



Appeal Decisions

Site visit made on 15 April 2024

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 17 May 2024

Appeal Ref: APP/P3420/C/23/3316348 ('Appeal A')

1 Beresford Crescent Newcastle-under-Lyme ST5 3RG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Dr Shamylla Samad against an enforcement notice issued by Newcastle-Under-Lyme Borough Council.
- The enforcement notice was issued on 18 January 2023.
- The breach of planning control as alleged in the notice refers to a planning permission granted on 18 January 2022 subject to conditions, and states that *it appears to the Council that the Permission has not been complied with, because the two storey side extension is larger in form, massing and scale than the condition 3 limitations permit.*
- The requirements of the notice are to (1) demolish and permanently remove the Unauthorised Development; and (2) remove all building materials resulting from the demolition of the Unauthorised Development from the Land.
- The period for compliance with the requirements is nine months.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeal is allowed and the enforcement notice is quashed.

Appeal Ref: APP/P3420/D/22/3312162 ('Appeal B')

1 Beresford Crescent Newcastle-under-Lyme ST5 3RG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Dr Shamylla Samad against the decision of Newcastle-Under-Lyme Borough Council.
- The application Ref 22/00754/FUL, dated 1 September 2022, was refused by notice dated 18 November 2022.
- The development proposed is described in the Council's decision notice as *Variation of condition 3 of planning permission (allowed at Appeal) 21/00569/FUL to reflect changes to the design and the addition of 2 skylights to the roof at the rear.*

Summary Decision: The appeal is allowed.

Appeal Ref: APP/P3420/D/22/3312165 ('Appeal C')

1 Beresford Crescent Newcastle-under-Lyme ST5 3RG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Dr Shamylla Samad against the decision of Newcastle-Under-Lyme Borough Council.
- The application Ref 22/00753/FUL, dated 1 September 2022, was refused by notice dated 18 November 2022.
- The development proposed is described in the Council's decision notice as *Retention of double storey side extension and roof alterations.*

Summary Decision: The appeal is allowed.

Application for costs

1. An application for costs was made by Dr Samad against the Council. This application is the subject of a separate Decision.

Main Issue

2. The main issue in all the appeals is whether the two-storey side extension that has now been built at 1, Beresford Crescent, adversely affects the character and appearance of the area. The Council's reasons for issuing the enforcement notice and for refusing the planning applications were that it appeared to them that the extension is not subordinate to the host dwelling and is harmful to the character and appearance of the area.

Preliminary Matters

3. Before coming onto the main issue about whether planning permission should be granted, some preliminary matters arise in respect of the notice and the applications.
4. The two planning appeals (B and C) relate essentially to the same development, but the applications are differently framed. Appeal B seeks to carry out development previously permitted but without complying with a planning condition to which that earlier permission (allowed on appeal under Inspectorate reference APP/P3420/D/21/3282673 on 18 January 2022) was made subject. I shall refer to this as the 'Existing Permission'. In effect, the appellant sought to substitute the 'plans' condition. At the time of making the application that is now the subject of Appeal B, the development was said to have begun, on 21 August 2022, but not been completed.
5. The application now forming Appeal C was made on the same day as Appeal B, 1 September 2022, but that application indicated that the development had been begun on 2 August and was completed on 26 August.
6. The appellant refers to pre-application correspondence from the Council to the effect that the changes to the development that had been permitted on appeal were so substantial that they fell outwith the Existing Permission, and that an application to develop without complying with the 'plans' condition would be inappropriate. Subsequently, the appellant submitted two separate applications. In the event, however, the Council's reasons for refusing the 's.73 application', now Appeal B, did not relate to the scope of the application but only to its merits.
7. The enforcement notice is somewhat difficult to understand. It appears to the Council that there has been a breach of planning control within paragraph (b) of section 171A(1) of the 1990 Act, thus indicating that the Council considered that development had been carried out without complying with a planning condition. The alleged breach of planning control is that "the [Existing] Permission has not been complied with", which does not tell me (or the recipient of the notice) whether the Council think development has been carried out without planning permission altogether, or only by failing to comply with a condition or limitation imposed on an existing grant of permission. It fails to raise a proper allegation.
8. The Council's reasons for issuing the notice say that it appeared to them that the breach of planning control had occurred within the previous four years,

