



Appeal Decision

Site visit made on 9 December 2025

by **A Berry MTCP (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12th December 2025

Appeal Ref: APP/P4605/C/24/3351855

18 Prince of Wales Lane, Birmingham B14 4LB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) ("the 1990 Act").
- The appeal is made by Mr Shahid Ansari against an enforcement notice ("EN") issued by Birmingham City Council.
- The EN was issued on 16 August 2024.
- The breach of planning control as alleged in the EN is:

On 26 February 2021, planning permission was granted by the Council under reference number 2021/00045/PA ("the Planning Permission") for the erection of a single storey rear extension subject to conditions in the approximate position marked in green on the attached plan hereinafter referred to as "the Premises".

Condition 2 of the Planning Permission requires the scheme to be in accordance with the listed approved plans.

Condition 4 of the Planning Permission requires the top-lights in the side elevations of the proposed single storey rear extension hereby approved facing the boundary with No. 16 Prince of Wales Lane shall be fitted with obscure glazing which shall have an obscurity rating of not less than 4 in the Pilkington Glass Range (or an equivalent obscurity rating) and the window shall thereafter be retained as such.

It appears to the Council that conditions 2 and 4 of the Planning Permission have not been complied with because the single storey rear extension has not been built in accordance with the approved plans.

- The development to which the permission relates is: Erection of single storey rear extension.
- The conditions in question are nos 2 and 4 which state:

Condition 2: The development hereby approved shall be implemented in accordance with the details submitted with the application and shown on drawing numbers BR01 - Location and site plan @ 1:500/1:1250, BR02 - Existing and proposed plans @ 1:100, BR03 - Existing and proposed elevations @ 1:100 ('the approved plans').

Condition 4: The top-lights in the side elevations of the proposed single storey rear extension hereby approved facing the boundary with No.16 Prince of Wales Lane shall be fitted with obscure glazing which shall have an obscurity rating of not less than 4 in the Pilkington Glass Range (or an equivalent obscurity rating) and the window shall thereafter be retained as such.

- The requirements of the EN are to:
 - i. Carry out [sic] remedial works to the Premises to ensure that the development is in accordance with the Planning Permission and the conditions attached thereto and in particular the approved plans BR01, BR02 and BR03 and;
 - ii. Remove all materials and rubble from the Land as a result of compliance with requirement i.
 - The period for compliance with the requirements is: 4 months after this EN takes effect.
 - The appeal is proceeding on the ground set out in section 174(2)(a) of the 1990 Act. 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 1990 Act.
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Decision

1. The appeal is allowed and the EN is quashed. In accordance with section 177(1)(b) and section 177(4) of the 1990 Act, the conditions nos 2 and 4 attached to the planning permission dated 26 February 2021, ref 2021/00045/PA are discharged.
2. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act for the erection of a single storey rear extension without complying with the said conditions but subject to the other conditions attached to that permission.

Appeal on Ground (a) and the Deemed Planning Permission

3. An appeal under ground (a) is that planning permission should be granted for the matter alleged. The **main issue** is the effect of the development on the living conditions of the occupiers of 16 Prince of Wales Lane in respect of light, outlook and privacy.

Reasons

4. The appeal site comprises a link-detached two-storey dwelling. Although described as a “*rear extension*”, planning permission¹ was approved for a single storey wrap-around side/rear extension comprising two brick and mono-pitch roof sections connected by a hipped roof conservatory. The windows within the side of the conservatory facing towards No 16 were conditioned to be obscure glazed with an obscurity rating of not less than 4 in the Pilkington Glass Range.
5. The brick and tile extensions were constructed in accordance with the permission. However, a brick built extension with a flat roof has been constructed on the same footprint as the permitted conservatory. Two high-level obscure glazed windows are positioned within the conservatory’s side elevation that face towards No 16. However, information regarding their obscurity rating has not been provided.
6. I observed during my site visit that the two high-level windows are set at a height above the internal floor level that prevents overlooking. Therefore, the extension does not harm the privacy of the occupiers of No 16. Even though these windows are obscure glazed, I am satisfied that a condition requiring the obscure glazing to be retained in perpetuity is not necessary to prevent overlooking.
7. No 16 has a ground floor window in proximity of the boundary shared with the appeal site. It is common ground between the parties that the part of the extension that has not been built in accordance with the approved plans does not adhere to the “*45 degree code*” when measured from No 16’s closest window. However, the Council’s document titled “the 45° Code”, adopted 2006 states that there can be special circumstances that may affect the use of the code including:

“if there is an existing solid boundary wall, permanent outbuilding or other type of solid screen between the neighbouring properties...as long as the new building/extension is not significantly larger than the wall, outbuilding/screen it may be accepted”.

¹ Planning Ref 2021/00045/PA

8. A close boarded fence is located along the shared boundary between the appeal site and No 16. The extension, as constructed, is marginally higher than the section of fence immediately adjacent to the extension and therefore, is not significantly larger than it. The neighbour asserts that the appellant recently replaced this part of the fence with one that is taller, which the appellant disputes.
9. It was agreed between the parties during my site visit that the height of the fence adjacent to the extension is 2.15m. It is unclear from the evidence before me whether planning permission was obtained for the fence or is indeed required. Notwithstanding this, even if the fence was reduced to a height of 2m as permitted by Class A, Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, it is my judgement that the extension would still not be significantly larger than the fence.
10. Consequently, the height of the intervening fence (either existing or reduced to 2m in height) justifies the extension breaching the 45 degree code line. As such, the extension does not have an unacceptable adverse impact on the outlook and light of the neighbour's window.
11. Drawings have been submitted to show the development "as constructed". The development is complete and therefore, I do not find it necessary for condition 2 of the planning permission to be amended to refer to the revised drawings.
12. For these reasons, the development does not harm the living conditions of the occupiers of 16 Prince of Wales Lane in respect of light, outlook and privacy. It complies with Policies DM2 and DM10 of the Development Management in Birmingham Development Plan Document, adopted 2021. These policies seek to ensure that development does not result in unacceptable adverse impacts on the amenity of occupiers and neighbours, including aspect and outlook; sunlight, daylight and overshadowing; visual privacy and overlooking.
13. The Council's reasons for issuing the EN include reference to Policy PG3 of the Birmingham Development Plan, adopted 2017. However, this policy does not refer to the living conditions of occupiers and therefore is not applicable to the appeal.

Conclusion

14. For the reasons given above, I conclude that the appeal should succeed on ground (a) and the EN should be quashed.
15. I shall discharge the conditions which are subject to the EN, and grant planning permission on the application deemed to have been made for the operations previously permitted without complying with the conditions enforced against.

A Berry

INSPECTOR