



Appeal Decisions

Site visit made on 20 June 2024

by D Hartley BA (Hons), MTP, MBA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th JULY 2024

Appeal A - APP/W4705/C/24/3342899

Land at 63 Prune Park Lane, Bradford, BD15 9JA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr J Singh against an enforcement notice issued by City of Bradford Metropolitan District Council.
- The notice was issued on 26 March 2024.
- The breach of planning control as alleged in the notice is without planning permission the change of use of the land from residential to shop curtilage and construction of a single storey extension.
- The requirements of the notice are to (i) demolish the rear extension, (ii) remove all arising materials from the land and make good any damage caused to the building, and (iii) return the land back to residential use.
- The period for compliance with the requirements is six calendar months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (b) 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.

Appeal B - APP/W4705/W/24/3342897

J & H Mini Market, 63 Prune Park Lane, Bradford, BD15 9JA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Mr Singh against the decision of City of Bradford Metropolitan District Council.
- The application reference number is 23/01493/FUL.
- The development proposed is described as proposed part change of use from residential curtilage to shop curtilage with a 1-storey rear extension to form cold store (retrospective) at 5 Rosedale Avenue, Bradford, BD15 9JD and 63 Prune Park Lane, Bradford, BD15 9JA.

Decisions

Appeal A - APP/W4705/C/24/3342899

1. It is directed that the enforcement notice is corrected and varied by: (i) the deletion of the words "*Land at 63 Prune Park Lane, Bradford, BD15 9JA shown edged red on the attached plan (the land)*" in section 2 and their substitution with the words "*Land to the rear of 5 Rosedale Avenue, Bradford, BD15 9JD and land to the rear of 63 Prune Park Lane, Bradford, BD15 9JA as shown edged red on the attached plan (the land)*", (ii) the deletion of the words "*without planning permission, the change of use of the land from residential to shop curtilage and construction of a single storey extension*" in section 3 and their replacement with "*without planning permission, the material change of use of the land from a residential use to a retail use and the construction of a single storey rear extension*", (iii) the deletion of the words "demolish the rear extension" in section 5(i) and their replacement with "*demolish the single*

storey rear extension attached to No. 63 Prune Park Lane, Bradford, BD15 9JA", (iv) the deletion of the words "*return the land back to residential use*" in section 5(iii) and their replacement with "*cease the retail use of the land*", and (v) the substitution of the plan annexed to this decision for the plan attached to the enforcement notice. Subject to the corrections and variations, the appeal is 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.

Appeal B - APP/W4705/W/24/3342897

2. The appeal is dismissed.

The Notice

3. In this case, the breach of planning control is "*without planning permission change of use of the land from residential to a shop curtilage and construction of a single storey extension*". Notwithstanding the heading in the notice, and, given the word "*and*" in the breach of planning control, I consider that the notice relates to both a material change of use of the land and operational development. Section 4 of the notice refers to ten (four for dwellinghouse) years with reference to section 171B of the Act when it should have referred to both ten and four years respectively. However, no ground (d) appeal has been pleaded and there is no evidence before me to indicate that the extension is immune from enforcement action owing to being substantially completed for four years prior to the notice being issued.
4. Indeed, the planning application form accompanying appeal B, and signed by the same person that has lodged appeal A, states that the work/change of use was completed on 2 April 2021. Even if such a date was to equate to the substantial completion of the rear extension, the building would not have been in place for a period of four years from this date. Therefore, even if the appellant had wanted to lodge a ground (d) appeal, I would have found, on the balance of probability, that his own evidence would have cast sufficient doubt about any claim that the extension had been substantially completed for more than four years. In this context, I do not find that the errors in the notice have caused injustice to any of the main parties.
5. In respect of a breach of planning control, it is necessary that the associated requirements match. The notice requires the appellant to "*demolish the rear extension*". While the breach of planning control and requirement 5(i) do not match, it is nonetheless clear from the evidence (e.g., the statements of case and photographs in the notice) that the extension has been built to the rear of No. 63 Prune Park Road for retail use purposes. The evidence is that the unauthorised material change of use of the land, and the extension, relate to part of the land to the rear of No. 5 Rosedale Avenue. The latter is used as a single dwellinghouse within one planning unit. It is clear from the evidence that the appellant is fully aware that the extension is a physical addition to No. 63 Prune Park Road, albeit that it is also been built on land to the rear of No. 5 Rosedale Avenue. The latter property is in use for retail purposes and is in a separate planning unit.
6. In order that the breach of planning control matches requirement 5(i) of the notice, I shall correct it by deleting all the words and replacing them with "*without planning permission, the material change of use of the land from*

residential use to a retail use and the construction of a single storey rear extension". In the interests of precision, the correction includes reference to "material" change of use given section 55(1) of the Act and, furthermore, the use of the word 'curtilage' is omitted as curtilage is not a use. I am satisfied that the correction to the breach of planning control does not cause injustice to any of the main parties.

