



Appeal Decision

Site visit made on 26 November 2024

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 December 2024

Appeal Ref: APP/X4725/C/24/3343729

238 Brandy Carr Road, Kirkhamgate, Wakefield WF2 0RE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Abdul Karim against an enforcement notice issued by the City of Wakefield Metropolitan District Council.
 - The notice was issued on 10 April 2024.
 - The breach of planning control as alleged in the notice is without planning permission, unauthorised single storey side extension, single story rear extension with balcony above and rear flat roofed dormer, on the Land.
 - The requirements of the notice are to:
 - 1) Demolish the single storey side extension.
 - 2) Demolish the single storey rear extension including clad material, balcony, and glass balustrade.
 - 3) Demolish the flat roofed rear dormer including clad material.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. It is directed that the enforcement notice is varied by the deletion of six (6) months as the time for compliance in section six of the enforcement notice and the substitution with eighteen (18) months.
2. Subject to the variation, 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.

The appeal on ground (c)

3. The appeal on this ground is that the matters alleged in the notice do not constitute a breach of planning control. The burden of proof is on the appellant to demonstrate that the matters alleged in the notice do not constitute a breach of planning control.
4. Whilst it was evident that the appellant has, since the notice was issued, replaced the cladding on the dormer and replaced the patio style doors with windows, the appropriate time period for the consideration of a ground (c) appeal is at the time when the notice was issued and when the appeal is determined.
5. There is no dispute between the main parties that the works amount to development within the meaning of development as set out in section 55(1) of the 1990 Act, for which planning permission is required.

6. The appellant's case is that the dormer extension and single storey rear extension constitute permitted development.
7. It is evident from the Council's submissions, particularly the photographs dated 15 November 2022, that the extensions and dormer were carried out as a single act of development.
8. To be permitted development, the development must meet all the limitations and conditions under each Class relevant to the development, in this case Article 3 Schedule 2 Part 1 Classes A and B of The Town and Country Planning (General Permitted Development) (England) (Order) 2015 (as amended) (the GPDO).
9. Paragraph A.1.(j)(iii) of Class A of the GPDO states that development is not permitted if the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse and would have a width greater than half the width of the original dwellinghouse.
10. Whilst internally the rear extension may not be connected to the single storey side extension (former sun lounge), the extensions are joined. Since the development extends beyond the side elevation of the original dwellinghouse and has a width greater than half the width of the original dwellinghouse, it fails to meet the Class A.1.(j)(iii) requirement.
11. Paragraph A.1.(k)(i) of Class A and paragraph B.1.(e)(i) of Class B state that development is not permitted if it would include the construction or provision of a verandah, balcony or raised platform. Since the development includes a balcony, it would fail to meet these requirements.
12. Moreover, it appears prior to the development taking place, the dwelling was finished in red brick with grey roof tiles. Accordingly, the render and cladding finish would not comply with the conditions at paragraph A.3.(a) and B.2.(a) of Part 1 which requires that the materials used in any exterior work must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse.
13. Notwithstanding the cubic content of the dormer, since the development does not comply with all the limitations and conditions in Class A and Class B, it is not permitted by Class A or Class B of Part 1 of Schedule 2 of the GPDO.
14. For the reasons given, the development is not permitted by any development order and there is no record of planning permission having been granted for it. The appeal on ground (c) therefore fails.

The appeal on ground (a) the deemed planning application

15. The main issues are:

- Whether the development is inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and development plan policy and the effect on the openness of the Green Belt.
- The effect of the development on the character and appearance of the house and area generally.

