



Appeal Decisions

Site visit made on 23 July 2024

by D Moore BSc (HONS), PGDip, MCD, MRTPI, IHBC

an Inspector appointed by the Secretary of State

Decision date: 2 August 2024

Appeal A Ref: APP/Q4245/C/24/3338156

Appeal B Ref: APP/Q4245/C/24/3338157

133 Park Road, Timperley, Altrincham WA15 6QQ

- The appeals are made under section 174 of the Town and Country Planning Act 1990, as amended (the 1990 Act).
- Appeal A is made by Mrs Reena Sharma against an enforcement notice issued by Trafford Council. Appeal B is made by Mr Chand Sharma.
- The enforcement notice was issued on 17 January 2024.
- The breach of planning control as alleged in the notice is failure to comply with conditions imposed on a planning permission ref 92318/HHA/17 granted on 20 December 2017.
- The development to which the permission relates is the erection of a one and a half storey front extension and a single storey attached garage with a gabled roof.
- The conditions in question are (i) no 2 which states "the development hereby permitted shall not be carried out except in complete accordance with the details shown on the amended plan, number 0954-004 Rev A, uploaded to the Council's website on 14th December 2017, and the submitted location plan; and (ii) no 4 which states "Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any equivalent Order following the amendment, re-enactment or revocation thereof) upon first installation the bathroom window in the first floor on the south elevation facing 135 Park Road shall be fitted with, to a height of no less than 1.7m above finished floor level, non-opening lights and textured glass which obscuration level is no less than Level 3 of the Pilkington Glass scale (or equivalent) and retained as such thereafter.
- The notice alleges that the conditions have not been complied with in that (i) condition 2 has been breached because the window in the first floor front elevation of the extension is not obscurely glazed or fixed shut. The window serves a bedroom, not a bathroom as indicated on the approved plan. Additional skylight windows have been installed on the front and rear roof slopes; (ii) condition 4 has been breached because the window in the first floor front elevation of the extension is not obscurely glazed and it has opening lights below 1.7m above finished floor level.
- The requirements of the notice are to:
 - 1) Remove the first floor front (south) elevation window of the extension.
 - 2) Install a replacement window which shall have been fitted with, to a height of no less than 1.7m above finished floor level, non-opening lights and textured glass which obscuration level is no less than Level 3 on the Pilkington Glass scale.
 - 3) Remove the low level skylights circled in red on the attached photograph ENF/01 and make good the roof using tiles to match the existing.
 - 4) Remove from the land to an authorised place of disposal all building materials, rubble and waste arising from carrying out the above steps.
- The period for compliance with the requirements is 6 months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (c) and (d) of the 1990 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 grounds (c) and (d).

Summary of Decision: The appeal is dismissed, and the enforcement notice is upheld in the terms set out below in the Formal Decision.

Application for costs

1. An application for costs has been made by Trafford Council against Mrs Reena Sharma and Mr Chand Sharma. This is the subject of a separate decision.

Preliminary Matters

2. The Appellants say that the Council did not seek to engage with them prior to the issue of the notice, contrary to its published procedures, and no evidence has been provided in relation to the alleged harm.
3. Complaints about whether the Council has acted outside of its procedures fall beyond the scope of these appeals. Expediency is a matter for the Council, and any challenge as to whether it was expedient for the local planning authority to issue the notice must be pursued by way of a judicial review. Similarly, comments about the Appellant's motivations and profession are not relevant and I have discounted any such remarks.

