



Appeal Decision

Site visit made on 10 December 2025

by **Robert Naylor BSc (Hons) MPhil MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 16 January 2026

Appeal Ref: APP/P4605/C/23/3327107

5 Sedgehill Avenue, Birmingham B17 0QR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended.
- The appeal is made by Mrs Reem Abuwarda against an enforcement notice issued by Birmingham City Council.
- The notice was issued on 6 July 2023.
- The breach of planning control as alleged in the notice is *without planning permission, the erection of a three storey rear extension and side dormer in the approximate position marked in green on the attached plan.*
- The requirements of the notice are:
 - i. *Remove the third storey of the rear extension and side dormer in their entirety and carry out remedial works so that the Premises accord with the plans approved pursuant to planning permission reference 2017/10381/PA.*
 - ii. *Demolish the unauthorised three storey rear extension and side dormer 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 or ii.*
- The period for compliance with the requirements is: *6 months after this enforcement notice takes effect.*
- The appeal is proceeding on the grounds set out in section 174(2)(a), (d), (f) and (g) of the 1990 Act (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.

Formal Decision

1. It is directed that the enforcement notice is corrected and varied by:
 - Delete the reference to “2017/10381/PA” from section 5.i. of the requirements and replace with “2017/10831/PA”.
 - Insert the word “or” at the end of section 5.i. of the requirements so that it reads: *“Remove the third storey of the rear extension and side dormer in their entirety and carry out remedial works so that the Premises accord with the plans approved pursuant to planning permission reference 2017/10831/PA, or”*
 - Deleting the text “6 months...” from the time for compliance paragraph at section 6 of the enforcement notice and substituting with the text *“Twelve months (12) from the date on which the enforcement notice takes effect”*.
2. Subject to the corrections and 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 Enforcement Notice

3. The enforcement notice alleges unauthorised operational works have been undertaken at the appeal site, with the requirements section indicating that these

works are not in accordance with the approved plans. The reference to the planning permission contains a typo, with the digits 3 and 8 transposed. However, it is clear from the evidence before me that the alleged breach pertains to development not being undertaken in accordance with permission granted under reference 2017/10831/PA at 5 Sedgehill Avenue, Birmingham B17 0QR. Consequently, in the interests of clarity and to avoid any misinterpretation I have corrected the reference in the notice accordingly, without causing injustice to either the Local Planning Authority or the appellant.

4. The requirements section of the enforcement notice also refers to remedial works to remove the development in its entirety and also to bring it back in line with the granted planning permission. However, these are alternative requirements as both these options cannot be carried out together. As such, I have corrected the notice as stated above, to ensure that the requirements of the notice are directed to either building in accordance with the planning permission **or** removing the development. Again, no injustice would arise to either party.

Appeal on ground (d)

5. An appeal on ground (d) is that, at the date on which the enforcement notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by those matters. The test of the evidence is the balance of probability¹, and the onus of proof is on the appellants. Therefore, the appellants must show, that the three storey rear extension and side dormer had been substantially complete four years prior to the date of the notice, in this case the relevant date is 6 July 2019.
6. Planning permission² was granted at the appeal site, however the subsequent operational development undertaken was not constructed in accordance with the approved details. Specifically, the first floor and roof extension, which were to be supported by piers did not fully extend over the side passageway. Furthermore, the side and the rear portion of the extension included a flush third storey with a flat roof, instead of a subservient hipped treatment attached to the main roof. Consequently, the operational development undertaken did not benefit from planning permission.
7. The appellant states that the works were undertaken in a phased manner and have provided Building Control documents highlighting the relevant phases of works. From the information before me, works were completed on a single storey rear extension³ in December 2018. Whilst a two storey rear extension and loft conversion⁴ were completed in January 2020, suggesting that the works were complete for Building Control purposes after 6 July 2019. Thus, they would not be immune from the Council taking enforcement action.
8. Nevertheless, the appellant contends the two storey side and rear extensions were completed and watertight, before work commenced on the loft conversion, although I have no evidence to confirm this. The appellant further contends that the alterations to the roof were undertaken separately utilising permitted development (PD) and thereby granted planning permission, by Article 3 and

¹ *Thrasyvoulou v SSE & Hackney LBC (No 1)* [1984] JPL 732

² Birmingham City Council Planning Ref: 2017/10831/PA

³ Appendix 3 of Appellants additional Statement of Case

⁴ Appendix 5 of Appellants additional Statement of Case

Schedule 2 Part 1 Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO).

