
Appeal Decisions

Site visit made on 18 January 2017

by K R Saward Solicitor

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

Decision date: 26 January 2017

25 Wychford Drive, Sawbridgeworth, Herts CM21 0HA

Appeal A: APP/J1915/C/16/3155055

Appeal B: APP/J1915/C/16/3167548

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr J Haley (Appeal A) and Mrs Haley (Appeal B) against an enforcement notice issued by East Hertfordshire District Council.
- The enforcement notice was issued on 27 June 2016.
- The breach of planning control as alleged in the notice is without planning permission the construction of a pitched roofed front porch.
- The requirement of the notice is to remove the unauthorised front porch.
- The period for compliance with the requirement is 2 months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a),(b),(c),(d),(f)&(g) 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.
- Appeal B is proceeding on the grounds set out in section 174(2)(b),(c),(d),(f)&(g) 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.

Summary of Decisions: The appeals succeed in part and the enforcement notice is upheld as varied in the terms set out below in the Formal Decisions.

Procedural matters

1. Originally an appeal was brought under ground (a) in the names of Mr and Mrs Haley. Because section 174 of the 1990 Act specifies that "a person" having an interest in the land to which an enforcement notice relates or "a relevant occupier" may appeal against the notice, there is no right of joint appeal. Therefore, all individuals who appeal against the enforcement notice are treated as having made separate appeals and different appeal references have been allocated. When an appeal is made against an enforcement notice on ground (a), an application for planning permission for the development enforced against is deemed to be made under Section 177(5) of the Act and a fee is payable in respect of each application. The deemed application made by Mrs Haley lapsed following non-payment of the prescribed fee within the specified period. Her appeal proceeds on the other grounds cited.
 2. In the appellants Grounds of Appeal, arguments raised under ground (b) are more pertinent to ground (c) and vice versa. I will deal with the arguments raised under the appropriate headings.
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Reasons

Appeals A and B

The appeals 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 a pitched roofed front porch, as alleged, has not been constructed on the land.
4. There is no dispute that there is now a porch with a pitched roof at the property. The issue in contention is essentially whether the development simply comprised the construction of a new roof or the works constituted the construction of a porch, as alleged.
5. Drawings¹ submitted to the Council in connection with an application for planning permission at the property illustrate the dwelling as it existed prior to development taking place. Sales particulars with a photograph of the front elevation pre-development have also been supplied. It can be seen from these documents that there was previously a single storey flat roofed projection with front and side windows and recessed porch on one side. As part of the works undertaken, the recessed area has been squared off, the windows filled in and a door re-positioned centrally with glazed panels above and to the sides. The flat roof has been replaced with a pitched roof and a deep overhang of the eaves. As the roof is gable fronted, there is an increase in height to the front elevation.
6. It is evident that the works comprise more than the simple addition of a roof. Whilst parts of the original structure remain, there is a material difference in the external appearance between the projection as it existed before compared to now when viewed from all public vantage points. This arises not only from the extent of works carried out, but also the overall scale and form of the completed porch. The nature and extent of those works and the dramatically different effect on the external appearance of the building as a whole causes me to conclude that the works are so significant as to virtually amount to a re-build of this part of the property. Indeed, the completed development bears little resemblance to the previous form. In my judgement, it would be correct as a matter of fact and degree for the development to be described in terms of the construction of a porch.
7. I conclude as a matter of fact the matter alleged has occurred. The appeal on ground (b) fails.

The appeals on ground (c)

8. The appeals on this ground are that the matters alleged in the notice do not constitute a breach of planning control. The onus is on the appellants under this ground of appeal to make out the case that there has not been a breach of planning control.
9. Planning permission was granted on 28 January 2015² for a single storey side extension, single and two storey rear extensions, pitched roof to front porch

¹ Numbered 819.01 and dated 2014

² Pursuant to Council ref: 3/14/2202/FP

and alterations to fenestration at the appeal property. The works to the front porch do not accord with the approved plans and a retrospective planning application to regularise the position was refused by the Council on 7 January 2016. There followed the issue of the enforcement notice.

10. If the appellants had concerns over the approach taken by the Council to the retrospective application then an appeal could have been submitted pursuant to section 78 of the 1990 Act.
11. The appellants argue that all works beneath flat roof level was a conversion not requiring planning permission because improvements or other alterations of any building work which does not materially affect the external appearance of the building is not 'development' for the purposes of section 55(2)(a) of the 1990 Act.
12. Section 55(1) says that 'development' means the carrying out of building operations. That is what requires planning permission under section 57. The key question is whether what has been undertaken amounts to a building operation which had planning permission.
13. I have no reason to believe that the projection which existed previously was unlawful. However, whilst the width and depth may be unchanged, there has been infilling including removal of windows, creation of a new door opening and raised height above the original eaves level to accommodate the new pitched roof. There is no dispute that the pitched roof is unauthorised.
14. It is difficult to see how these works could have been undertaken other than as a single building operation particularly given the nature of the roofing works. 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 may not amount to development and another part is permitted development³. That could occur only if there were different operations each substantially complete before starting another. There is no evidence to indicate that is what has happened here. As such, I conclude that the porch as a whole required express planning permission by virtue of section 57 of the Act.
15. Since planning permission has not been granted for the porch as built, I find there is a breach of planning control for the matter alleged in the notice. The ground (c) appeals fail.