The ground (c) appeals

4. To succeed on ground (c), the Appellants must show on the balance of probabilities that the matters alleged do not constitute a breach of planning control.
5. The Appellants explain that minor alterations were made to the development during construction, due to matters related to building regulations, which resulted in deviations from the approved plans. The alterations included the installation of four roof lights in the original south facing roof slope, which serve a bedroom, and four roof lights in the north facing roof slope of the extension, also serving a bedroom. Two roof lights are positioned 0.8m above finished floor level and two roof lights are positioned 1.8m from floor level respectively (in each bedroom). The low-level roof lights are obscurely glazed and openable to meet fire safety regulations (1 x fire escape in each bedroom). The high-level roof lights are non-obscure and are also openable. In addition, a window has been installed in the south facing elevation of the extension at first floor level. This is fitted with clear glass and is openable. It serves a bedroom.
6. It is clear from the Appellants' evidence that the development has not been built in complete accordance with the approved plan ref 0954-004 Rev A and is therefore in breach of condition 2 of the planning permission. It is also apparent that the window on the first floor of the south elevation has been fitted with clear glass and openable lights, which is in breach of condition 4.
7. The Appellants argue that conditions 2 and 4 were not legally imposed and/or fail the policy tests described in the National Planning Policy Framework and the Planning Practice Guidance. I disagree. Condition 2 is commonly used to ensure compliance with plans and to allow for future amendments through an application to vary a condition. Condition 4 was imposed to protect the amenity of the neighbouring occupiers, which was considered necessary in the circumstances to make the proposed development acceptable in planning terms.
8. The fact that the approved plans did not meet the building regulations is not a reason to find the condition was improperly imposed. It is likely that a solution could be found, and this does not make the imposition of the condition

unreasonable. Both conditions meet the legal and policy tests, in my judgement.

9. Carrying out development without compliance with the conditions subject to which planning permission was granted constitutes a breach of planning control. The appeals on ground (c) must fail, therefore.

The ground (d) appeals

10. To succeed on ground (d), the Appellants must show on the balance of probabilities that, at the date when the notice was issued, no enforcement action could be taken in respect of the matters alleged due to the passage of time.
11. It is argued that the window and rooflights inserted in breach of the planning conditions have been in place for more than four years and should be immune from enforcement action. However, the matter alleged is a breach of conditions. Every breach of condition is subject to a ten year immunity period under Section 171B(3) of the 1990 Act. The Appellants say the development was completed by December 2019, which is when the conditions were breached. Consequently, the matters alleged would not be immune from enforcement control.
12. The ground (d) appeals must fail, therefore.

The ground (a) appeal and the deemed planning application

Main Issue

13. The ground (a) appeal is that planning permission should be granted for the erection of a one and a half storey front extension and a single storey attached garage with a gabled roof without compliance with conditions 2 and 4 of the planning permission ref 92318/HHA/17 dated 20 December 2017.
14. The main issue is the effect of the development on the living conditions of neighbouring occupiers with regard to privacy.

Reasons

15. The appeal property is a detached house that is positioned relatively close to another detached house No 135 Park Road. Both houses lie at the end of a shared driveway, accessed from Park Road. There is residential development at the rear of the appeal property, which is separated by the gardens of the houses on Acresfield Road.
16. Planning permission was granted for extensions to the appeal property and the development was constructed, but with deviations from the approved plans, as described above. The Council considers that the window in the south facing elevation, which serves a first floor bedroom, has resulted in a material loss of privacy to the detriment of the living conditions of the occupiers of No 135.
17. No 135 is an L-shaped dormer bungalow, which has a ground floor lounge served by a west facing bay window and two smaller, north facing windows. I saw that there is an oblique line of sight between the Appellant's new bedroom window and the neighbour's lounge windows. The greatest effect is on the north facing windows, but the side light of the neighbour's bay window is also

impacted. The 1.8m dividing fence does little to alleviate the impact because the unauthorised window is at first floor level and allows downwards views.

