



Appeal Decision

Site visit made on 13 February 2024

By Elaine Gray MA, MSc, IHBC

an Inspector appointed by the Secretary of State

Decision date: 26th March 2024

Appeal Ref: APP/Z4718/C/23/3322041

1 Thornie View, Dewsbury, WF12 9DP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Asjid Hussain against an enforcement notice issued by Kirklees Metropolitan Council.
 - The notice was issued on 12 April 2023.
 - The breach of planning control as alleged in the notice is: Without the benefit of planning permission, the erection of a first floor rear extension.
 - The requirements of the notice are to: a) Dismantle and demolish the first floor rear extension in its entirety; b) Return the dwellinghouse to its condition prior to the breach taking place; c) Remove from the land all debris and resultant materials from carrying out the above steps. Or; d) Dismantle and demolish the first floor rear extension in its entirety; e) Reconstruct the first floor rear extension in strict accordance with planning permission 2021/62/93250/E and approved plans, drawing number 5A (existing and proposed rear elevations) as attached to the notice; f) Remove from the land all debris and resultant materials from carrying out the above steps.
 - The periods for compliance with the requirements are: Three months for steps a) – c); Six months for steps d) – f).
 - 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.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Ground (a) and the deemed planning application

Main Issue

2. The main issue is the effect of the development on the living conditions of neighbouring residents, with particular regard to overbearing, outlook and daylight.

Reasons

3. The appeal site is a two-storey end of terrace dwelling in a row of three similar dwellings. Planning permission, ref: 2021/62/93250/E, was granted for the construction of a first-floor bathroom and bedroom extension over an existing single storey rear extension. The proposal included the setting in of the new extension by about 1.5m from the boundary of the adjoining property at 2 Thornie View. As built, the new extension is offset from the boundary but does not achieve the 1.5m gap which, in the Council's view, made the development acceptable in terms of its effects on No 2.

4. The Council's document entitled 'House Extensions and Alterations SPD' (SPD) sets out detailed guidance for two-storey rear extensions. Amongst other things, these should be separated from the property boundary, such as a wall, fence or hedge, by at least 1.5m, and should not adversely affect habitable room windows where they adjoin a neighbour's boundary.
5. The appellant provides an aerial photograph of the terrace prior to the unauthorised development taking place. This image shows that previously, Nos 1 and 2 had flat roofed two storey rear extensions which projected to the same depth from the rear elevations. Because of this equal depth, the first-floor bedroom window at No 2 had an uninterrupted, open outlook across the plot of No 1. The introduction of the new first floor extension, in close proximity, intrudes on the natural line of vision, resulting in an increased sense of enclosure.
6. The amount of natural daylight reaching this window and the ground floor window beneath it will also have been reduced. As the rear elevation of No 2 faces north-west, it will experience very little direct sunlight during the day, and therefore, the loss of daylight will be all the more significant. Similarly, the back garden of No 2, which is the main outdoor space for the property, will feel more enclosed by the first-floor extension as built.
7. I accept that the new extension projects to the same depth as approved. However, given the modest size of the houses, and the fact that the windows at No 2 are so close to the shared boundary, I do not agree that the increased size of the extension has a negligible effect. Although the windows at No 2 are relatively wide, the outlook for occupants is already confined by the shorter garden plot and presence of trees and vegetation along the railway line. In that context, then, even the relatively small extra width to the extension has had an unacceptably harmful effect on living conditions at No 2.
8. My attention has been drawn to an example at 103 Headfield Road where a two-storey rear extension was allowed under planning permission ref: 2021/62/94450/E. However, in that case, the neighbouring dwelling sits to the south of No 103, and its rear elevation faces almost due east, meaning that the development will have a significantly lesser effect on daylight. This detail alone demonstrates that this example is not directly comparable to the case before me, which limits the weight I can afford it.
9. Some other examples have been alluded to in the area, but I am not aware of their planning history, which lessens the weight I can afford them. I agree that proposals of this kind are not necessarily harmful, and are dependent on the circumstances of each individual site. However, in this particular case, I see no justification to set aside the minimum 1.5m set back from the boundary that the SPD recommends for proposed two storey rear extensions.
10. I note the appellant's comments on the 45 degree rule. However, I have not been provided with the extract he refers to, and in any event, this rule is only a starting point for consideration.
11. Taking these factors in combination, I conclude that the development is unacceptably harmful to the living conditions of occupants at 2 Thornie View. It therefore conflicts with Policy LP24 of the Kirklees Local Plan, which requires development to promote good design by ensuring, amongst other things, that extensions should minimise impact on residential amenity of future and

neighbouring occupiers. For that reason, it is at odds with the development plan as a whole. It also conflicts with the guidance of the SPD, and the National Planning Policy Framework, which seeks to ensure that new development is appropriate for its location in terms of living conditions.

Ground (f)

12. Ground (f) is that the steps required to comply with the requirements of the notice are excessive. The appellant argues that, instead of removing the entire extension, a partial demolition and reconstruction in line with the 2021 approved scheme would be more appropriate. As this is essentially the option given in requirements d) – f), I am satisfied that an acceptable lesser step has already been encompassed within the enforcement notice.
13. On that basis, the appeal on ground (f) fails.

Ground (g)

14. Ground (g) is that the time given to comply with the notice, in this case three months and six months for the respective steps, is too short.
15. The appellant argues that these timescales do not allow him sufficient time to finance the work, or to find reputable contractors. He highlights the ongoing shortage of skills in the construction sector. As he and his family reside at the property, he needs extra time to plan the work so as to minimise disruption to them. He therefore considers that the period for compliance should be extended to one year.
16. However, allowing a year to comply with the notice would be tantamount to granting a temporary permission for the unauthorised development. To allow the harm to living conditions to persist for a further year would not be justified. It would call into question whether it was expedient for the Council to enforce in the first place, and would erode the confidence of the public in the efficacy of the planning system.
17. With regard to the financing of the work, the appellant has effectively incurred these costs himself by carrying out development without planning permission, and so this factor in itself does not justify an extension of the time period.
18. The appellant is entitled to anticipate success on ground (a), and should not be expected to begin preparations to remedy the breach prior to the outcome of the appeal. I also accept that there may be some practical difficulties involved in carrying out the requirements. However, the works are relatively small in scale, and I am mindful that the Council has powers to extend the compliance period, should this prove necessary.
19. Taking all these circumstances into account, I am not satisfied that there is good reason to extend the compliance periods set out in the notice.
20. The appeal on ground (g) therefore fails.

Conclusion

21. The appeal is dismissed, the deemed planning application is refused, and the enforcement notice is upheld.

Elaine Gray INSPECTOR