
Appeal Decision

Site visit made on 3 January 2017

by Thomas Shields MA DipURP MRTPI

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

Decision date: 9 January 2017

Appeal Ref: APP/A2470/C/16/3155256

14B Queen Street, Uppingham, Rutland, LE5 9QR

- 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 Clive Giles against an enforcement notice issued by Rutland Council.
 - The enforcement notice was issued on 19 July 2016.
 - The breach of planning control as alleged in the notice is, without planning permission the carrying out of the following unauthorised works on the Land:
 - 3.1 The conversion of the building to a dwellinghouse
 - 3.2 The removal of part of the chimney stack from the north elevation gable end
 - 3.3 The insertion of three rooflights into the west facing roof slope
 - 3.4 The insertion of four UPVC window openings, one on the ground floor level and three on the first floor level of the eastern elevation
 - 3.5 The replacement of the original timber doors at ground floor level with a modern UPVC glazed door and a full length UPVC plate glass window.
 - The requirements of the notice are:
 - (i) Remove from the eastern elevation the UPVC windows shown as A, B, C and D on the attached plan (Plan B). Brick up the openings using brickwork to match the existing.
 - (ii) Remove the UPVC door and full size glazed unit shown as E and F on the attached plan (Plan B) from the eastern elevation and refit vertical boarded timber doors of a style to match those originally fitted as shown on the attached photograph.
 - (iii) Remove from the Land all building materials arising from compliance with the requirements at (i) and (ii) above.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fee has 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 succeeds on ground (g) and the enforcement notice in section 6 is varied by deleting "three (3) months" and replacing it with "6 months".
2. Subject to the variation the appeal is dismissed and the enforcement notice is upheld.

Appeal site and background

3. 14B Queen Street is a former outbuilding to the rear of buildings facing onto High Street within the Uppingham Conservation Area. A related appeal (APP/A2470/W/16/3154482) against the Council's refusal to grant planning
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permission for the development carried out was dismissed on 7 November 2016.

4. The breach of planning control described at section 3.1 to 3.5 of the notice includes a number of elements. However, there are no requirements at section 5 of the notice to be taken in respect of the breach at (3.1) to (3.3). Hence, the Council does not seek to enforce against the conversion of the building to a dwellinghouse, the removal of the chimney stack, or the insertion of the three rooflights. As such, the Council has used its discretion to 'under-enforce'.
5. Given the above factors, the effect of section 173(11) of the Act is that where an enforcement notice in respect of any breach of planning control could have required buildings or works to be removed, or an activity to cease, but has stipulated some lesser requirement, (under-enforcement), which has been complied with, then, so far as the notice did not so require, planning permission shall be deemed to be granted under s73A for that operation or use.

The appeal on ground (f)

6. The ground of appeal is that the requirements of the notice exceed what is necessary.
7. When a ground (f) appeal is made it is essential to understand the purpose of the notice. Section 173(4) of the Act provides that the purpose is to (a) remedy the breach of planning control that has occurred or (b) to remedy any injury to amenity which has been caused by the breach.
8. Each of the notice's requirements at section 5 requires the complete removal and restoration of the relevant unauthorised alteration. Hence the purpose of those requirements falls within section 173(4)(a). Any lesser steps than complete removal and restoration would not remedy those parts of the breach of planning control. Consequently, the requirements are not excessive.
9. I am unable to consider the merit of alternative treatment (the appellant refers to a 2010 planning permission incorporating windows at first floor and one at ground floor in lieu of a door) because there is no ground (a)/deemed planning application before me to consider.
10. However, as explained previously, given that full compliance with the notice would grant a deemed planning permission for the building to be used as a dwellinghouse, I am concerned that it would not then provide an acceptable level of amenity to occupiers in respect of there being no windows to the bedrooms; a point referred to by the appellant. I address this matter further in the appeal under ground (g).
11. For the above reasons the appeal on ground (f) fails.

The appeal on ground (g)

12. The ground of appeal is that the period for compliance with the notice requirements falls short of what should reasonably be allowed. The appellant argues that 3 months is inadequate to allow the works to be carried out given that tenants would need to find alternative accommodation and a 9 month period is sought.

13. The physical works required to be carried out to fully comply with the notice would not take very long. However, as I have set out previously, full compliance with the notice would not provide an acceptable level of amenity in respect of the first floor bedrooms.
14. In these circumstances I can substitute a longer period of time for compliance to allow for an alternative scheme for windows and doors to be submitted to the Council and granted planning permission and implemented. The onus on ensuring that happens in a timely manner is upon the appellant.
15. Taking account of the above a period of 9 months for compliance is unjustified. I consider that 6 months is a more reasonable period of time.
16. To this limited extent the appeal succeeds and I have varied the notice accordingly.

Thomas Shields

INSPECTOR