- The effect on the living conditions of neighbouring occupiers with particular regard to privacy; and
- if the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

Whether inappropriate development

16. Policy LP62 of the Wakefield District Local Plan Adopted January 2024 (Local Plan) relates to existing uses in the Green Belt and states that small scale limited development will be permitted subject to a number of criteria, including that extensions and alterations are not disproportionate over and above the size of the existing building when originally constructed.
17. Paragraph 154 of the Framework indicates that the construction of new buildings should be regarded as inappropriate in the Green Belt except in a number of clearly defined circumstances, including at 154 c) the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building. Policy LP62 of the Local Plan is consistent with the Framework in this respect.
18. The Council's Residential Design Guide Part 2: Guidance for Householders Supplementary Planning Document (SPD) sets out that the extension or alteration of a house in the Green Belt can be acceptable provided that it does not result in disproportionate additions over and above the size of the original house. A maximum extension of up to 50% of the volume and 50% of the floor space of the original house may be regarded as proportionate over and above the size of the original house.
19. The rear extension spans the width of the dwelling, joining the enlarged side extension, and the dormer occupies a significant proportion of the roofslope. Together with the depth and height of the ground floor extension and volume of the dormer, the extensions are significant relative to the original dwelling.
20. Neither party has provided calculations or floor plans. However, the Council stated that the extensions have exceeded 50% of the original floorspace and volume, and the appellant provided no substantive contrary evidence. Given that and based on my observations, the extensions represent a disproportionate addition over and above the size of the original building.
21. The extensions therefore fail to meet the exception at paragraph 154 c) of the Framework and are inappropriate development in the Green Belt.

Openness

22. The Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. Openness in terms of the Green Belt is the absence of development and has been found by the courts to have a spatial as well as visual aspect.
23. The extensions are at the rear of the dwelling, views of which are limited to a small number of neighbouring and nearby dwellings and accordingly in visual

terms the effect on openness would be limited. However, as already stated, the extensions are significant and therefore in spatial terms, have reduced openness. Overall, I consider the harm to the openness of the Green Belt is limited.

Character and appearance

24. The appeal property is a detached dwelling, located in an area which has a rural character. Dwellings in the immediate locality are predominantly detached and there is a wide range of styles, types, and ages of property. Dwellings of a more contemporary appearance are not uncommon.
25. Viewed in this context a contemporary approach is not necessarily inappropriate, including the use of cladding and flat roof forms. However, the extensions and dormer because of the width, spanning that of the dwelling, depth and overall height comprise substantial and bulky additions. Together, with the parapet wall which protrudes awkwardly above the existing eaves, the resulting development appears out of proportion with and overwhelms the rear elevation of the dwelling, adversely affecting its appearance.
26. Replacing the cladding would not overcome the harm in respect of the scale and mass of the extensions.
27. The dwelling is set in a relatively generous plot. Nevertheless, and whilst the extensions are not visible in wider public views, that does not diminish the need for good design.
28. Overall, for the reasons given, the extensions and dormer have a materially harmful effect on the character and appearance of the dwelling and its surroundings. This is contrary to Policy LP57 of the Local Plan which states that development will only be permitted where it would not be discordant with the style of the original dwelling or result in harm to the character of the area. There is also conflict with the design aims of the Framework.

Living conditions

29. The area to the front of the neighbouring 240 Brandy Carr Road, is hard surfaced and appears to be used predominantly for parking vehicles. Accordingly, it seems occupiers would use the rear garden for recreation purposes. It is evident from the Council's photographs and my observations, that users of the balcony would have elevated and largely uninterrupted views over the rear garden of No.240. This would cause significant harm to the living conditions of its occupiers through overlooking, making the garden less pleasant to use.
30. Whilst views over the garden areas at 236 Brandy Carr Road are limited to some extent by domestic outbuildings on the boundary between the dwellings, the balcony has nevertheless resulted in an increase in the actual and perceived level of overlooking and loss of privacy, making the garden less pleasant to use by occupiers of that dwelling.
31. Since the notice was issued the appellant has replaced the balcony doors with windows, such that it seems there would be no convenient access onto the balcony. However, this does not necessarily mean that the balcony could not be used, and the windows replaced with doors in future. Conditions preventing the use of the balcony and/or retention of windows would, in effect, nullify the

benefit of any permission for the balcony and would not be reasonable. Accordingly, conditions would not overcome the harm.

