



Appeal Decision

Site visit made on 14 May 2024

by H Davies MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 May 2024

Appeal Ref: APP/U3935/C/23/3329502

72 Goddard Avenue, Swindon SN1 4HS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act).
 - The appeal is made by Mrs G O'Connell against an enforcement notice issued by Swindon Borough Council.
 - The notice was issued on 16 August 2023.
 - The breach of planning control as alleged in the notice is, without planning permission, the unauthorised operational development of the erection of a large dormer on the rear of the dwelling on the Site.
 - The requirements of the notice are to:
 - (a) Remove from the dormer from the rear elevation of the dwelling on the Site as shown in the attached photo of the Site which is within the redline plan.
 - (b) Remove all resultant materials from the Site following compliance with (a).
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) 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. It is directed that the enforcement notice is corrected as follows:
 - In section 5 (what you are required to do), delete the first use of the word 'from'.
2. Subject to this correction, the appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the development already carried out, namely, erection of a large dormer on the rear of the dwelling.

Application for costs

3. An application for an award of costs has been made against Swindon Borough Council. The application is the subject of a separate decision.

The notice

4. 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 (a) includes an extra 'from' as its second word, which appears to be a drafting error.

5. However, the notice also specifies that the dormer is located on the rear elevation and a photograph of it is attached to the notice. Therefore, despite the extra word in requirement (a), it is clear from the notice what the alleged breach is, and what the notice requires. It is also clear from the appellant submissions that they understood the alleged breach and the requirements. I am satisfied that I can correct the notice by removing the extra word, as set out in the decision, without causing injustice to either party.
6. The Council reasons for issuing the notice are clear. The appellant view on this is considered under the appeal on ground (a). I note that the annex to the notice gave the incorrect fee for a ground (a) appeal. However, the correct fee was subsequently paid and this appeal is proceeding on ground (a), so no injustice was caused to the appellant.

Preliminary Matters

7. Planning permission was granted in July 2021 (ref S/HOU/21/0678) for 2 front rooflight windows and 2 rear dormers. The dormers granted permission were small, with a traditional style pitched roof, one set within the rear main roof and one in the side facing roof of the rear projection. The development has not been constructed in accordance with the approved plans.

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

8. 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 large dormer on the rear of the dwelling.

Main issue

9. The main issue is the effect of the development on the character and appearance of the host dwelling and the surrounding area with particular regard to the extent to which it would preserve or enhance the character or appearance of the Swindon Town Gardens Conservation Area.

Reasons – Character and appearance

10. The appeal site is a traditional mid terrace dwelling in a residential area. It is within the Swindon Town Gardens Conservation Area. The appeal development consists of a dormer on the rear elevation. It spans most of the width of the main rear roof surface, ending at an angle where it meets the roof of the two storey rear projection of the dwelling. It has a flat roof and is finished in black cladding of a similar colour to the surrounding slate roofs. The top of the dormer is below the height of the main roof ridge but is higher than the ridge of the rear projection by a modest amount.
11. The dormer is not visible from the front so has no impact on the main streetscene. A lane runs to the side of 75 Goddard Avenue and directly to the rear of the gardens of the dwellings along Goddard Avenue, including the appeal site. This lane has the character and appearance of a typical rear access lane, featuring a mixture of rear garden walls, fences, gates and garages. The rear elevations in the immediate vicinity of the site are a mix of styles and finishes and there are other flat roof dormers.

12. From the lane to the side of No 75, the top and a small section of the side of the dormer is visible above the ridge of the rear projection. The rear elevation of the dormer is also visible in glimpses at points along the rear lane, between garages, walls and gates. It will be visible from certain points in gardens of neighbouring dwellings, although intervening built form and vegetation will limit this. There is considerable separation between the dormer and any facing elevations of dwellings to the rear of the site. The dormer is relatively large, but it is not excessively bulky and does not overly dominate the rear elevation. It is finished in a colour which helps it to blend in with the roof. When taken together, the above factors mean that the dormer does not have an unacceptable visual impact on the site or the surrounding area.
13. The context of the rear lane, within which the dormer is viewed, does not contain elements which I consider contribute to the special character and appearance of the Conservation Area. The statutory duty in Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, relates to the preservation of designated heritage assets, and is a matter of considerable importance and weight. The National Planning Policy Framework states that when considering the impact of a development on the significance of a designated heritage asset, great weight should be given to the asset's conservation and any harm to the significance requires clear and convincing justification. As set out above, I do not consider that the development results in harm and the significance of the Conservation Area is preserved.
14. I conclude that the development does not cause unacceptable harm to the character and appearance of the site and the surrounding area and preserves the character and appearance of the Swindon Town Gardens Conservation Area. As such, the development complies with Policy DE1 (Design) and EN10 (Historic Environment and Heritage Assets) of the Swindon Borough Local Plan 2026 (adopted March 2015). Together, amongst other things, these policies seek to ensure that development is of a high quality design, which conserves elements that contribute to the special character and appearance of the Conservation Area, as well as reflecting the surrounding context, including built characteristics, site conditions, scale, massing and materials.

Conclusion on ground (a) and the deemed planning application

15. The appeal on ground (a) succeeds.

The appeal on ground (f)

16. The appeal on ground (f) is that the steps required by the notice exceed what is necessary. The appeal on ground (a) succeeds and I shall grant planning permission for the development as built, as described in the notice. Therefore, ground (f) does not fall to be considered.

Conclusion

17. For the reasons given above, I conclude that the appeal on ground (a) succeeds. I shall quash the notice and grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act.

H Davies

INSPECTOR