



Appeal Decision

by **S A Hanson BA(Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date 5 December 2024

Appeal Ref: APP/P4605/C/24/3340715

398 Flaxley Road, Birmingham B33 9EF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mrs Lubna Shafiq against an enforcement notice issued by Birmingham City Council.
 - The notice was issued on 9 February 2024.
 - The breach of planning control as alleged in the notice is: Without planning permission, the unauthorised erection of a two-storey side extension built not in accordance with its 2021/09036/PA consent and a rear dormer window in the approximate position marked in green on the attached plan.
 - The requirements of the notice are to:
 - i) Demolish the unauthorised two-storey extension in its entirety and remove all demolished materials from the Premises; OR
 - ii) Undertake remedial works to ensure that the unauthorised two-storey side extension is developed fully in accordance with its planning approval of 2021/09036/PA.
 - iii) Demolish the unauthorised rear dormer in its entirety, remove all associated material and reinstate the roof line to the condition it was prior to the development.
 - The period for compliance with the requirements is three (3) months.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

2. It has not been necessary to carry out a site visit as, in this particular case, where all the information needed is included with the application and appeal documents, a decision can be reached on the papers. The parties were contacted regarding this matter and given the opportunity to comment on the appropriateness of the proposed approach. No responses were received.
3. A planning application for the retention of the two-storey side extension and rear dormer (Ref: 2022/09250/PA) was refused by the Council on 7 March 2023. A subsequent appeal against that decision was dismissed on appeal dated 22 August 2023 (Ref: APP/P4605/D/23/3323187).
4. As part of their submissions, the appellant suggests that part of the dormer roof extension was constructed by mistake within the extended portion, which I take to mean along the roof of the side extension. It seems that they considered that to be permitted development. Accordingly, and as the Council has referred to those matters in its appeal statement, I shall deal with this matter as a hidden ground of appeal which I will consider under ground (c) of s174 of the Act. Given the evidence before me, I can consider this without injustice to either party.

The Appeal on Ground (c)

5. This ground of appeal is that the matters alleged do not constitute a breach of planning control. The onus of proof in ground (c) is upon the appellant, and the test of the evidence is on the balance of probabilities.
6. The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the Order) by way of Article 3, grants planning permission for certain types of development set out within the schedules and classes it contains. Within Schedule 2, Part 1 of the Order, Class B grants permission for the enlargement of a dwellinghouse consisting of an addition or alteration to its roof, subject to specified conditions and limitations.
7. Article 3(5)(a) specifies that the Order does not grant planning permission for works to an existing building if that building was constructed unlawfully. As the two-storey extension was not built in accordance with the approved plans, and is therefore unauthorised, the building to which the dormer was added, had been constructed unlawfully. The dormer is therefore not permitted by the Order and requires an express grant of planning permission. Since no planning permission exists for the development, it constitutes a breach of planning control.
8. The appeal on ground (c) therefore fails.

The Appeal on Ground (f)

9. An appeal on ground (f) is that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control or any injury to amenity. Since the notice requires the appellant to demolish the unauthorised rear dormer in its entirety and to either demolish the unauthorised two-storey extension in its entirety or to undertake remedial works to ensure that the unauthorised two-storey extension is developed fully in accordance with its planning approval of 2021/09036/PA, the purpose of the notice is to remedy the breach¹.
10. For the appeal on ground (f) to succeed, the appellant must propose alternative steps which would remedy the breach. The appellant considers that the steps to comply with the notice are excessive and of huge expense. They suggest physical alterations to the extension in respect of 'set back' and 'roof step down' and alternatives to demolishing the unauthorised dormer roof extension.
11. While I have sympathy for the appellant's predicament, I am afraid that the matters suggested in their grounds of appeal inform only the planning merits of the allegation. As the appeal has been brought on ground (f) only, my decision is solely concerned with whether the requirements are excessive and I am not able to consider the planning merits of the scheme, including whether or not alterations to it would make it appropriate. I am only able to do this under a ground (a) appeal, which has not been made in this case.
12. Therefore, having regard to the notice's requirements to remedy the breach of planning control, the power afforded to me under section 176(1) only relates to whether the requirements exceed what is necessary to remedy the breach and not the substance of the notice.

¹ Section 173(4)(a) of the Act.

13. The requirements of the notice require the removal of the unauthorised rear dormer and either the demolition of the unauthorised two-storey extension or remedial works to ensure that the two-storey side extension is developed fully in accordance with its planning approval ref: 2021/09036/PA. Having regard to both the nature of the breach and requirements of the notice, there are no lesser steps that have been suggested that would achieve the purpose of remedying the breach of planning control in this case and none are obvious to me. As such, the appeal on ground (f) does not succeed.

Other Matters

14. The appellant has provided addresses and application reference numbers for what they describe as two similar developments in the area. I am not aware of the actual full circumstances that may have led to those instances, but in any case, their presence does not affect my decision on the appeal before me. I also acknowledge that the appellant appears to have been let-down by their builder, however, this is a private matter between the parties involved.

Conclusion

15. For the reasons given above, I conclude that the appeal is dismissed and the enforcement notice is upheld.

S A Hanson

INSPECTOR