



Appeal Decision

Site visit made on 7 August 2024

by Elizabeth Jones BSc (Hons) MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 August 2024

Appeal Ref: APP/P4605/C/23/3332127

65-67 Yardley Road, BIRMINGHAM, B27 6LL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Ali Kamran against an enforcement notice issued by Birmingham City Council.
- The notice was issued on 28 September 2023.
- The breach of planning control as alleged in the notice is Without planning permission, the unauthorised construction of a structure to the rear for the use as 5 self-contained dwelling units.
- The requirements of the notice are to demolish the unauthorised development in its entirety and remove all demolished materials from the Premises.
- The period for compliance with the requirements is: 6 months.
- The appeal is proceeding on the ground set out in section 174(2)(f) of the Town and Country Planning Act 1990 (as amended).

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with a correction and variation.

The Enforcement Notice

1. An enforcement notice should be drafted so that it tells the recipient fairly what they have done wrong and what they must do to remedy it. The enforcement notice alleges "without planning permission, the unauthorised construction of a structure to the rear for the use as 5 self-contained dwelling units...". The Council considers that the structure was built for the sole purpose of residential accommodation and its complete demolition would prevent the appellant from reinstating the use. Albeit the enforcement notice does not allege a material change of use and the requirements do not include cease the use, the appellant does not dispute this and no appeal under ground (b) 'that what is alleged by the enforcement notice has not in fact happened' has been brought.
2. Moreover, the notice is issued under section 171(1) (b) of the Act which states "failing to comply with any condition or limitation subject to which planning permission has been granted constitutes a breach of planning control". Planning permission reference 2020/05405/PA for the 'erection of a single storey rear extension' was granted on 29 September 2020 (Appendix 2 of the appellant's statement) and a non-material amendment for 'internal reconfiguration, additional windows and doors to the north elevation and obscured windows to the south elevation' reference 2023/02974/PA was approved on 7 July 2023 (Appendix 1 of the appellant's statement).
3. It is clear from the submissions that the structure has not been built in accordance with approved plans. In addition, from what I saw at my site visit, although the residential use has not yet commenced, both the internal layout and the doors and windows on the north elevation have not been constructed

as shown on the approved drawing number P22123-UDH-XX-ZZ-DR-A-21100 (Proposed Plans/Elevations).

4. I therefore consider it necessary to correct the allegation to refer to the alleged breach of condition. Given the Council's reference to s171(1)(b) in the notice and its agreement to the varied requirement I am satisfied that no injustice will be caused to either party.

The appeal on ground (f)

5. The appeal on ground (f) is that the steps required by the notice to be taken or the activities required by the notice to cease, exceed what is necessary to achieve the purpose. The purposes of an enforcement notice are set out in Section 173(4) of the Act and are to remedy the breach of planning control (s173(4) (a)) or to remedy injury to amenity (s173(4)(b)). In this case the notice requires that the unauthorised development be demolished. I therefore consider that the purpose of the notice is to remedy the breach of planning control.
6. In appealing on ground (f) the onus is on the appellant to specify lesser steps which in their view would overcome the objections to the development. The appellant considers that the requirements of the notice are excessive because having secured planning permission for a single storey rear extension the appellant argues that the internal layout could be altered to that shown on the approved drawings without the need to demolish the whole structure.
7. I consider that an alternative requirement to make the development comply with the non-material amendment to the planning permission that has already been granted would also achieve the purpose of the notice. The Council states that it has no objection to me exercising my powers to vary the notice in this way.
8. I therefore conclude that the appeal on ground (f) succeeds to this extent, and I am varying the notice accordingly.

Formal Decision

9. It is directed that the enforcement notice is corrected by deleting the allegation at section 3 (The matters which appear to constitute the breach of planning control) and by replacing it with the following: 'Without planning permission, the construction of a single storey rear extension without complying with condition 1 of planning approval reference 2020/05405/PA and the terms of the non-material amendment planning permission reference 2023/02974/PA drawing number P22123-UDH-XX-ZZ-DR-A-21100 (Proposed Plans/Elevations)'.
10. It is directed that the enforcement notice be varied by the deletion of the text at section 5 (What you are required to do) and replacing it with the following:

Either

- demolish the unauthorised development in its entirety and remove all demolished materials from the Premises.

or

- make alterations to the unauthorised development to comply with the terms of the non-material amendment planning permission reference 2023/02974/PA dated 7 July 2023 and drawing number P22123-UDH-XX-ZZ-DR-A-21100 (Proposed Plans/Elevations) including the terms and conditions subject to which planning permission reference 2020/05405/PA was granted.

11. Subject to the above correction and variation the appeal is dismissed, and the enforcement notice is upheld.

Elizabeth Jones

INSPECTOR