



Appeal Decision

Site visit made on 7 August 2024

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 11 September 2024

Appeal Ref: APP/B3030/C/23/3331064

2 St. Marys Drive, Edwinstowe NG21 9LY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Amanda Fletcher against an enforcement notice issued by Newark & Sherwood District Council.
- The notice was issued on 11 September 2023.
- The breach of planning control as alleged in the notice is without planning permission , operational development consisting of the erection of a single storey rear extension (as shown within photographs 1 & 2 and identified with an 'X' on Plan A).
- The requirement of the notice is to
 - A. Demolish the extension (as shown within photograph 1 & 2 and identified with an 'X' on Plan A) and remove all resultant waste and materials from the land.
- The period for compliance with the requirement is 150 days.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) 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.

Decision

1. 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.

Preliminary Matters

2. The allegation refers to the erection of a single storey rear extension. Whilst identifiable as an extension, the structure is partially constructed as shown in the photographs referred to in the notice.
3. The Council refused a planning application for an extension to the rear of the property which was partially retrospective. However, this appeal relates only to the development which consists of the partially retrospective element of the application and not the extension which was proposed in the planning application.

An appeal under ground (a) and the Deemed Planning Application (DPA)

4. The DPA in an enforcement appeal derives directly from the allegation. I am therefore considering whether planning permission should be granted for the development which is an extension which has been partially constructed as shown on the photographs referred to in the notice.

Main Issues

5. The main issues are the effect of the development upon (i) the character and appearance of the area and (ii) the living conditions of the occupiers of No 4 St Marys Drive (No 4) with particular regard to outlook.

Reasons

Character and Appearance

6. The appeal site consists of a two storey semi-detached dwelling located on the corner of St Marys Drive and St Edwins Drive. The prevailing character of the area is of semi-detached dwellings of a similar style. Some dwellings including the appeal dwelling on St Marys Drive are constructed of buff colour bricks with some render. However, there are also dwellings on both St Marys Drive and St Edwins Drive that have red brick and cladding. Due to its corner location, the appeal site also has a continuous wall with pillars to the front and side which is made up of red bricks.
7. Both St Marys Drive and Edwins Drive are on a gradient with St Edwins Drive being at a higher level than St Marys Drive. The appeal dwelling is also on higher ground than the adjoining semi-detached dwelling at No 4. The rear garden of the appeal dwelling has different levels with elevated sections both to the rear boundary and to the side boundary with St Edwins Drive. There is a staggered boundary fence dividing the appeal garden and No 4 with the fence being lower at the point where it joins the rear of the dwellings.
8. The development consists of a partially completed single storey rear extension to the dwelling. The extension is largely made up of three walls with no roof, guttering, windows or doors. The walls consist of breeze blocks to the interior and red bricks to the exterior although a small section of bricks on one wall has now been stained in a lighter colour.
9. The Council's reason for issuing the notice in relation to character and appearance is limited to "any proposed overcoating to the bricks would not be effective resulting in an unsympathetic and overall incongruous development." This reason replicates the reason for refusing the planning application which related to a complete structure.
10. As the development is to the rear of the dwelling, there are no views of it from St Marys Drive. On my site visit, I was unable to see the development from St Edwins Drive largely due to the difference in height between the location of the development which at a significantly lower level than St Edwins Drive and the boundary treatment of a low red brick wall with pillars and insets of close boarded fencing. Whether or not the roof form proposed as part of the planning application would result in visual harm is not a matter before me as I am assessing what existed at the time the notice was served i.e. the partially constructed extension. The development has very limited visual impact on the area as it is not visible in wider views.
11. The Council's reason for issuing the notice and its conclusion in its evidence does not specifically address the impact of the development upon the host dwelling. Whilst there are references elsewhere in the evidence, the Council appears to be assessing the extension that was the subject of the planning application including matters such as the roof form and guttering rather than the development as it exists.
12. On the evidence before me, I do not find that the development does harm the character and appearance of the area. It therefore complies with Core Policy 9 of the Newark and Sherwood Amended Core Strategy (March 2019) which seeks development being of an appropriate form and scale to its context.

