

Appeal Decision

Site Inspection on 25 August 2016.

by Graham Self MA MSc FRTPi

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

Decision date: 21 September 2016

Appeal Reference: APP/P1750/C/16/3142604

Site at: 14 Church Circle, Farnborough GU14 6QH

- The appeal is made by Ms Neelam Bains under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by Rushmoor Borough Council.
- The council's reference is 14/00071/CONSRV.
- The notice is dated 16 December 2015.
- The breach of planning control alleged in the notice is:
"On the 11th May 2012 planning permission number 12/00157/EXT was granted for the erection of a rear extension and change of use from a community house to 5 self-contained flats, subject to conditions. Condition 7 required:
'Unless agreed in writing by the Local Planning authority, the permission hereby granted shall be carried out in accordance with the following approved drawings:- 01B, 02E, 04B, 05A, 06, 07A, & 08B.'
It appears to the Council that the condition has not been complied with, because the windows have not been provided in accordance with drawing 04B which required the installation of single glazed timber sash windows as the stated materials for the proposed windows. The windows that have been installed are UPVC windows, which are in breach of this condition."
- The requirements of the notice are:
"Remove the 24 UPVC windows (in the front elevation, 5 at ground floor and 6 at first floor; in the south elevation, 3 at ground floor and 3 first floor; in the rear elevation, 2 at ground floor, 2 at first floor and 1 at second floor; and in the north elevation, 1 at ground floor and 1 at first floor)."
- The period for compliance is six months.
- The appeal was made on ground (a) as set out in Section 174(2) of the 1990 Act.

Summary of Decision: The appeal is allowed and the enforcement notice is quashed for legal reasons.

Relevant History

1. Planning permission was granted in March 2009 for development at the appeal property, described in the relevant application as:
"The existing building consists of 8No. bedsits. It is proposed to demolish existing rear extension & rebuild as proposed on Drawing Nos 20812/01 & 02. To provide 5 No. self contained flats"

2. Permission was granted subject to seven conditions. Condition 1 was a standard condition requiring the development to be begun within three years. Condition 2 applied to the rear extension, and I refer to it more fully later.
3. In the application which resulted in the 2009 permission (Item 11 in the application form), the existing window materials were described as: "Single glazed timber sash" and the proposed materials were described as: "To match existing style and appearance".
4. In February 2012 (shortly before the 2009 permission was due to lapse in March 2012) Ms Bains applied for a new planning permission to replace the then extant 2009 permission in order to extend the time limit for implementation. The proposal was described in the application as: "Rear extension & change of use from community house to 5 self-contained flats following demolition of the existing rear extension". Planning permission was granted in May 2012, subject to nine conditions. Condition 7 is quoted in the summary details at the start of this appeal decision.

The Enforcement Notice - Legal Issues

5. The enforcement notice issued by the council is flawed in three ways. First, the allegation refers to Condition 7 of the 2012 planning permission and states that Drawing 04B required the installation of single glazed timber sash windows as the stated materials for the proposed windows. But there is no such requirement or statement on the drawing. The drawings as submitted in evidence are reduced to A4 size and I have had to use a magnifying glass, but I can only find notes relating to the brickwork and roof ("Facing brickwork to match existing" and "Roof slates to match existing"), and a note on one of the side elevation drawings reading: "New window openings formed".
6. Second, as the council have realised, there are 26 windows in the appeal property. The requirements of the enforcement notice refer to 24 windows. As part of their case, the council asked that the requirements be varied so as to include two windows in the rear elevation which are not mentioned in the notice as issued.
7. Third, Paragraph 1 of the notice refers to Section 171A(1)(a). For an enforcement notice alleging a breach of condition, this should have specified Section 171A(1)(b). This is a minor matter which has not caused any difficulty for the appellant, and could be corrected using the powers available to me under Section 176 of the 1990 Act.
8. After my site inspection I sent messages to the council and appellant inviting written comments on the first two matters above. On the first matter, I wrote that the 2012 drawings show glazing bars which appear thinner than those installed, but as far as I could tell, the words "single glazed timber sash windows" do not appear anywhere on the drawing. On the second matter, my message pointed out that inspectors' powers to vary enforcement notices cannot normally be used if the result would make a notice more onerous than it was originally.
9. In their responding comments, the council contended that the recipient of the notice could be in no doubt as to the breach of planning control enforced against, that the development was carried out as one operation, that the intention of the notice was clear, and that a simple correction in respect of the number of windows would not disadvantage the appellant in any way. The council did not make any comment on the first matter mentioned above.

10. The application form which resulted in the 2009 planning permission contained a section headed "Materials". In this part of the application the existing window materials were specified as: "single glazed timber sash" and the proposed materials were specified as: "To match existing style and appearance". Condition 2 of the 2009 permission stated that "the external walls and windows of the extension hereby permitted shall be of the same material, design, colour and type as those of the existing building". (It is to be noted that this condition only referred to *the extension hereby permitted*.)
11. The 2012 planning application did not contain the details I have just described in the 2009 application, and the 2012 permission did not repeat Condition 2 of the 2009 permission. The 2012 permission was a fresh permission - indeed, it was not granted until after the 2009 permission had lapsed. Nor have the council disputed my comment that the words "single glazed timber sash windows" do not appear on Drawing 04B.
12. The basis of the enforcement action is that Condition 7 of the 2012 permission combined with Drawing 04B required the installation of single glazed timber sash windows as the stated materials for the proposed windows. That basis is unfounded. There is nothing in Condition 7 or in Drawing 04B making such a statement or establishing such a requirement. Nor does any other drawing or condition of the 2012 permission do so.
13. Although Section 176 of the 1990 Act enables inspectors to correct and vary enforcement notices, these powers cannot be used for what would in effect amount to re-writing a notice, and I do not consider it appropriate for me to try to do so in this instance even if I could see how a notice could be framed. In summary, this enforcement notice alleges the breach of a condition, and in turn the failure to comply with a drawing, when neither the condition nor the drawing refer to the matters alleged to have been breached. I find that the enforcement notice is flawed beyond correction. I shall therefore quash it.
14. As regards the number of windows, it is not normally possible to widen the scope of an enforcement notice without causing injustice to an appellant. This point by itself might not have been fatal to the notice, but it is not necessary for me to make a finding on it in view of the conclusion just explained.
15. Because the enforcement notice is being quashed on legal grounds the appeal is being allowed. I refrain from commenting on the planning aspects raised by the appeal on ground (a), since doing so could prejudice future proceedings, if there are any. The fee paid for the application deemed to have been made under Section 177(5) of the 1990 Act should be returned in due course.

Formal Decision

16. I allow the appeal and direct that the enforcement notice be quashed.

G F Self

Inspector