
Appeal Decision

Site visit made on 15 September 2016

by Anthony J Wharton BArch RIBA RIAS MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 21 September 2016

Appeal Ref: APP/Z0116/C/16/3151410

18 Bellevue Road, Easton, Bristol BS5 6DS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Ms Calista Rocket and Mr Daniel Parr against an enforcement notice issued by Bristol City Council.
 - The enforcement notice was issued on 25 April 2016.
 - The breach of planning control as alleged in the notice is: the erection of a cycle storage structure to the front of the property.
 - The requirements of the notice are to completely remove the unauthorised cycle storage structure and reinstate the front boundary wall.
 - The time for compliance with the requirements is 30 days.
 - The appeal made on ground (f) only, as set out in section 174(2) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended cannot be considered (see matters of clarification below)
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Background information and matters of clarification

2. The appeal property is a two storey, mid-terraced dwelling house located on the west side of Bellevue Road. The unauthorised timber structure has been built between the footway and the front bay window. Part of the front wall has been demolished to accommodate the store. The doors open out on to the footway and there is some planting on the flat roof. A complaint was made to the Council in March 2015 and it was considered expedient to take enforcement action.
3. A retrospective application (15/05281/H) was made for the retention of the cycle store and this was refused on 2 February 2016. Although no fee would have been applicable, there was no appeal made against this refusal. Instead the appellants submitted a modified scheme. This was received by the Council on the same date that the enforcement notice was issued and the Council refused to accept the amended application.
4. The Localism Act 2011 amends The Town and Country Planning Act 1990 by inserting section 70C. This gives an authority the power to decline retrospective applications where an enforcement notice is in place. The notice was not in place at the time of the retrospective application (15/05281/H) and the Council accepted and then refused that in February 2016. When the amended application, was submitted (and irrespective of the timing – date of issue of the enforcement notice)

this was a new proposal which was attempting to overcome the reasons of refusal of the retrospective application.

5. I do not consider, therefore that the Council should have used the powers under section 70C to reject the amended application which was not a 'retrospective application' but a new amended one. Be that as it may, a fee would still have been required for this appeal if ground (a) and the deemed application were to be considered. Clearly, for whatever reasons, the fee was not paid and, despite the fact that the Council would be content for me to consider ground (a), I am not empowered to consider anything other than the appeal on ground (f). This is how I have dealt with the appeal and in relation only to the original unauthorised bicycle store which I saw during my site visit. I cannot consider any amended scheme and in any case, the information is not before me.

6. I can understand the concerns and frustrations of the appellants but I cannot deal with the manner in which the Council has handled the case. If the appellants are aggrieved in this respect then this is matter between them and the Council. So too is whether or not the amended scheme is to be re-submitted and considered.

The appeal on ground (f)

7. I do not consider that the requirements of the notice are excessive. The aim of the notice is to remedy the breach of control. The breach involved the removal of part of the front wall and the erection of the timber structure. Even though I cannot consider an appeal under ground (a), I share the Council's concerns about the impact of the store on both the dwelling house and the area in general. In my view the removal of the structure and replacing the wall would overcome the breach/harm caused and I do not consider that any lesser steps are justified.

8. It may well be that the section of front wall could have been removed without planning permission but it was removed so that the unauthorised structure could be built hard up against the footway. It is, therefore justified to require its reinstatement as part of the requirements of the notice. I consider it necessary, therefore, that the requirements are carried out in full and that the reinstatement of the wall does not exceed what is necessary to remedy the breach of planning control. The appellants have not shown that any other lesser steps can overcome the planning harm referred to in the notice. The appeal must fail, therefore on ground (f).

Other Matters

9. In reaching my conclusion I have taken into account all of the other matters raised by the appellants. These include the planning history; the references to the amended scheme; the references to section 70C (inserted by the Localism Act 2011); the reasons for delaying the re-submission of the amended application; the unsatisfactory communications with the Council and the confusion arising as to whether or not there should have been a 'fee-free' appeal under ground (a).

10. However none of these matters alters my conclusions on the ground (f) appeal and nor is any other factor of such significance so as to alter my decision that the appeal should fail and that the notice should be upheld.

Anthony J Wharton

Inspector