Policies DM5 (Design) and DM6 (Householder development) of the Allocations & Development Management Development Plan Document (July 2013)(DPD) which requires development to protect the character of the area.

Living conditions

13. The solid side wall of the development is located in very close proximity to the boundary fence with No 4. The gap between the development and the fence is not uniform and the narrowest gap is closest to the rear wall of the appeal property. The side wall has no guttering or roof and has to be assessed in its current form.
14. The staggered fence arrangement means that the height of the development is most noticeable closest to the rear wall where the fence panels are at their lowest and the gap between the side wall and the boundary fence is at its smallest. To the other side of the boundary fence, there is a terraced area as the patio doors of No 4 are in close proximity to the boundary fence.
15. The Council's SPD addresses how poorly designed development can impact the amenity of nearby occupiers. In particular, it refers to development not being of a depth or height that gives the impression of enclosing or 'looming' over private amenity spaces. Factors to consider can include the position of windows in habitable rooms, height and depth, degree of separation, the amount of private amenity space and the topography of the site.
16. The ground levels at No 4 are lower than at the appeal site which increases impact upon amenity. The patio doors at No 4 which lead on to a patio area are in very close proximity to the development which is in excess of 4 metres in length parallel to the boundary fence. Although the appellant states that the proposal could be constructed pursuant to Prior Approval and such extensions being common place, I was unable to see any other similar extensions along the row of dwellings beyond No 4. In addition, Prior Approval is not retrospective and would involve neighbour consultation and the materials used would have to match the existing appearance of the appeal dwelling.
17. I do consider that the development as existing does cause harm to the amenity of the occupiers of No 4. Although the development is not complete, in its current form, the height and depth along the boundary does create a looming and overbearing effect particularly against the first two shortest fence panels.
18. The appellant has provided a photograph of an extension which has been granted planning permission at 12 Birkland Drive, which from my site visit observations, is a substantial detached house. The appellant states the photograph illustrates how the development is intended to look when completed. However, there is no mechanism before me that can achieve a complete structure within this appeal. I am therefore unable to attach any weight to what the development could look like as the parties do not dispute that a second planning application would be required even if I granted planning permission for the existing partially constructed building.
19. Similar issues arise in making comparisons when considering if there is a fallback position under permitted development rights. Where fallback is argued where there is a complete building, the appellant is stating that if planning permission is refused, the fallback would take place and would be less desirable than that for which planning permission is sought. However, the development

is incomplete and it is not possible to make a comparison between what could be built under permitted development rights and what exists now. I cannot therefore conclude that reliance upon permitted development rights would result in development that would have greater impact upon No 4 than the development. I am therefore unable to attach any weight to a 'fallback' position for the rear of the appeal site.

20. I do therefore find that there is harm to the living conditions of No 4 due to loss of outlook. The development is therefore contrary to Policies DM5 and DM6 of the DPD which collectively refer to development not resulting in an unacceptable loss of amenity for neighbouring occupiers.

The appeal under ground (g)

21. An appeal under ground (g) is that the period for compliance is too short. The period for compliance is 150 days, which is around 5 months. The appellant has asked for a period of at least a year to comply with all of the requirements. The appellant is required to demolish the partially constructed extension and remove the materials and has referred to employing local tradesmen who have significant waiting lists. However, even allowing for a waiting period for tradesmen, a period of 150 days is not unreasonable given the nature of the work which is demolition and removal. The appeal under ground (g) fails.

Other Matters

22. The planning application which was part retrospective was recommended for approval by officers. However, that was not the decision ultimately reached by the Council. The planning application also differs from this enforcement appeal as I am considering the development as it exists now, not what was proposed. I have considered this appeal on its own merits.
23. The appellant has also made comments about the decision to take the planning application to Planning Committee, issues with the validity of the refusal notice in the absence of a date, the expediency of taking enforcement action and alleged encroachment. However, none of these matters fall within my remit in determining this appeal.

Conclusion

24. I have found that the development does not harm the character and appearance of the surrounding area. However, I have found harm with regard to loss of outlook. There are no material considerations to outweigh the conflict that I have identified with the development plan.
25. For the reasons given above, I conclude that the appeal 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).

E Griffin

INSPECTOR