



Appeal Decision

Site visit made on 2 May 2025

by **D Hartley BA (Hons) MTP MBA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 02nd May 2025

Appeal Ref: APP/M0655/C/24/3347544

16 Poplars Avenue, Warrington, WA2 9LQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Shane Yates against an enforcement notice issued by Warrington Borough Council.
 - The notice was issued on 28 May 2024.
 - The breach of planning control as alleged in the notice is without planning permission, the construction of a dormer extension.
 - The requirements of the notice are to a) permanently remove the dormer extension from the dwelling, b) after compliance with requirement a), re-instate the original roof plane of the house to its former condition and appearance as shown in the architectural drawing 'proposed wrap round single storey pitched roof extension', pursuant to planning permission reference 2022/42467, and c) remove from the land all fixtures, fittings, materials and debris resulting from compliance with requirements (a) and (b).
 - The periods for compliance with the requirements are 1) two calendar months from the date on which this notice takes effect in respect of requirement a), and 2) three calendar months from the date on which this notice takes effect in respect of requirements b) and c).
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d), (e), (f) 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.
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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 Matter

2. The National Planning Policy Framework was revised in December 2024 and subsequently amended in February 2025 (the 2025 Framework). This replaces the previous version of the National Planning Policy Framework published in December 2023. The 2025 Framework has not materially changed in terms of considering the effect of the development on the living conditions of occupiers of neighbouring properties or design issues. Given the ground (a) appeal main issues, it has not therefore been necessary for me to seek further comments from the main parties about the implications of the 2025 Framework.

Reasons

Ground (e) appeal

3. An appeal made on ground (e) is that copies of the notice were not properly served on everyone with an interest in the land as required by section 172 of the Act. Section 172(2) of the Act provides that a copy of an enforcement notice shall be served on the owner and occupier of the land to which it relates, and any other

person having an interest in the land, including mortgagees, tenants, and sub-tenants, being an interest which, in the opinion of the local planning authority, is materially affected.

4. The appellant states that a copy of the notice was posted through an external letter box which he *'did not have access to at the time'*. He therefore states that at the time he was not aware of the enforcement notice. It is not clear from the evidence why the appellant did not have access to the letter box. In any event, the appellant has lodged an appeal and so is fully aware of the enforcement notice.
5. On the evidence that is before me, I am satisfied that the Council served copies of the notice in accordance with the requirements of section 329 of the Act. I conclude that the evidence demonstrates that copies of the notice were properly served on everyone with an interest in the land as required by section 172 of the Act. Even if the appellant was not initially aware of the served enforcement notice, he is now. Indeed, he has lodged an appeal. It cannot therefore be claimed that the appellant has been prejudiced in any way in terms of the serving of the notice. Therefore, the appeal on ground (e) fails.

Ground (c) appeal

6. An appeal made on ground (c) is that the matters alleged do not constitute a breach of planning control. The onus is on the appellant to make a case on the legal grounds of appeal.
7. The appellant states that his architect advised him that planning permission was not needed for the dormer extension as it was permitted development. I do not know what was said between the appellant and his architect about the need or otherwise for planning permission for the dormer extension. However, this is not a relevant matter in terms of considering the ground (c) appeal.
8. It is necessary that I consider whether the dormer extension is permitted development in respect of the conditions and limitations in the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).
9. The dormer extension is not permitted development under Class B of Part 1 of Schedule 2 of the GPDO in so far that the works exceed the height of the highest part of the existing roof and extend beyond the plane of an existing roof slope which forms the principal elevation of the dwellinghouse. Moreover, the appellant does not provide any measurements to counter the position reached by the local planning authority that the cubic content of the resulting roof space exceeds 50 cubic metres in respect of this detached dwellinghouse. Furthermore, and, in any event, the dormer extension does not meet all the conditions laid out in B.2 of Class B in so far that the materials used are not similar in appearance to those used in the construction of the exterior of the existing dwellinghouse, the eaves of the dwellinghouse have not been retained, and a 0.2 metre set back from the eaves is not achieved.
10. For the above reasons, I conclude that the dormer extension is not permitted development. It is an act of development as defined in section 55 of the Act, and planning permission is required for it. Therefore, the ground (c) appeal fails.

Ground (d) appeal

11. An appeal made on ground (d) is that at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. In an appeal against an enforcement notice on ground (d), the burden of proving relevant facts is on the appellant, and the relevant test of the evidence is on the balance of probability.
12. The appellant claims that the dormer was completed in April 2023 and that it was erected before the adoption of the Warrington Local Plan 2023 (WLP) including policies DC6 and ENV8. The adoption of the WLP is not relevant to the consideration of a ground (d) appeal.
13. In this case, the relevant immunity period is four years. The notice was issued on 28 May 2024. Even if the development was substantially complete in April 2023, four years has not passed between then and the notice being issued. Therefore, the dormer extension is not immune from enforcement action. Consequently, the ground (d) appeal fails.

Ground (a) appeal and the deemed planning application

14. An appeal is made under ground (a) which is that planning permission ought to be granted in respect of the breach of planning control alleged in the notice.
15. I have considered the reasons for issuing the notice and the main issues are the effect of the dormer extension on (i) the character and appearance of the area, and (ii) the living conditions of the occupiers of neighbouring residential properties in respect of outlook and privacy.