18. I sat and stood in the neighbour's lounge in various positions, and it was apparent that the unauthorised window has resulted in a loss of privacy due to actual and perceived overlooking. The unauthorised window is relatively wide, and it serves a main habitable room, which is likely to be occupied on a regular basis. Although the views are at an oblique angle, there is less than 10m separation between the houses so views can be obtained. The neighbour's lounge is one of the main living spaces in the house, where people can expect to sit and relax with reasonable levels of privacy. The introduction of the first floor bedroom window has adversely affected that privacy.
19. I saw that No 135 has blinds fitted on the lounge windows, which would mitigate the overlooking to a certain extent. However, it is a reasonable expectation that people can occupy their living spaces without the need for curtains or blinds to be closed or partly closed throughout the day.
20. I have taken account of the situation prior to the approval of the works. Despite the proximity of the houses and their relationship to each other, the dwellings were designed to respect privacy as far as possible. While there were very oblique views of the neighbour's lounge window from the Appellant's original master bedroom, this would not have affected privacy to any material extent. Similarly, any views from the approved ground floor window that sits directly below the unauthorised window, and serves the Appellant's lounge, would be screened by the 1.8m panel fence.
21. In addition to the bedroom window, there are also two obscurely glazed roof lights positioned at 0.8m from floor level on the south facing elevation, which serve an existing bedroom, and are directly opposite the neighbour's lounge. These are both openable windows but are fitted with restrictors to about 10cm. The views that can be obtained from the rooflights towards the neighbour's lounge are limited due to the obscure glazing and restricted opening. However, the lower rooflights add to the perception of overlooking that is experienced when using the neighbour's lounge and they compound the harm.
22. The Council is also seeking the removal of the low level rooflights on the north facing elevation. These are similar to the rooflights described above and limited views can be obtained. However, any adverse impact to the occupiers of the properties on Acresfield Road is mitigated due to the high, mature semi-evergreen trees and shrubs along the shared boundary. Even if the trees and shrubs were cut back or removed, any harm would not be material given the length of the neighbouring gardens and consequent separation distances. I do not consider there is any loss of privacy resulting from the north facing rooflights.

Other matters

23. The Appellant explains that the alterations concerning the rooflights arose from the building regulations fire safety requirements as those approved would not provide adequate means of escape. While this is a valid consideration, it may be that a suitable scheme can be agreed that satisfies both planning and building regulations requirements. Also, this matter applies to the rooflights not to the unauthorised bedroom window, which is the main point of concern.

24. I note that two dormer windows have been constructed at No 135, facing towards the Appellant's house. It appears that this development was approved subsequent to the permission that allowed the extensions at No 133. The full balance of considerations that informed that decision are not before me, and it is not clear whether any similar conditions were imposed. I am unable to take a view on matters of consistency, therefore, and I can only afford this consideration limited weight.
25. I saw that roof extensions have recently been constructed at No 125 Park Road, which comprise a side facing dormer window. The window facing No 127 appears to serve a bedroom and it is positioned close to windows on the side of the neighbour's bungalow with a direct line of sight. I cannot be certain whether the ground floor windows of No 127 serve main habitable rooms, or whether views are obtainable beyond the roof of No 125. Consequently, I can only afford this matter limited weight.
26. The Appellant's rights under the European Convention on Human Rights, which is incorporated into the Human Rights Act 1998, must be considered. Article 8 deals with the right to respect for family life and the home. Dismissal of this appeal will require the Appellant to alter the windows which serve bedrooms. This would represent a minor interference with their home and family life. However, the conflict with local planning policy which would arise, in particular the fact that the development is incompatible with the surrounding development, is significant. I am satisfied that the legitimate aim of conforming with planning policy cannot be achieved by any means which are less interfering with the Appellant's rights.

Conclusion

27. I find that the development has an adverse effect on the living conditions of the neighbouring occupiers at No 135 Park Road with regard to loss of privacy. The development does not accord with Policy L7 of the Trafford Local Plan Core Strategy (2012) and the advice within the Council's Supplementary Planning Document SPD4: A Guide to House Extensions and Alterations (2012), which seek among other things, to ensure there is no prejudice to the amenity of the occupants of adjacent properties by reason of overlooking. The development does not accord with the development plan as a whole and planning permission should be refused. There are no substantive considerations that indicate otherwise.
28. The ground (a) appeal fails, therefore.

Conclusion

29. I conclude that the appeals should not succeed.

Formal Decision

30. For the reasons given above, I conclude that the appeals 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).

D Moore

Inspector