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## Appeal Decisions

Site visit made on 29 April 2024

by **H Davies MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 07 May 2024

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**Appeal A Ref: APP/P4605/C/23/3326893**

**Appeal B Ref: APP/P4605/C/23/3326894**

**54 Towyn Road, Moseley, Birmingham B13 9NA**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended (the Act).
  - The appeals are made by Mr Banaras Khan (Appeal A) and Mrs Naheed Akhtar (Appeal B) against an enforcement notice issued by Birmingham City Council.
  - The notice was issued on 12 July 2023.
  - The breach of planning control as alleged in the notice is, without planning permission, the erection of an unauthorised single storey rear annex extension in the approximate position marked in green on the attached plan.
  - The requirements of the notice are to:
    - (i) Demolish the unauthorised single storey rear annex extension in its entirety and return the ground floor rear elevation to the condition it was in before the breach took place; and
    - (ii) Remove all demolished building materials and rubble from the premises arising from compliance with requirement (i) above.
  - The period for compliance with the requirements is 4 months.
  - Appeal A is proceeding on the grounds set out in sections 174(2)(a), (f) and (g) of the Act. 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 sections 174(2)(f) and (g) of the Act.
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### Decision

1. It is directed that the enforcement notice is varied as follows -
  - In section 6 (time for compliance), delete the words '4 months' and substitute the words '6 months'.
2. Subject to this variation the appeals are 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

3. A previous application to retain a single storey ancillary annex extension at the site (ref 2022/07298/PA) was refused. An appeal against the refusal was subsequently dismissed. The development subject to this notice is similar to that which has already been refused.

### The appeal on ground (a) and the deemed planning application

4. The 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. The terms of the deemed planning application

are derived from the allegation set out in the notice, as corrected. Hence, planning permission is sought for a single storey rear annex extension in the approximate position marked in green on the attached plan.

### *Main Issue*

5. The main issue is the effect of the proposed development on the character and appearance of the site and the surrounding area.

### *Reasons*

6. 54 Towyn Road is a two storey terraced dwelling in a primarily residential area of similar dwellings. The appeal site is an irregular T shape, having incorporated additional land which was previously part of the garden of 95 Springfield Road. The development subject to this appeal is located within and covers the vast majority of this additional land.
7. The Towyn Road terrace features long narrow plots with gardens proportionate to the dwellings. Springfield Road runs roughly at right angles to Towyn Road, and features larger semi-detached dwellings set within long plots. The rear gardens of this part of Towyn Road join the generous wide gardens of dwellings on Penshaw Grove. Despite the presence of some outbuildings, particularly at the end of gardens on Springfield Road, the adjoining gardens mean the area around the appeal site has an open and spacious character. Prior to the appeal development being built, the appeal site would have reflected and been in keeping with this prevailing pattern of development.
8. The development subject to this appeal is substantial. It largely fills the additional area of land and is built right up to the southern and western boundaries and with only a narrow gap to the northern boundary. This results in a development that is cramped and awkward within its space and is entirely out of keeping with the surrounding pattern of development. The building has a footprint greater than the original dwelling and its overall scale and mass are entirely out of proportion with the host dwelling.
9. There are no other structures in the area of a comparable scale, within a single plot. There is a block of built form nearby consisting of 2 outbuildings in adjoining gardens on Springfield Road. However, even this is not as large as the appeal development and is spread across two plots so I do not consider it a relevant comparison. Therefore, although it does not impact on the street scene, the appeal development is out of keeping with and detrimental to the open and spacious character of its garden setting. Its appearance is incongruous, overly dominant and fails to respond appropriately to its context.
10. I conclude that the development causes unacceptable harm to the character and appearance of the site and the surrounding area. As such, the development does not comply with Policy PG3 of The Birmingham Development Plan 2031 (adopted 2017) (BDP), Policy DM2 of the Development Management in Birmingham Development Plan Document (adopted 2021) (DPD), and guidance set out in the Birmingham Design Guide Healthy Living and Working Places City Manual Supplementary Planning Document (adopted 2022) (SPD). Together, amongst other things, these policies seek to ensure that development is of a high design quality, suitable to its location, reinforces local distinctiveness, responds to the local context, and that outbuildings and extensions are in proportion to the house.

### *Other Matters Relating to Ground (a)*

11. I note the lack of objection to the development from the occupant of one of the adjoining dwellings. This does not outweigh the matters outlined above. I find no specific conflict with the aim of achieving sustainable neighbourhoods. Despite this, Policy TP27 (Sustainable neighbourhoods) of the BDP also requires high quality design which, as set out above, I do not consider the development to be.
12. In their reasons for issuing the notice, and in their statement, the Council do not raise any specific issues regarding the impact of the development on the living conditions of occupants of the dwelling, or occupants of neighbouring dwellings. On the basis of my site visit, while the remaining outdoor space is limited, and the development is visible from surrounding dwellings, I have no substantive reason to conclude that the development has an unacceptable impact on amenity. Despite this, Policy DM2 (Amenity) of the DPD also requires development to be suitable to its location which, as set out above, it is not.

### *Conclusion on ground (a) and the deemed planning application*

13. I conclude that the development conflicts with the development plan as a whole and there are no material considerations which indicate that a decision should be taken other than in accordance with the development plan. Therefore, the appeal on ground (a) fails and planning permission is refused.

### **The appeals on ground (f)**

14. An appeal on this ground is 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. The notice requirements in this case seek to remedy the breach of planning control.
15. The appellants have suggested the development could be amended to a flat roof. Even with a flat roof, the development would not be permitted development, which the appellants accept, so would still require planning permission. While a flat roof would reduce the impact to a modest extent, the overall scale, mass, and layout would remain unacceptable. I do not find this an acceptable alternative scheme which could be granted planning permission. Hence the breach would not be remedied by changing the development to a flat roof. On the evidence provided to me, there are no lesser steps which would remedy the breach of planning control. The appeals on ground (f) fails.

### **The appeals on ground (g)**

16. An appeal on this ground is that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed. The works required to remove the extension are considerable, and it may not be practical to complete them within 4 months, particularly given the lack of a easy route to remove materials from the site. However, 9 months seems excessive, bearing in mind the harm and lack of policy compliance I have identified which needs to be addressed without undue delay. In balancing the harm resulting from the breach of planning control against the practicalities of removing the extension, I consider it reasonable and proportionate for the compliance period to be 6 months.

17. I conclude that the period for compliance with the notice falls short of what is reasonable. It would be reasonable to vary the compliance period to 6 months and the appeal on ground (g) succeeds. I shall uphold the notice but exercise my powers under s176(1)(b) of the Act to vary the notice accordingly.

### **Conclusion**

18. For the reasons given above, I conclude that the appeal on ground (a) should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act as amended. The appeals on ground (f) also fails. However, I conclude that the period for compliance with the notice falls short of what is reasonable. Therefore, I shall vary the period for compliance, prior to upholding the notice. The appeals on ground (g) succeeds to that extent.

*H Davies*

INSPECTOR