9. Whether operational development is substantially complete and how that is to be assessed was considered by the *Sage*⁵ judgment. The House of Lords held when an application is made for planning permission for a single operation, it was made in respect of the whole of the operation. If a building operation is not carried out, both internally and externally, fully in accordance with the planning permission, the whole operation is unlawful. The appeal site draws parallels with the case law, given that the operational works as constructed were not fully in accordance with planning permission 2017/10831/PA and therefore would be considered unlawful.
10. Furthermore, even if the alterations to the roof were deemed PD, Article 3(5)(a) of the GPDO states permission granted by Schedule 2 does not apply if in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful.
11. Consequently, on the balance of probability, some works to the roof may well have been undertaken in 2019. However, when considered holistically it has not been demonstrated with sufficient precision and unambiguity that the operational development was either a) substantially complete prior to 6 July 2019; or b) in accordance with the approved permission.
12. The ground (d) appeal therefore fails.

Appeal on ground (a) and the deemed planning application

13. A ground (a) appeal is that planning permission should be granted for the matters alleged in the enforcement notice, in whole or in part.

Main Issues

14. The main issues in this appeal are the impact of the development on i) the character and appearance of the host property and the surrounding area; and ii) the living conditions of the adjoining residents with specific regard to outlook, light and privacy.

Reasons

Character and appearance

15. The appeal site is a semi-detached dwellinghouse located on the eastern side of Sedgehill Avenue. The topography is undulating with the appeal site set at the bottom of a slope. The surrounding area is mainly residential with a distinct rhythm and style to the properties, which are tight knit and views of the rear are limited to glimpse views only. There are several other extensions on neighbouring properties in the vicinity, although these are generally single storey rear extensions, and from my site visit there was a noticeable lack of two and three storey extensions within the area.
16. Whilst it is acknowledged that planning permission has been granted for the erection of a two storey side and rear extension and installation of rear dormer window, the scheme was significantly more subservient than that of the current development. Both parties agree that despite being set back from the street scene

⁵ *Sage v SSETR & Maidstone BC* [2003] UKHL 22; [2003] JPL 1299

the extension is larger and bulkier than that of the approved scheme. The increase in mass, particularly at the upper floor level, results in an appearance which dominates the rear of the host property, to its detriment. Furthermore, the increase in the scale of the development, particularly on the flank elevation and at roof level on the rear, appear visually dominant and out of keeping in the surrounding area.

17. The flat roof treatment for a significant proportion of the roof, provides a substantial boxlike addition to the roof profile which contributes to its bulky appearance. While the overall ridge height has not been increased, the unauthorised works provide a negative impact on the proportions of the host property. This roof extension creates a significant visual change to the appearance of the property itself and the rhythm of the area in general. The resulting development is also too large in relation to the adjoining dwellings, and overall causes harm to the local character, building proportions and form.
18. I have had regard to the other schemes for similar development⁶ as highlighted by the appellant. These developments may have some design similarities to the appeal proposal, but they are all a substantial distance from the site. On the basis of the information I have about these other cases, the context would appear to be very different. The character of each site and how these relate to the street scene also varies. I am not bound by these decisions as each scheme needs to be considered on its own merits and circumstances, and as such I afford these examples only modest weight.
19. For the reasons above, the development does not provide high design quality, and is not sympathetic to local character, nor does it respond well to the site conditions and local area context. As such, the scheme does not accord with the relevant sections of policy PG3 of the Birmingham Development Plan (BDP), adopted January 2017; policy DM2 of the Development Management in Birmingham (DMB) Development Plan Document, adopted in December 2021; the aims and objectives of the Birmingham Design Guide: Healthy Living and Working Places City Manual (BDG), adopted September 2022; nor paragraph 135(c) of the National Planning Policy Framework (the Framework).

Living conditions – adjoining residents

Outlook

20. The development provides additional storeys at the first floor and roof level with a stark brick treatment close to the boundary with the adjoining property at No 3 Sedgemoor Avenue. This property is located at a lower ground level than the appeal site and has not been extended, albeit there is a small outbuilding in close proximity to the rear elevation.
21. The rear garden at No 3 is modest in size and has a significant land level drop from the appeal site. Given the gardens moderate extent, coupled with the height of the development, its close proximity, and projection beyond the existing first floor rear elevation; the development appears oppressive and overpowering, when viewed from the garden of No 3.
22. In addition, the development provides a stark, looming presence of considerable height and bulk on this boundary, which also dominates the outlook from the

⁶ Appendix 7 of the Appellants Statement of Case

openings of the rear facing ground floor kitchen at this property. This subsequently provides an oppressive form of development to the detriment of the living conditions of these occupants.