which would not be the appropriate period to refer to in the case of an alleged breach consisting of a failure to comply with a condition, but would have been apt where the development appeared wholly unauthorised. The remedy sought is the complete demolition and removal of the 'Unauthorised Development'. It is quite unclear from paragraph 3 of the notice whether the 'Unauthorised Development' means the two-storey side extension *in toto* or the two-storey side extension inasmuch as it is "larger in form, massing and scale" than the Existing Permission's plans condition allowed. The requirements are to demolish and remove the Unauthorised Development. If this means removal of the side extension altogether, this would be a disproportionate remedy to an allegation of a breach of a planning condition. There is no positive requirement set out in the notice to alter the development so as to comply with the terms and conditions of the planning permission that had been granted, as is envisaged by section 173(4) of the Act in such cases.

9. Given the overall outcome of the case and the existence of other appeals concerning the same subject matter, I do not need to consider whether the notice is capable of correction, because I am quashing it anyway. Ordinarily I should need to decide exactly what is alleged by the notice in order to understand the deemed planning application that would arise on ground (a) in Appeal A. If it were to constitute an allegation of a failure to comply with a planning condition, the deemed application would be equivalent to the true nature of the application in Appeal B. If it constitutes an allegation of development without planning permission at all, it is akin to Appeal C. The difference is that in Appeal B I should consider the conditions to which the Existing Permission should be made subject, and more specifically whether to substitute the plans condition; whereas in Appeal C I should consider a straightforward retrospective application.
10. However in making Appeal B the appellant (as with Appeal C) did not supply any plans that were submitted with the application, and nor did the Council. It appears to me unreasonable to permit a development of the same description as the Existing Permission, namely the erection of a two-storey side extension, without any reference to any plans depicting what might be approved.
11. It is therefore not possible to entertain any of the appeals except retrospectively in the light of what has now actually been built, and deciding whether or not to grant permission for what is now there. In reality this is what is sought by the appellant. Therefore, although technically there are three appeals before me each seeking planning permission in some form, I shall consider whether to grant a single permission in respect of the development that has been carried out and dispose of all appeals as befits that outcome.

Reasons

12. In determining whether to grant permission I am bound to have regard to the Existing Permission. Irrespective of whether the present development is to be viewed merely as a deviation from the 'plans' condition or as a different development altogether, that Existing Permission is not yet time-expired and it thus constitutes a fallback position for the appellant. Building out that exact permission appears somewhat unrealistic in the light of the water company's technical concern that the corner of the extension should not be built above the existing sewer. Nonetheless in the light of the previous Inspector's decision I have no reason to think that a similar development, overcoming the water

company's concern perhaps by truncating the rear corner of the development, would not have been approved.