Ground (b) appeal

7. An appeal made on ground (b) is that the matters comprising the alleged breach of planning control have not occurred.
8. Section 2 of the notice, which relates to the land to which the notice relates, states "*land at 63 Prune Park Lane, Bradford, BD15 9JA edged red on the attached plan*". For this reason, the appellant states that the breach of planning control has not occurred because the material change of use of the land relates to land at No. 5 Rosedale Avenue and not to No. 63 Prune Park Lane.
9. In this case, the red edged plan accompanying the notice includes part of the land to the rear of No. 5 Rosedale Avenue as well as land at No. 63 Prune Park Lane. The extension which is the subject of this appeal has been constructed off the rear wall of No. 63 Prune Park Lane. It is part and parcel of the use of such a property as a shop. It is clear from the evidence that the appellant is fully aware of what the notice is attacking and what rear extension it relates to. On the evidence that is before me, I do not find that the recipient has been misled in respect of the breach of planning control address. The evidence is that the appellant is fully aware of what land the notice relates to. In this regard, there can be no claim that the notice is a nullity.
10. In this case, the evidence is that No. 63 Prune Park Lane and No. 5 Rosedale Avenue are in the same ownership. I have considered whether I can correct section 2 of the notice by deleting all the words and replacing them with "*Land to the rear of 5 Rosedale Avenue, Bradford, BD15 9JD and land to the rear of 63 Prune Park Lane, Bradford, BD15 9JA as shown edged red on the attached plan (the land)*". I am satisfied that such a correction would not cause injustice to either of the main parties. It makes no difference to the way that the appellant has made his ground (a) appeal.
11. In the interests of precision, and, without injustice being caused to the main parties, I shall also vary requirement 5(i) of the notice by deleting all the words and replacing them with "*demolish the single storey rear extension attached to No. 63 Prune Park Lane, Bradford, BD15 9JA*", and by deleting all the words in requirement 5(iii) of the notice and replacing them with "*cease the retail use of the land*". I shall also substitute a new plan attached to the notice so that the red edge relates specially to land to the rear of No. 5 Rosedale Avenue, Bradford, BD15 9JD and land to the rear of 63 Prune Park Lane, Bradford, BD15 9JA. It is important that I emphasise that the new plan does not include a new red edge, but rather a smaller red edge.
12. The ground (b) appeal succeeds to the extent that the breach of planning control relates to land to the rear of No. 5 Rosedale Avenue and land to the rear of No. 63 Prune Park Lane. However, subject to the above corrections and variations, which would not cause injustice to the main parties, the notice shall not be quashed. Accordingly, it is necessary that I determine the deemed planning application as part of the ground (a) appeal.

Ground (a) appeal and the deemed planning application and the s.78 appeal

Main issue

13. I have considered the reasons for issuing the notice and the reasons for refusal of planning permission. The main issue is the same for both appeals which is the effect of the unauthorised development on the living conditions of the occupiers of No. 5 Rosedale Avenue in respect of outlook and the size of private outside amenity space.