Light

23. In terms of the impact on light at No 3, there are four openings in the rear elevation of this property serving habitable rooms. The two at ground floor level serve a kitchen, whilst the two windows at the first floor level serve bedrooms. The Council refers to the 45 degree code and policy DM10 of the DMB in their reasons for issuing the notice. These guidelines are used to assess the impacts of light on existing houses, where development should not cross the line from an angle of 45 degrees from the nearest window, which provides the main source of natural light to 'habitable rooms' of dwellings that could be affected.
24. It is clear that the rear extension breaches this 45 degree code for the openings closest to this boundary. Furthermore, this is a 2D plan view assessment only, and does not take into account the increase in height which arises as a result of the development. Given the significant increase in bulk and mass at first floor and roof level, coupled with the lower ground level at No 3, the development unacceptably diminishes the amount of light entering the habitable rooms at ground floor and first floor levels of No 3.
25. Whilst I acknowledge that the appellant has drawn my attention to the positioning of an existing outbuilding close to the rear elevation at No 3, this is significantly lower than the development at the appeal site and is also under the control of this resident, unlike the development subject to this appeal. Given the significant height difference and the breach of the 45 degree code, this consideration does not outweigh my findings in respect to this matter.

Privacy

26. In regard to privacy, the flank dormer window facing No 7 Sedgehill Avenue, provides unrestricted views of the neighbouring amenity space. Whilst a degree of mutual overlooking is to be expected in a suburban setting, the orientation of the window and the close relationship between the opening and its neighbours creates an unacceptable degree of overlooking and a loss of privacy harmful to their living conditions. However, I appreciate that the window is a secondary opening, and the use of obscured glazing would mitigate impacts of overlooking and loss of privacy. This could be secured by condition, if I were to allow the appeal.
27. Overall, the proposal would unacceptably harm the living conditions of the neighbouring occupants with particular regard to No 3 Sedgehill Avenue, due to the impact on daylight and outlook. Therefore, the proposal would conflict with the objectives of the BDG, the relevant sections of policies DM2 and DM10 of the DMB and the Framework which collectively seek, among other things, to protect the amenity of the occupants of adjacent buildings from unneighbourly development and ensure good levels of amenity with accommodation that meets every day needs.

Conclusion on ground (a) and deemed planning application

28. The development subject to this appeal causes unacceptable harm to the character and appearance of the host property and the surrounding area and the

living conditions of the adjoining residents. As such, the development is in conflict with the Development Plan when taken as a whole. There are no material considerations that indicate the decision should be made other than in accordance with the Development Plan.

29. Consequently, the ground (a) appeal does not succeed.

Appeal on ground (f)

30. The appeal on ground (f) is that the requirements of the enforcement notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. S173(4) of the 1990 Act sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, a) the remedying of the breach of planning control by discontinuing any use of the land or by restoring the land to its condition before the breach took place or b) remedying any injury to amenity which has been caused by the breach.
31. Having regard to its requirements, it is clear that the purpose of the notice is to remedy the breach of planning control as set out under section 173(4)(a) of the 1990 Act. That purpose includes i) complying with the planning permission 2017/10831/PA or ii) restoring the land to its condition before the breach took place. Option i) provides for retaining most of the existing development at ground and first floor levels, whilst replacing the erroneous roof section (albeit additional structural works would be required), which provides an obvious alternative to its complete removal.
32. I have already found under ground (a) that the current development harms the visual character and appearance of the host property, the surrounding area, and living conditions of the adjoining residents. Therefore, it is unacceptable as built. No lesser steps have been put forward by the appellant, in the form of an alternative proposal, thus I have no basis on which to consider whether another option is viable as this could prejudice the parties. However, this does not preclude the appellant from exploring an alternative scheme with the Local Planning Authority via an appropriate planning application. Given the corrected period of compliance this should be sufficient to gauge whether any agreement on such an alternative scheme is likely.
33. Nevertheless, I find that either option i) or ii) would be appropriate to remedy the breach of planning control, and as such the requirements of the enforcement notice are not excessive. Given that no lesser steps have been identified that would achieve the aims of the notice, the appeal on ground (f) therefore fails.

Appeal on ground (g)

34. For an appeal on ground (g) to succeed, it is to be demonstrated that the period specified in the enforcement notice for compliance in accordance with section 173(9) of the 1990 Act falls short of what should reasonably be allowed.
35. The appellant contends that the period of six months is too restrictive given the requirements of the notice, suggesting that further structural works would need to be undertaken to accord with planning permission 2017/10831/PA. The appellant also contends that the works would be costly.

36. In response to these concerns, I am unaware of any financial constraints of the appellant nor the availability of funding in order to undertake the necessary works. Nevertheless, in my view given the structural nature of the works, an increase of a further six months to twelve for compliance, would give ample time for the appellant to make the necessary arrangements and carry out the works. I will vary the enforcement notice accordingly.
37. To that extent, the appeal succeeds on ground (g).

Overall Conclusion

38. For the reasons given above, I conclude that the appeal should be dismissed, and the enforcement notice is upheld with corrections and variations.

Robert Naylor

INSPECTOR