13. The differences between the plans approved under the Existing Permission and what has been carried out on site are helpfully set out by the parties. The Existing Permission was obtained on appeal following a re-submission of an earlier proposal. I have not seen the plans of that earlier (refused) proposal but I understand from the documents before me that changes were then made to reduce the size of the extension to result in the proposal for which the Existing Permission was granted. The previous Inspector referred to the width of the extension having been 'reduced' to 3.85m.
14. In that Inspector's judgement, that reduced width, combined with the set back from the principal wall of 500mm and a drop in ridge height of 450mm, would make the proposal appear subordinate to the host dwelling. This was because the roofline would not protrude above the roofline of the existing dwelling and the set back would, she said, overcome bonding and brick matching problems. The width of the extension would be less than the width of the host dwelling and there was sufficient space on the site to accommodate the proposal.
15. The relevant policy context for consideration of the proposal is provided by the Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy ('CSS') 2006–2026, adopted in 2009, and the Newcastle-under-Lyme Local Plan ('LP') 2011, adopted in 2003, which together constitute the development plan for the area.
16. CSS policy CSP1 seeks to ensure good design that contributes positively to the area. LP Policy H18 specifically applies to the design of residential extensions, requiring that they should be subordinate to the design of the original dwelling; use complementary materials; and should not detract materially from the character or integrity of the original dwelling or the street scene.
17. The Council's officer reports on the applications are again somewhat difficult to understand, pointing out that the extension is larger than that permitted by the previous Inspector and finding that "consequently" the changes made are not acceptable. Yet the previous Inspector was not considering any different proposal.
18. The extension that has been constructed is just over 4m wide, so around two-thirds of the width of the pre-existing building. The eaves of the extension are flush with the existing dwelling. Some setback, of around 40cm from the principal wall of the dwellinghouse and further from the front of the dominant bay window, is achieved, thus avoiding the bonding or brick-matching concerns recognised by the previous Inspector. The ridge set-down is perceptible, although not significant, although the set-back from the front elevation and roof plane helps to achieve an impression of this being further reduced especially on the approach descending Pilkington Avenue.
19. The property lies on the corner of Beresford Crescent and Pilkington Avenue and within a short distance of the main Whitmore Road, and thus occupies a prominent position within the Westlands. Approaching the site from Whitmore Road, the extension does not look out of place but appears to make good use of the spacious plot, with an adequate separation distance achieved from the existing detached garage. The building line of the street is not disturbed as a result of the extension.

20. Overall, and on balance, the extension manages to achieve the appearance of being subordinate to the original dwellinghouse, so meeting the first criterion of policy H18. I do not understand there to be any issue raised by the Council as to the design (save for the size) or the materials used, and I find these to be reasonably well-matched and likely to assimilate over time, so meeting the second criterion. The third criterion requires an assessment of whether the extension detracts materially from the character or integrity of the original dwelling or the street scene. The extension here is in keeping with the area's character of large semi-detached dwellings that are generally built out almost to the sides of their own plots of land and does not appear significantly more overdeveloped than those, including the opposite corner plot at no. 2. It does not detract from the original dwelling or the street scene and thus this third criterion is also met.
21. It follows that I do not find there to be any overall conflict with the development plan for the area, and no material considerations are brought to my attention that would indicate a decision except in accordance with the development plan. Therefore permission will be granted.
22. As set out above, I will grant only one permission and will do so on a retrospective basis; namely to grant permission for the development that has already been carried out. I have had regard to the conditions suggested by the Council in the event that permission is granted. The first of those requires compliance with certain plans. As the development is now largely complete I find those to be unnecessary. The second refers to the use of matching materials but again this is unnecessary for the same reason.
23. The groundworks are however not yet completed, and the previous Inspector imposed a number of conditions aimed at securing both the protection of nearby trees and the safety of highway users for the duration of the development then proposed including after it was to have been occupied and brought into use. I shall reimpose those where of continuing relevance, although with some combination. The details of the access and parking areas shall require the Council's written approval, and I envisage that those details will include the details of the surfacing materials that must then be provided and retained. All such details will need to have regard to the root protection areas of the nearby trees.

Conclusion

24. For the reasons given above I conclude that the appeals should succeed and a planning permission will be granted for the development that has been carried out.

Formal Decisions

25. The appeals are allowed, the enforcement notice is quashed, and planning permission is granted for the development already carried out, namely the construction of a two-storey side extension and roof alterations to the dwellinghouse at 1 Beresford Crescent, Newcastle-under-Lyme ST5 3RG subject to the following conditions:
- (1) The detached garage building on the land shall be retained for the parking of motor vehicles and cycles. It shall at no time be converted to living accommodation without the prior written permission of the local planning authority.

- (2) The development hereby permitted shall not be occupied or brought into use until written approval of the local planning authority has been obtained for the details of access and parking areas on the land, including the timing of their provision. Those details shall include and provide for the appropriate surfacing of the access and parking areas and all details shall have regard to the findings of the BS5837 Tree Survey & Arboricultural Impact report dated 14 March 2021. Any such access and parking areas shall be provided in accordance with the approved details and in accordance with the approved timetable, and thereafter retained and maintained for the lifetime of the development.

Laura Renaudon

INSPECTOR