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# Appeal Decision

Site visit made on 1 May 2024

**by H Davies MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 09 May 2024**

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**Appeal Ref: APP/P4605/C/23/3328170**

**44 Daisy Road, Birmingham B16 9DZ**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act).
  - The appeal is made by Mr Wajid Ali against an enforcement notice issued by Birmingham City Council.
  - The notice was issued on 25 July 2023.
  - The breach of planning control as alleged in the notice is the unauthorised erection of a single storey rear building in the approximate position marked in green on the attached plan.
  - The requirements of the notice are to:
    - (i) Demolish the unauthorised development in its entirety; and
    - (ii) Remove all demolished materials as a result of compliance with (i) from the premises.
  - The period for compliance with the requirements is 6 months.
  - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) 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.
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## Decision

1. It is directed that the enforcement notice is corrected as follows:
  - In section 5, at requirement (ii), delete the character '5'.
2. Subject to this correction the appeal is dismissed and the enforcement notice is upheld.

## The notice

3. I have a duty to get the notice in order and s176(1) of the Act grants powers to (a) correct any defect, error or misdescription in the enforcement notice, and/or (b) vary the terms of the notice, provided it would not result in injustice to the appellant or the Council. Requirement (ii) contains a random '5' character in it, which seems to be a typing mistake. The meaning of the requirement is clear, so I am satisfied that I can correct the notice accordingly without causing injustice, as set out in the decision.

## Preliminary matters

4. I note that the appellant states they have discussed the development with a neighbour and representatives of the Council planning team. Regardless of any such discussions, the development does not benefit from planning permission.

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

5. 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. Hence, planning permission is sought for a single storey rear building.

#### *Main Issues*

6. The main issues are:
- The effect of the development on the character and appearance of the site and the surrounding area;
  - The effect of the development on the living conditions of the occupants of the adjoining dwelling at 42 Daisy Road, with regard to outlook and light; and
  - Whether the development provides acceptable living conditions for occupants of the appeal site, with regard to outdoor amenity space.

#### *Reasons – Character and appearance*

7. 44 Daisy Road is a two-storey, mid-terrace property within a predominantly residential area. Its garden backs onto public open space around a reservoir. The dwelling is in a prominent elevated position above the reservoir, with open slatted fencing along the rear boundary.
8. A single storey building to the rear of the dwelling has been partially constructed. At the time of my site visit, the side walls were in place, but there was no end wall or roof.
9. The footprint of the development is large and disproportionate to the size of the dwelling and the site and results in a cramped and confined appearance. I acknowledge that there are other single storey rear extensions, in a similar position, in the surrounding area. Some of these appear to be original with others being more recent additions. However, none of the other extensions project as far from the original main rear elevation as the appeal development, and it is also wider than most in the area. As such, the development is at odds with the surrounding built form.
10. The development is highly visible from the open space to the rear and its elevated position increases its prominence and exacerbates its detrimental impact on the visual amenity of the area. It is not visible from the front so does not impact on the main streetscene.
11. 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). This seeks to ensure high design quality, which responds to the site conditions and the local context.

#### *Reasons – Living conditions: Occupants of No 42*

12. The depth of the development is considerable, and it projects significantly further than the single storey elements at dwellings to either side. The development is right on the boundary with 46 Daisy Road but adjoins a rear projection at No 46 for around half its depth, which limits the impact on No 46.

13. Policy DM10 of the Development Management in Birmingham Development Plan Document (adopted 2021) (DPD) specifies that 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 (referred to as the '45-degree code').
14. The development is set off from the boundary with 42 Daisy Road by a narrow strip. No 42 has a rear and a side facing window at ground floor level. These appear to serve habitable rooms and are in close proximity to the appeal development. Although I have not carried out formal calculations, from observations made during my site visit, the appeal development clearly breaks the '45 degree code' with regard to both of these windows at No 42.
15. Despite only being a single storey, due to a combination of the length, the proximity to the boundary and the narrowness of the plots, the development is a dominant and visually oppressive feature from the perspective of No 42. It would have an enclosing and overbearing effect on the outlook, and unacceptably reduce the amount of light received, from the rear ground floor windows serving habitable rooms at No 42.
16. I conclude that the development causes unacceptable harm to the living conditions of the occupants of a neighbouring dwelling, with regard to outlook and light. As such, the development does not comply with Policies DM2 and DM10 of the DPD. Together, amongst other things, these policies seek to ensure that development does not result in unacceptable adverse impacts on the amenity of neighbours, including consideration of outlook and light.

*Reasons – Living conditions: Appeal site occupants*

17. The development would leave only a small area of yard as outdoor amenity space to serve the appeal site dwelling. Gardens in the area are typically quite modest, and many have been reduced by the erection of rear extensions. Notwithstanding this, some of the other dwelling on Daisy Road also have outdoor space to the front and none of the nearby dwellings have outdoor space as small as that resulting from the appeal development.
18. The dwelling has already been extended, including into the roof, and I am informed it is in use as a house in multiple occupation. The remaining outdoor space would not be sufficient to meet the reasonable needs of the occupants of the extended dwelling to the detriment of their residential amenity. While proximity to the reservoir is noted, there is no direct access from the dwelling to the public open space and it does not outweigh the lack of adequate private outdoor space to serve the dwelling.
19. I conclude that the development does not provide acceptable living conditions for occupants of the appeal site, with regard to outdoor amenity space. As such, the development does not comply with Policies DM2, DM10 and DM11 of the DPD which seek to ensure that development provides access to sufficient and usable outdoor amenity space.

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

20. 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 not granted.

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

21. The 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.
22. The appellant has not set out any lesser measures which might remedy the breach. There are no obvious alternatives or lesser steps which would remedy the breach of planning control. On this basis, the appeal on ground (f) fails.

### **Conclusion**

23. 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 1990 Act as amended. The appeal on ground (f) also fails.

*H Davies*

INSPECTOR