
Appeal Decision

Site visit made on 19 September 2016

by K R Saward Solicitor

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

Decision date: 29 September 2016

Appeal Ref: APP/W2465/C/16/3145652
188 Kitchener Road, Leicester LE5 4FQ

- 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 Mrs Y Patel against an enforcement notice issued by Leicester City Council.
- The enforcement notice was issued on 29 January 2016.
- The breach of planning control as alleged in the notice is without planning permission the erection of a single storey extension including a canopy and pillars situated at the front of the property.
- The requirements of the notice are:-
 1. Demolish and remove the single storey extension at the front of the property.
 2. Remove the canopy and pillars at the front of the Property.
 3. Remove all associated waste materials from the Land resulting from compliance with the paragraphs above.
- The period for compliance with the requirements is 1 month.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b) & (c) 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 s177(5) of the Act.

Summary of Decision: The appeal succeeds in part on ground (a) and the enforcement notice is upheld as varied in the terms set out below in the Formal Decision

Application for costs

1. An application for costs was made by Mrs Y Patel against the Council. This application is the subject of a separate Decision.

Preliminary Matters

2. Whilst the ground (c) box was not ticked on the Appeal Form, it is clear from the appellant's Appeal Statement that an appeal is brought on that ground. The appellant's comments also indicate that an appeal is submitted on grounds (e), (f) and (g), but no submissions have been made on these grounds. The appeal proceeds on grounds (a), (b) and (c).

The appeal on ground (b)

3. This ground is that the breach of control alleged in the notice has not occurred. In order to succeed on this ground it would need to be demonstrated that the development as alleged, i.e. the front extension, canopy and pillars, have not been erected on the land. This is not disputed. Following the issue of the notice the pillars have been removed and the appellant says this took place in May 2016. At the same time, the canopy was reduced in size. The relevant
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date for the purposes of the ground (b) appeal is when the notice was issued. Therefore, as a matter of fact the breach, as alleged, has occurred and the ground (b) appeal must fail.

4. Arguments that the development are within the terms of a planning permission or permitted development, fall within ground (c).

The appeal on ground (c)

5. The appeal on this ground is that the matters alleged in the notice do not constitute a breach of planning control. The appellant contends that the front extension is a porch which is permitted development and that other works benefit from planning permission.
6. In 2001, planning permission was granted for a single storey extension at the front and side of the property plus a rear extension. The front extension comprised a porch projecting around 1.55m from the front wall and 2.4m in width. A second planning permission was granted in 2011 for a single storey side and rear extension.
7. When it became apparent that the built development did not accord with the approved plans, a retrospective application was submitted. Planning permission was secured in September 2013 for 'retention of two storey extension to side and rear, canopy to front of house (Class C3)'. As part of that application the canopy was to project 1.4m from the front elevation rather than 1.7m as built. Pillars supporting the canopy roof at either end were to be removed and replaced with brackets as shown in the approved plans.
8. Prior to submitting the 2013 application, the appellant states that she was advised by the Council that the front extension porch which had been constructed was permitted development. The appellant has produced a drawing identifying the ground area for the 'porch' as measuring 3sqm being the size limit for a porch as permitted development within Schedule 2, Part 1, Class D of the Town and Country Planning (General Permitted Development) (England) Order 2015.
9. According to the Council, the canopy is not the same as the one approved by the 2013 permission. In particular, the approved canopy is 1.4m in depth whereas the canopy was built at 1.7m. It has since been reduced to 1.4m and the pillars replaced with brackets. The appellant refers to the time limit condition imposed on the 2013 permission for the development to begin. The appellant points out that she had 3 years from 5 September 2013 to start the approved works with no finish date. As it happens, the appellant says that the works to remove the pillars and reduce the canopy were undertaken in May 2016. It is the appellant's position that the canopy has thus been built in accordance with the 2013 permission.
10. If the canopy is not the same as that contained in the 2013 permission then it does not benefit from the planning permission and the Council would be justified in taking enforcement action.
11. Section 55 of the 1990 Act says that 'development' means the carrying out of building operations. That is what requires planning permission under section 57. The key issue is whether what has been built was a building operation which had planning permission. The situation must be judged at the date the development was carried out; normally the date the works

commenced. It is undisputed that the canopy was built larger than that subsequently approved. Although the canopy has now been reduced to the approved depth, express planning permission was not granted for the 'porch'. The canopy spans the width of the dwelling and provides the roof covering for the 'porch' which is encompassed within the overall extension of the frontage.