Character and appearance

16. While there is some variety in the design of the dwellinghouses in Poplars Avenue, they are nonetheless two-storey in height, of brick construction and with predominantly unbroken hipped roofs. These attributes, along with the sense of space between and around the dwellinghouses, add positively and distinctively to the character and appearance of the locality.
17. The dormer extension is a large and bulky addition when experienced in Poplars Avenue and from the dwellinghouses in Harding Avenue. The dormer is also prominent in view from Harding Avenue when seen between some of the dwellinghouses. It is not proportionate or ancillary in scale to the host property and detracts from the otherwise mainly unbroken front roof slopes in Poplars Avenue.
18. To the rear, the dormer encompasses the former rear roof plane and appears as an unsympathetic and dominant box-like structure which fails to assimilate well with the original house, or that of its neighbours. The use of grey cladding is not reflective of the use of mainly brick for the elevations of the properties in the surrounding area.
19. For the reasons outlined above, I conclude that the development has caused significant harm to the character and appearance of the area and does not constitute good design. Therefore, it does not accord with the character, appearance and design requirements of policy DC6 of the WLP, the Warrington House Extension SPD 2021 (SPD), and chapter 12 of the 2025 Framework.

Living Conditions

20. I was able to consider the relationship between the appeal development and properties to the rear of the site in Harding Avenue as part of my site visit. Given the height, bulk and size of the dormer extension, I find that it appears as a dominant and oppressive form of development when seen from the rear windows of immediate properties in Harding Avenue (particularly Nos. 12 and 14 Harding Avenue) to the detriment of the outlook enjoyed by the occupiers of these dwellinghouses.
21. Moreover, there are vertical and horizontal windows in the rear of the dormer extension and facing properties in Harding Avenue. While I accept that it is not uncommon for properties in this area to have windows in the rear elevations, in this case the unauthorised windows are extensive and at a high level. I find that harm has been caused to the occupiers of the Nos. 12 and 14 Harding Avenue in terms of a loss of privacy.
22. I accept that the two vertical windows have opaque glass, and a condition could be imposed to ensure that they are retained as such. Even if the appellant were to make the other windows opaque glass, this would not overcome the perception of being overlooked from such a tall structure. Moreover, if all the windows included opaque glass, this would result in a very oppressive bedroom environment and with inadequate outlook to the rear. Furthermore, and, in any event, the inclusion of opaque glass windows would not alter or overcome my conclusion about the impact of the development on outlook.
23. For the above reasons, I conclude that the development does not accord with the amenity requirements of policy ENV8 of the WLP, the SPD, and paragraph 135(f) of the 2025 Framework.

Other Considerations

24. The appellant states that the dormer extension was needed to accommodate the needs of all family members, including his children, and that if it had to be removed it would mean that male and female children had to share a bedroom.
25. I acknowledge the reasons why the appellant constructed the dormer extension. The evidence is that the extension ensures that the family has enlarged accommodation which meets their needs. However, these personal circumstances must be weighed against the significant harm that has been caused to the character and appearance of the area, and to the living conditions of the occupiers of neighbouring residential properties. The latter are matters to be considered in the public interest.
26. Moreover, a balanced consideration of the above personal circumstances needs to reflect the potential for the house to be possibly extended in a more sympathetic and proportionate manner in accordance with development plan policies. Should the notice be upheld, it does not automatically mean that it would not be possible to explore the potential to remodel the dwellinghouse and/or to make sympathetic additions to it, which could provide additional or more efficient floorspace.
27. The appellant has commented that his architect told him that planning permission was not needed for the dormer extension. I have some sympathy with the

appellant if that is the case, but this is not a matter which can justify granting planning permission for harmful development.

28. The appellant has commented that he would be prepared to change the materials and to make alterations to the dormer extension so that it reflects permitted development rights. I have not been provided with an alternative scheme (i.e., drawings) to show me what the resultant development would look like, and, in any event, such changes would result in development which is materially different to the breach of planning control, as distinct from part of the matters alleged. Moreover, I emphasise that it is not possible to make unlawful development permitted development given that paragraph 3(5) of the GPDO states that *'the permission granted by Schedule 2 does not apply if— (a) in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful'*.

Planning Balance and Conclusion

29. The development has caused significant harm to the character and appearance of the area and does not constitute good design. In addition, harm has been caused to the living conditions of the occupiers of neighbouring residential properties in respect of outlook and privacy, namely the occupiers of Nos. 12 and 14 Harding Avenue. I find that the personal circumstances relating to the reasons for erecting the unauthorised dormer extension do not outweigh the planning harm caused in respect of my conclusions on the main issues. Therefore, I conclude that the ground (a) appeal fails.

Ground (f) appeal

30. An appeal made under 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 remedy any breach of planning control or to remedy any injury to amenity which has been caused by any such a breach.
31. The purpose of the notice is to remedy the breach of planning control. In this regard, the requirements of the notice, which include the removal of the unauthorised dormer extension, are not excessive.
32. The appellant considers that the requirements of the notice are excessive given the identified personal circumstances and the need for the development. These are not relevant matters in respect of the ground (f) appeal. They are matters that I have considered and balanced as part of my consideration of the ground (a) appeal and the deemed planning application above.
33. For the above reasons, I conclude that the ground (f) appeal fails.

Conclusion

34. 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).

D Hartley, INSPECTOR