Outside amenity space

14. Use of the land for retail purposes, and the erection of an extension to No. 63 Prune Park Lane (used on my site visit as a cold store for mainly alcoholic refreshments), has had the effect of significantly reducing the amount of private outside amenity space that can be used in association with use of No. 5 Rosedale Avenue as a two-storey dwellinghouse. In fact, because of the breach of planning control, only a small strip of private and rear outside amenity space is now available for existing and future occupiers of the dwellinghouse.
15. The appellant states that a three-bedroom flat with a balcony would have similarly sized outside amenity space. I do not know what flat the appellant is referring to, and, in any event, the appeal property is a dwellinghouse and not a flat. I have reached a view about this matter based on my site visit observations and on the planning merits of the respective appeals.
16. In my judgement, the resultant private outside amenity space for occupiers of No. 5 Rosedale Avenue is now deficient. Indeed, I do not find that the space now offered for occupants is proportionate or reasonable for day-to-day living purposes. The space has been diminished to such an extent that it does not now offer existing or future residents the sort of space that they should reasonably expect in terms of the collective need for day-to-day exercise, domestic storage, sitting out, drying clothes and relaxing.
17. I deal with the effect of the breach of planning control on the outlook enjoyed by the occupiers of No. 5 Rosedale Avenue below, but the harm identified above is compounded owing to the position and scale of the rear extension. This is because the extension is within very close proximity to the disproportionately small rear outside amenity space associated with No. 5 Rosedale Avenue and from this area it is experienced as having a dominating and enclosing impact.
18. In reaching the above conclusion, I have considered the appellant's comment that there are public open spaces nearby and that many of the neighbouring houses have similarly sized rear gardens. The evidence is not clear in terms of where the 'nearby' public open spaces are located. In any event, there is a functional difference between public and private amenity spaces. The possible existence of public open spaces nearby does not outweigh the loss of private outside amenity space for No. 5 Rosedale Avenue.
19. While it may be the case that there are some (albeit not all) dwellinghouses in the area which have relatively small rear gardens, this does not in itself justify the loss of what I consider to be an unacceptable amount of rear garden space associated with No. 5 Rosedale Avenue. I find that retaining an acceptable amount of private outside amenity space is part of achieving good design and,

furthermore, good housing stock for future generations. Indeed, paragraph 135(f) of the National Planning Policy Framework 2023 (the Framework) states that planning decisions should ensure that developments have a '*high standard of amenity for existing and future users.*' For the reasons outlined, I do not find that the breach of planning control has ensured a high standard of amenity, and, in this regard, it has resulted in poor design.

Outlook

20. The unauthorised rear extension is just over three metres from the ground floor kitchen window of the dwellinghouse. It takes up almost the full width of the former garden area. Given this, coupled with its height and close position, I find that it has had an unacceptably enclosing and dominating impact on the outlook of the occupiers of No. 5 Rosedale Avenue when experienced from the ground floor kitchen window. The appellant states that at about 2.5 metres in height, the rear extension is like a conventional outbuilding. He states that it is much lower than the three-metre-high wall which encloses the garden.
21. The wall enclosing the garden is positioned much further away from the ground floor kitchen window of No. 5 Rosedale Avenue and therefore does not have the same adverse outlook impact. I do not know if No. 5 Rosedale Avenue has permitted development rights and hence whether it would be possible to erect an outbuilding(s) in the rear garden without the need for planning permission. Even if there was a greater than theoretical possibility of such an outbuilding(s) being erected on the land, there is no evidence from the appellant to indicate that this would likely occur if the notice was upheld. I therefore afford this matter limited weight in favour of granting planning permission. It is not sufficient to outweigh the significant harm that has been caused to the living conditions of the occupiers of No. 5 Rosedale Avenue in outlook and private outside amenity space terms.

Planning balance and conclusion

22. For the above reasons, I find that the breach of planning control has caused significant harm to the occupiers of No. 5 Rosedale Avenue in respect of outlook and the loss of private outside amenity space. I accept that the extension to the shop has likely had some economic benefits, but, neither this, nor the other considerations identified above, carry sufficient weight to outweigh the significant harm that has been caused in respect of my consideration of the main issue above.
23. The development has failed to accord with the amenity requirements of policy DS5 of the Council's Core Strategy Development Plan Document 2017 and paragraph 135(f) of the Framework. No planning conditions, including the possibility of cladding the facilitating extension in stone or another material, would overcome the significant harm identified. I conclude that the development which is the subject of the appeals does not accord with the development plan for the area taken as a whole and there are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, the ground (a) appeal fails, and the appeal made under section 78 of the Act should be dismissed.

Overall Conclusions

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24. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations and corrections and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

Appeal B - APP/W4705/W/24/3342897

25. For the reasons given above, the appeal should be dismissed.

D Hartley

INSPECTOR



Substitute Plan

This is the plan referred to in my decision dated: **10TH JULY 2024**

by D Hartley BA (Hons), MTP, MBA, MRTPI

Land to the rear of 5 Rosedale Avenue, Bradford, BD15 9JD and to the rear of 63 Prune Park Lane, Bradford, BD15 9JA

Reference: APP/W4705/C/24/3342899

Scale: Not to scale