32. For the reasons given, I conclude that the development harms the living conditions of the occupiers of No.240 and No.236 with regard to overlooking and loss of privacy. This is contrary to Policy LP57 of the Local Plan which states that development will only be permitted where it would not significantly reduce the privacy of occupants of neighbouring properties. It also conflicts with the Framework which seeks to ensure a high standard of amenity for existing and future users of buildings.

Other considerations

33. The appellant undertook the development to bring the accommodation up to modern standards and provide additional accommodation for his grandchildren and family to visit. However, since the notice was issued and appeal made, the appellant's personal circumstances have changed, specifically the appellant's son is seriously unwell and at the time of my visit being cared for at home, in a room in the extension which has been fitted out with the necessary support facilities.
34. Whilst the need for the extensions was not driven by these circumstances, they are nevertheless an important consideration to which I attach substantial weight.
35. I acknowledge the appellant's misgivings about the actions of the Council. However, these have no bearing on the planning merits of the development and the outcome of the appeal.

Green Belt Balance

36. Paragraph 152 of the Framework indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The Framework goes on at paragraph 153 to require that substantial weight should be given to any harm to the Green Belt and very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
37. Whilst I attach substantial weight to the appellant's circumstances, it does not follow that the appeal should succeed. There is understandably little evidence regarding the appellant and his families future accommodation needs, and as such no evidence to demonstrate that the appeal development would be the only means by which such needs may be met. Accordingly, dismissing the appeal would be a proportionate response necessary in the wider public interest.
38. I have found harm to the Green Belt by way of inappropriateness, harm to the character and appearance of the dwelling and area and the living conditions of neighbouring occupiers.
39. In this instance the appellant's circumstances do not clearly outweigh the harm to the Green Belt to which I am required to attach substantial weight. Consequently, the very special circumstances necessary to justify the development do not exist. Therefore, the development conflicts with the Green Belt protection aims of Policy LP62 of the Local Plan and the Framework.

Conclusion on ground (a)

40. For the above reasons, I conclude that the appeal on ground (a) should not succeed.

The appeal on ground (f)

41. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve the purpose. The purposes of an enforcement notice are set out in section 173 of the Act and are to remedy the breach of planning control (section 173(4)(a)) or to remedy injury to amenity (section 173(4)(b)).
42. As the enforcement notice requires that the extensions and dormer be demolished, I find the purpose is to remedy the breach of planning control.
43. I have considered the appellant's suggestion of removing and replacing the cladding under ground (a). That would not, in any event, remedy the breach of planning control.
44. Since it is not excessive, in order to remedy the breach of planning control, to require the demolition of the extensions and dormer, the appeal on ground (f) therefore fails.

The appeal on ground (g)

45. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable.
46. Where an appeal is made against an enforcement notice, regardless of the grounds, the appeal 'stops the clock' and the period for compliance does not start until the date of the appeal decision. If the appeal proceeds on ground (g) and other grounds, the appellant is entitled to assume success in the other grounds, and so it is necessary to start from the date of the appeal decision when considering what the 'reasonable' period for compliance would be.
47. As already acknowledged, since the notice was issued and appeal made, the appellant's circumstances have changed. Accordingly, the appellant was given the opportunity to provide additional comments in respect of the appeal on ground (g) and the Council given an opportunity to respond.
48. The appellant suggested a period of 24 months. In response, the Council suggested a period of 12 months, noting their discretionary power to further extend the period, if necessary. However, in the circumstances it is reasonable for the appellant to have some certainty.
49. Undoubtedly the requirement to demolish the extensions in six months would place a disproportionate burden on the appellant. Even if account is taken of the need to remedy the harm, given the current exceptional circumstances I am satisfied that the period for compliance should be extended to 18 months. Whilst not the 24 months suggested by the appellant, this would be a proportionate response to the breach of planning control and would achieve an appropriate balance between the need to resolve the breach of planning control and the interests of the appellant. To this extent, the appeal on ground (g) succeeds.

Conclusion

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

Felicity Thompson

INSPECTOR