12. To establish if the development has planning permission, the important point is whether there was one or more building operation. When works are undertaken contemporaneously, the development as a whole must be looked at. It is not possible to split the works into different components on the basis that part is permitted development and another part has express planning permission, if it is one building operation. That could only occur if there were different operations each substantially complete before starting another.
13. Here, it is apparent that only one building operation has been carried out with all the works undertaken as though one development including the construction of the 'porch' which forms part of the canopy extension. It clearly has not been built separately. That being so, the 'porch' would not have been within the parameters of permitted development and the single building operation does not benefit from planning permission.
14. I conclude that the appeal on ground (c) must fail.

The appeal on ground (a) and the deemed planning application

Main Issue

15. The main issue is the effect of the development on the character and appearance of the host dwelling and the surrounding area.

Reasons

16. The deemed planning application proceeds solely on the basis of what is alleged in the enforcement notice i.e. the erection of a single storey extension including a canopy and pillars. The application is thus for pillars and a canopy of the original depth rather than that to which it has been reduced.
17. The appeal site is located in a residential area composed of modest, traditional style houses. No 188 is one half of a pair of semi-detached houses in a relatively long row of houses of similar size and appearance with upper and lower bay windows and pitched roofs. All have small front gardens mostly paved over to provide off-street parking. Where extensions to other semi-detached houses along this stretch of the road are visible from the highway, the additions are small and unobtrusive.
18. The full width canopy takes the form of a shallow pitched roof above the ground floor accommodation and continues past the main side elevation to cover the side extension. The 'porch' is glazed and encloses what was previously the front door in a shaped design which projects forward of the ground floor bay window. As reduced, the canopy ends roughly in line with the porch. Prior to the reduction, the canopy would certainly have been disproportionately bulky and combined with the pillars would have appeared unduly prominent. It would thereby have detracted from and had an adverse effect on the character and appearance of the host dwelling and the

surrounding area contrary to policy CS3 of the Council's Core Strategy¹ which, amongst other things, seeks high quality design. It would also have conflicted with the similar aims of paragraphs 56 and 58 of the National Planning Policy Framework.

19. The reduction having been made and the pillars removed, this part of the development has less visual impact than it would before. Although the porch is quite prominent due to its projection, the shape and materials broadly reflect those of the adjacent bay window. The overall effect is of a relatively cohesive development that does not give rise to material harm in conflict with the aforementioned policies.
20. The previous grant of planning permission for a canopy of the size now subsisting is a relevant consideration even if the 2013 planning permission cannot now be implemented. I am also mindful that it would serve no purpose to require the appellant to demolish the front extension only for a replacement porch of similar footprint to be built under permitted development rights.
21. Clearly based on the harm identified, the deemed planning application should not be allowed for the development as identified in the notice when it includes the pillars and larger canopy. However, it is within my powers pursuant to section 177(1)(a) to grant planning permission in respect of any part of the matters alleged in the notice.

Conclusion on ground (a) and the deemed planning application

22. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal on ground (a) should succeed to the extent that an extension with canopy up to 1.4m in depth be allowed. This would allow the development to remain in its current, reduced form. In this instance, the most appropriate approach for this to be achieved is for me to vary the notice so that it requires a reduction in the depth of the extension to no more than 1.4m. Under section 173(11) of the Act, when the requirements of the notice have been complied with then planning permission shall be treated as having been granted for the extension by virtue of section 73A.

Formal Decision

23. It is directed that the enforcement notice be varied by deletion of paragraphs 5.1 and 5.2 of the notice and substitution therefor with:
 - (i) "5.1 Remove the pillars at the front of the Property."
 - (ii) "5.2 Reduce the canopy to a depth of no more than 1.4m measured from the main front elevation."
24. Subject to these variations, the appeal is dismissed and 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.

KR Saward

INSPECTOR

¹¹ Leicester City local development framework Core Strategy, 2014