The appeals on ground (d)

16. In a ground (d) appeal, the burden of proving relevant facts is on the appellants, and the relevant test of the evidence is the balance of probability. The ground of appeal is that at the time the notice was issued it was too late to take enforcement action.
17. Even though there was a single storey projection beneath a flat concrete roof which existed for more than 4 years prior to the issue of the notice, this was not the same development attacked by the notice. As set out in my reasons under ground (b), the development in breach of planning control is the

³ Under Article 3 of the Town and Country Planning (Permitted Development)(England) Order 2015

construction of a porch with pitched roof. It is not disputed that the works to create the porch in its current form were undertaken within the past 4 years. It follows that the appeals on ground (d) must fail.

18. Arguments concerning the notice requiring the demolition of parts of the original dwelling are more appropriately addressed under ground (f).

Appeal A only - ground (a) and the deemed planning application

Main Issue

19. The main issue is the effect of the porch on the street scene along Wychford Drive.

Reasons

20. Wychford Drive is a residential road composed predominantly of detached and semi-detached houses of similar simple, modern architectural style in tightly knit plots. No 25 is a detached house located towards the head of a cul-de-sac. Whereas other properties in the cul-de-sac have exposed brickwork and feature cladding, No 25 has painted render. The style and original proportions of the main house is otherwise the same. Given the alignment of properties along this row, the appeal property occupies a forward position giving it prominence when entering the cul-de-sac, enhanced by its different finish and colour.
21. The porch is highly visible in the street scene by reason of its gabled pitch roof design, scale and height. Whilst the eaves height may not have changed, the ridge is much higher rising to a point just beneath a first floor window. Although the angle of the pitch appears to correspond with that of the main roof, the conformity ends there. The style of roof is a bulky addition at odds with its surroundings. Indeed, the extent of overhang of the roof with its wide fascia is a highly discordant feature particularly given the height and width of the porch.
22. As part of the 2015 planning permission, a new mono-pitch roof was approved to the single storey projection which otherwise looked as though it would be unchanged. That style of roof would be consistent with examples found elsewhere in the road although most front projections are flat roofed. Not only would a mono-pitch roof have been far more in keeping with the surroundings, it would have had a less dominating effect on the front elevation than the porch as built with its prominent and sizeable overhang. The deviation from the approved plans is not minor, but represents more extensive development of a dramatically different appearance.
23. Whether the approved porch roof would have afforded sufficient rainwater protection is not a factor that justifies the wholly different built form of roof.
24. My attention has been drawn to a number of other additions at properties in the vicinity. None of these are directly comparable to the porch in this case. Nor do they set a precedent as each case must be considered on its merits.
25. Notwithstanding that there have been no neighbour or parish council objections, I conclude that the porch has a significant adverse effect on the

street scene contrary to policies ENV1, ENV5 and ENV6 of the Local Plan⁴ which, amongst other things, seek a high standard of design that responds to local character. It also conflicts with the similar aims of paragraphs 56 and 58 of the National Planning Policy Framework.

Conclusion on ground (a) and the deemed planning application

26. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal on ground (a) and the application for deemed planning permission should fail.

Appeals A and B

The appeals on ground (f)

27. The ground of appeal is that the steps required by the notice to be taken are excessive.
28. In requiring removal of the porch in its entirety parts of the original house would be removed. The scope of an enforcement notice is limited to achieve wholly or partly the purposes set out in section 173(4)(a) and (b) of the 1990 Act. In this case the requirement of the notice to remove the porch is consistent with the purpose of remedying the breach and the reasons for issuing the notice concern the visual amenity of the area. The notice therefore aims to address both purposes. Where planning permission has not been granted for the development undertaken, the power is simply to restore the land to its condition before the breach took place. To require remedial action beyond that would be excessive. Thus removal of the structure in its entirety is not justified.
29. The 2015 planning permission is extant and it remains open to the appellants to build the porch in accordance with the approved plans. I shall therefore vary the requirements of the notice in line with section 173(4)(a) to require *either* restoration of the porch to its former condition or modified to comply with the terms and conditions of the 2015 permission.
30. To this extent the appeals on ground (f) succeed.

The appeals on ground (g)

31. The ground of appeal is that the time given to comply with the requirements of the notice is too short. The appellants seek 1 year rather than the 2 months afforded by the notice.
32. No further planning permission would be needed to comply with the requirements of the notice. Nor should a structural engineer need to be engaged in light of my conclusion on ground (f) as no part of the original building would require removal. I acknowledge that 2 months is a short time in which to secure quotes, engage a contractor and to complete the works.
33. A period of 4 months would be more appropriate. It strikes the right balance between affording sufficient time for works to be undertaken and addressing the harm arising so that the response is a proportionate one.

⁴ East Herts Local Plan Second Review April 2007

34. To that extent, the ground (g) appeals succeed.

Formal Decisions

Appeal A

35. It is directed that the enforcement notice is varied by:-

(a) deleting the text of paragraph 5. in its entirety and inserting

“EITHER (i) restore the porch to its condition immediately before the development took place OR (ii) modify the porch to comply with the terms of the planning permission (ref: 3/14/2202/FP) dated 28 January 2015 including the conditions subject to which that permission was granted.”

(b) deleting 2 months from paragraph 6. and inserting 4 months as the period of compliance.

36. Subject to these variations the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

37. It is directed that the enforcement notice is varied by:-

(c) deleting the text of paragraph 5. in its entirety and inserting

“EITHER (i) restore the porch to its condition immediately before the development took place OR (ii) modify the porch to comply with the terms of the planning permission (ref: 3/14/2202/FP) dated 28 January 2015 including the conditions subject to which that permission was granted.”

(d) deleting 2 months from paragraph 6. and inserting 4 months as the period of compliance.

38. Subject to these variations the appeal is dismissed and the enforcement notice is upheld.

KR Seward

INSPECTOR