

Appeal Decision

Site visit made on 12 December 2016

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 19 December 2016

Appeal Ref: APP/D0121/C/16/3150764

3 Caveners Court, Upper Bristol Road, Weston-super-Mare BS22 8DH

- 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 Mr Samie Reynolds against an enforcement notice issued by North Somerset Council (the LPA).
 - The enforcement notice is not dated but there is a date of when it would have come into effect had it not been appealed. This is 17 May 2016.
 - The breach of planning control as alleged in the notice is, without planning permission, the erection of a front dormer extension.
 - The requirements of the notice are as follows:
 - (i) remove the dormer extension from the land, and
 - (ii) remove from the land all building materials and rubble arising from compliance with requirement (i) above, and
 - (iii) restore the roof of 3 Caveners Court to the condition it was in which it was before the breach of planning control took place.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on ground (c) 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 does not fall to be considered.
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Decision

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

Matters of clarification and background information

2. Although the notice was signed, it was not dated. However, the date of issue can be ascertained from the date that it was due to come into effect which was 17 May 2016. The date of issue was 28 days before the 17 May 2016, which was 19 April 2016. I have, therefore, proceeded to deal with the notice on that basis and I am satisfied that no injustice will be caused to either the appellant or the Council.
 3. I am not empowered to deal with the merits of the case or to consider whether or not planning permission should be granted for the dormer window. The only ground of appeal is ground (c) and under this ground the onus is on the appellant to conclusively show that there has not been a breach of planning control (for example because there is a permission in place or that the works constitute 'permitted development').
 4. The appeal site is a two-storey mid terrace house in a predominantly residential part of Weston-Super-Mare. The surrounding properties are of similar type and construction and many have been altered including the insertion of dormer windows. Caveners Court is a short private cul-de-sac leading off the Upper Bristol
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Road and serving several similar dwellings. When the appellant's dormer was brought to the Council's attention, in April 2015, the appellant was invited to submit a planning application for its retention. No application was submitted. The Council then issued a Planning Contravention Notice (PCN) on 11 August 2015. This was not completed or returned.

5. The Council refers to the National Planning Policy Framework (NPPF) and in particular to section 7 which requires good design. It also refers to relevant adopted North Somerset Core Strategy (NSCS); the most relevant being Policy CS12 (Achieving high quality design and place-making), as well as to design policies in the North Somerset Replacement Local Plan (NSRLP) and the Emerging Sites and Policies Plan (ESPP). Policy CS12 is referred to under the reasons for issuing the, as are policies GDP/3 and DM32 and DM38 of the NSRLP and the ESPP respectively.

The appeal on ground (c)

6. Whilst the above policies set the scene for the issuing of the notice, I have indicated above that the merits of the development carried out are not before me. This appeal turns on whether or not the development (the addition of the dormer) constitutes 'permitted development' under the Town and Country Planning (General Permitted Development) (England) 2015 (the GPDO) or whether planning permission is required for the operational development as carried out.

7. The appellant contends that the extension does not require planning permission because it is 'permitted development'. He refers to checking the matter on the 'Planning Portal' and considers that all of 'permitted development' criteria ('referred to by him as laws') are met. He indicates that the Council's Building Inspector has seen the development at every stage and is '*more than happy*' with what has been done. The appellant stresses that having carried out his research he should not be having problems at this stage of the build.

8. The relevant part of the GPDO is Part 1, Class B. This starts by stating that the enlargement of a dwelling house consisting of an addition or alteration to its roof (this would include a dormer) is permitted development. The next part of Part B then goes on to set out a list of situations B.1, (a) to (f), which constitute such developments (*additions etc to a roof of a dwelling house*) which are not permitted.

9. At B.1 (c) it is indicated that one such type of an addition to a roof which is not permitted development is where '*any part of the dwelling house, as a result of the works, extend beyond the plane of any existing roof slope which forms the principal elevation of the dwellinghouse and fronts a highway*'. In this case the dormer window as built clearly extends beyond the plane of the existing roof slope. It is built into the roof slope and forms a triangular box structure sitting on top of the original sloping roof to the property.

10. So far what has been built might be considered to be 'permitted development'. However, if the front slope of the roof relates to the 'principal' elevation of the house (usually the front elevation) and also fronts a 'highway', then planning permission is required for any alteration which extends beyond the original slope.

11. Having seen the appeal property and the adjacent houses, I consider that the roof slope at No 3 cannot be considered to be on any elevation other than the front and principal one. There is also no doubt that it fronts on to Caveners Court which serves 6 dwellings. This is a private road leading off Upper Bristol Road and is an access road to the other dwellings within this grouping.

12. Even if it is a private access and not an adopted road, for the purposes of the GPDO it is classed as a 'highway'. Under the Interpretation of Part 1 of the GPDO, as indicated by the LPA, on page 24, it states '*I. For the purposes of Part 1 – 'highway' includes an unadopted street or private way*' and that an '*unadopted street*' means a street that is not being a highway maintainable at public expense.

13. Unfortunately for the appellant, therefore, planning permission is required for the dormer works carried out to the roof of his property. I sympathise with the predicament in which he now finds himself and appreciate that he attempted to comply with the advice set out in the 'Planning Portal'. But matters relating to the GPDO can be complex. In this case the appellant's research was not complete in that he clearly failed to notice that the word '*highway*', for the purposes of the GPDO, also related to a private, unadopted access road such as Caveners Court.

14. In conclusion, therefore, because the works do not constitute permitted development and there is no planning permission in place, there has been a breach of planning control. It follows that the appeal cannot succeed on ground (c) and that the appeal must fail.

Other Matters

15. I have taken into account all other matters raised by both the Council and the Appellant but none carries sufficient weight to overturn my conclusion that the dormer window as built does not constitute 'permitted development' under the GPDO.

Anthony J Wharton

Inspector