/P4605/C/23/3325039

2 Bagshawe Croft, Birmingham, B23 5YR

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeals are made by Mr David Weldon (Appeal A) and Mrs J Weldon (Appeal B) against an enforcement notice issued by Birmingham City Council.
- The notice, numbered 2022/0046/ENF, was issued on 25 May 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
 - (ii) Remove all demolished building materials and rubble from the premises arising from the compliance with requirement (i) above.
- The period for compliance with the requirements is 3 months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (f), (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.
- Appeal B is proceeding on the grounds set out in section 174(2) (f) and (g) of the Act.

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

Applications for Costs

1. An application for costs was made by Mr David Weldon and Mrs J Weldon against Birmingham City Council. This application is the subject of a separate Decision.

Procedural Matters

2. 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.
3. In their submissions on ground (a) the appellant refers to the General Permitted Development Order 1995. For the avoidance of doubt, the relevant legislation is the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) which was in force at the time the development was carried out.

Appeal A on ground (a)

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 predominantly residential area. The appeal development has been built close to the rear side boundary with the neighbouring property No 4 Bagshawe Croft.
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. The parties agree that the appeal development fails to comply with the 45 Degree Code. Albeit the neighbours ground floor room has a window to the front, given its height and depth and proximity to the common boundary, the appeal development diminishes the outlook and reduces the amount of light reaching the nearest rear habitable room window, in this case patio doors, at No 4. As such, despite its north-east orientation, the appeal development adversely affects the living conditions of the occupiers of No 4.
8. The appellant argues that the appeal development could be knocked down and an extension of 3 metres in depth could be erected under permitted development rights (PD) by virtue of the GPDO. An extension of this depth would, in my view, be less harmful than the appeal development which is 3.76 metres in depth. Whether or not an extension could be constructed under PD or the prior approval process, no detailed drawings are before me. Thus, I am unable to compare a hypothetical extension arising out of PD rights as suggested by the appellant with the appeal development, which the appellant acknowledges is not PD due to its projection from the rear elevation.
9. Article 3(5) of the GPDO states that the permission granted by Schedule 2 does not apply if: (a) in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful. Thus, here, the fallback position would only be available once the unauthorised extension is demolished.
10. In any event, to be a material consideration, a fallback position must be a realistic option and not merely a theoretical prospect of being an alternative. The appellant comments that this option "would disturb the neighbour and would be a highly unsustainable option". I have no substantive evidence to

indicate that there is a real prospect that the appellant would demolish and reconstruct an extension in line with PD. As such, it does not afford a credible fallback position that would warrant the grant of planning permission on the deemed planning application.

11. I am informed that the former conservatory was approximately 3 metres in depth and being fully glazed light was able to pass through. The appeal development is approximately 700 mm deeper and of solid construction. Thus, it is reasonable to assume, the appeal development has a more harmful impact on the neighbours' living conditions than the former conservatory in terms of light and outlook.
12. I conclude that the appeal development has an unacceptably harmful effect on the living conditions of the occupiers of No 4 with regard to loss of light and outlook. As such, it conflicts with Policy PG3 of the Birmingham Development Plan 2031 (2017) (BDP), 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 and the Council's Supplementary Planning Document The 45^o Code 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.
13. The Council assessed the appeal development under Policy PG3 and DMB Policies DM2 and DM10. There is no evidence that the Council failed to take into account the design principles contained in Design Principle 12 of the BDG which refers to these policies.

Other Matters

14. The matters referred to by the appellant as non-planning matters, including access to the neighbour's property and the boundary fence are noted but do not influence my decision. Also, the appellant's comments regarding third party objections are not matters determinative to the appeal.
15. Whether or not certain parts of the appeal development could be considered as de minimis and whether it was expedient to issue the notice is a matter for the Council and is not relevant to the s174 grounds of appeal.
16. The appellant refers to other rear extensions in the area. Apart from an aerial image, no details have been provided and I do not know if they are directly comparable with the appeal development. In any event, I have determined the appeal before me on its own merits in relation to the development plan, the Framework and any other material considerations.

Conclusion

17. For the reasons given above, I conclude that the appeal on ground (a) should not succeed.

Appeals A and B on ground (f)

18. The appeals on ground (f) are that the requirements of the notice exceed what is necessary to achieve the purpose. The purposes of an enforcement notice are set out in section 173 of the Act¹. As the enforcement notice requires the

¹ S173 of the Act - Those purposes are—

demolition of the extension, the purpose is clearly to remedy the breach of planning control. No lesser steps would achieve that purpose.

19. The appellants consider it excessive for the notice to require demolition of the extension when the extension could be reduced to 3 metres in depth as per PD. Since it is the whole of the appeal development that is in breach of planning control it is not excessive to require the whole to be removed. Moreover, having regard to Article 3(5) of the GPDO above, the appellants are mistaken in suggesting that the unlawful appeal development could be modified. I have considered the fallback position under ground (a) and for the reasons given above, have discounted it. I accept that enforcement action is intended to be remedial not punitive and have considered the ground (a) appeal development on its own individual planning merits.
20. The appellant contends that the requirements of the Enforcement Notice are contrary to their Human Rights. The Human Rights Act 1998, Article 8, as set out in Schedule 1, is primarily concerned with the right to private and family life without interference. In addition, Article 1 of the First Protocol sets out the right to peaceful enjoyment of possessions. I recognise that this appeal concerns the appellant's home and family life. However, it does not follow that removal of the extension would be a violation of their human rights. I have already found that the requirements in the enforcement notice are not excessive to remedy the breach of planning control. In terms of Human Rights, I find that they are not a disproportionate remedy when balanced against the need to uphold the operation of the planning system, which includes the requirement for development to accord with the planning policies of the Council's statutory Development Plan; that being made and applied in the wider public interest.
21. For the reasons given above, I conclude that it is not excessive to require the removal of the extension. No lesser steps would remedy the breach of planning control that has occurred. The appeals on ground (f) therefore fail.

Appeals A and B on ground (g)

22. An appeal on ground (g) 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 appellants seek a period of six months to comply with the notice in order to source contractors.
23. 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. From all I have seen and read, 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 appellants. 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

(a)remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or
(b)remedying any injury to amenity which has been caused by the breach.

the Council, in the light of all the circumstances at the time. Therefore, the appeals on ground (g) fail.

Formal Decisions

Appeal A: APP/P4605/C/23/3325038

24. 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.

Appeal B: APP/P4605/C/23/3325039

25. The appeal is dismissed, and the enforcement notice is upheld.

Elizabeth Jones

INSPECTOR