



Appeal Decisions

Site visit made on 23 July 2025

by **E Griffin LLB Hons**

an Inspector appointed by the Secretary of State

Decision date: 17th October 2025

Appeal A Ref: APP/P4605/C/24/3351413

Appeal B Ref: APP/P4605/C/24/3351414

107 Parkdale Road, Sheldon, Birmingham, B26 3UU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - Appeal A is made by Scott Burrell and Appeal B is made by Aisulu Ismailova against an enforcement notice issued by Birmingham City Council.
 - The notice was issued on 9 August 2024.
 - The breach of planning control as alleged in the notice is 'without planning permission, the erection of a single storey rear extension in the approximate position marked in green on the attached plan.'
 - The requirements of the notice are
 - i. Reduce the depth of the single storey rear extension to three metres or:
 - ii. Demolish the unauthorised single storey rear extension in its entirety and return the Premises to its condition prior to the breach and,
 - iii. Remove all building materials and rubble from the Premises as a result of compliance with i and ii
 - The period for compliance with the requirement is 6 months.
 - Appeal A is proceeding on the grounds set out in section 174(2) (a), (f) 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.
 - Appeal B is proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 (as amended).
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Decision

Appeal A

1. Appeal A is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a single storey rear extension in the approximate position marked in green on the plan attached to the notice.
2. I take no further action with regard to Appeal B.

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

Main Issue

3. The main issue is the effect of the development upon the living conditions of the occupiers of No 105 Parkdale Road with particular regard to loss of light and outlook.

Reasons

4. The appeal property is a semi-detached two storey dwelling located within a row of similar properties in a residential area with front and rear gardens. At the rear of the dwellings, there a variety of rear extensions and conservatories. No 105 which is the adjoining semi-detached property has a modest single storey rear extension which includes a dining room.
5. The development consists of a roughly square shaped single storey extension at the rear of the appeal property. The side elevation wall of the development is directly on the boundary with the adjoining semi -detached dwelling at No 105. I visited No 105 as part of the site visit and viewed the development from the garden of No 105 as well as through the dining room window. Prior to the development taking place, wooden fencing would have extended along the boundary to the rear of the appeal property. The development is higher than the existing fence which is staggered in height with lower panels nearest to the dwellings.
6. Policy DM10 of the Council's Development Management in Birmingham Development Plan Document (2021) (DPD) states that development will need to ensure adequate outlook and daylight to dwellings, in line with the approach of the '45 Degree Code' incorporated into City Note LW-4 of the Birmingham Design Guide (2022) (BDG). Development should not cross the line from an angle of 45 degrees from the nearest window providing the main source of natural light to a 'habitable room' of dwellings that could be affected.
7. There is no dispute between the parties that the development breaches the 45 Degree code. However, a failure to comply with the code does not mean that development is automatically refused. The policy states that the purpose of the code is to balance the needs of a householder with the living conditions of neighbouring occupiers. Whilst specific exceptions may be referred to in a policy, that does not preclude taking into account any material considerations such as personal circumstances in reaching a decision.
8. The Council relies upon an appeal decision which it has not provided where the Inspector found that the considerable harm to the character and appearance of the area was not outweighed by the limited weight attributed to personal circumstances of the appellant. However, each appeal decision has to be decided upon its own particular facts and circumstances. The issue of what weight to be attributed to any harm and any other matters including personal circumstances is a matter of judgement for the decision maker based upon the particular facts.
9. It is not disputed that the development requires planning permission. The Council however acknowledges that a 3 metre extension could be constructed under permitted development rights although permitted development rights are not retrospective. The Council has however included in the requirements, as an alternative to demolition, the retention of a 3 metre extension in view of the personal circumstances of the family. I do consider it very likely that in the event of the notice being upheld, the appellant would retain a 3 metre extension and an extension of a lesser depth will therefore remain.
10. With regard to the code, the Council has referred to a shortfall of approximately 3.3 metres with No 105 and states that this results in a detrimental impact by way of loss of outlook and light. The Council refers to the development significantly restricting access to morning sunlight although the appellant refers to early

morning sunlight. Based upon the Council's figures, a 3 metre extension is still a breach of the Code albeit to a lesser extent.

11. The occupiers of No 105 have not formally objected to or supported the development but provided access to view the development from their property as a result of a request from the appellant. The appellant refers to consulting the neighbours during the construction process. Views standing inside No 105 at the middle of the rear window looking out, due to the angle, are limited to the edges of the flank wall of the development. In the garden itself, the occupiers of No 105 use the side wall of the development as a feature with plants hanging from it. The extent of planting both on the wall and the garden area to the side of the wall does not support the view that any loss of light has caused any detriment or restricted the use of any part of the garden. The garden is of a reasonable size and provides ample sitting out areas for the occupiers.
12. With regard to outlook, there is now a solid wall along the boundary where there was previously a continuous wooden fence. However, an extension is very likely to remain even in the event of the notice being complied with. There is some loss of outlook which is limited to the difference between a 3 metre extension and the development.
13. On the evidence before me, I do not find that there is adverse harm to the living conditions of the occupiers of No 105 with regard to loss of light. I find the harm arising from loss of outlook to be limited and therefore not in conflict with Policy DM2 of the DMD which refers to *unacceptable* (my emphasis) adverse impacts on amenity of neighbours. However, as Policy DM10 of the DMD specifically refers to the 45 degree code and I have found some harm it is appropriate to consider whether any other material considerations outweigh the harm that I have found.

Personal circumstances

14. Information has been provided regarding the personal circumstances of a family member and the reasons for providing additional living space at ground floor level. The evidence includes details of medical history and conditions. The downstairs layout was previously open plan with no utility or downstairs bathroom.
15. The changes to the internal layout with the additional space provided by the development include a downstairs toilet, a sound proofed utility room and part of the lounge is now a separate sensory room for use by the family member. The reasons for these specific features are related to the needs of the family member and have brought about significant improvements to the quality of life of the family as a whole. On the evidence before me, I do consider that substantial weight should be given to the personal circumstances of the appellant and his family.

Planning balance and Conclusion on ground (a)

16. I have found that the development causes limited harm in respect of loss of outlook with regard to the living conditions of the occupiers of No 105 Parkdale Road. However, I attach substantial weight to the personal circumstances of the appellant and his family. Personal circumstances do therefore outweigh the limited harm caused to the living conditions of the occupiers of No 105.
17. There is some conflict with Policy DM10 of the DPD and the 45 degree code. However, the personal circumstances of the appellant and his family justify a

decision other than in accordance with the development plan for the reasons given. Appeal A is therefore allowed under ground (a).

Conditions

18. I have to consider whether or not any conditions are necessary. The Council had proposed a single condition to render the development in a suitable colour and refers to blockwork. However, as the development now has a grey render, the issue of the finish has now been addressed. No other conditions are required when planning permission is being granted for operational development that already exists.

Overall conclusion

19. For the reasons given above, I conclude that Appeal A succeeds on ground (a). I shall grant planning permission for the development as described in the notice. The enforcement notice will be quashed.
20. In these circumstances, the appeals made under Appeal A and Appeal B on grounds (f) and (g) do not fall to be considered.

E Griffin

INSPECTOR