
Appeal Decision

Site visit made on 13 December 2016

by Elizabeth Jones BSc (Hons) MCTP MRTPI

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

Decision date: 20 February 2017

Appeal Ref: APP/F0114/C/16/3152163

Land at Heath Cottage, Tilley Lane, Farmborough, Bath BA2 0BE

- 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 David Hitchings against an enforcement notice issued by Bath & North East Somerset Council.
 - The enforcement notice was issued on 12 May 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of the two storey side extension in the approximate position marked with a RED cross on the attached plan.
 - The requirements of the notice are to demolish the side extension in its entirety and make good the land.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (e), (c) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is allowed and the enforcement notice is quashed.

Application for costs

2. An application for costs was made by Mr David Hitchings against Bath and North East Somerset Council. This application is the subject of a separate Decision.
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Appeal on ground (e)

4. Ground (e) is concerned with whether a copy of the enforcement notice was properly served as required by s172(2) of the 1990 Act. In appeals on grounds (e) and also (c), the burden of proof is firmly on the appellant and the test is the balance of probability.
 5. S172(2) provides that a copy of an enforcement notice shall be served (a) on the owner and on the occupier of the land to which it relates; and (b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice. S172(3) states that the service of a notice shall take place (a) not more than twenty eight days after its date of issue; and (b) not less than twenty eight days before the date specified in it as the date on which it is to take effect. S329 prescribes methods by which a notice may be served.
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6. The notice was issued on 12 May 2016. The appellant suggests that he only received a copy of the notice a few days before the date on which it was due to take effect, 12 June 2016, and the little time he had to make the appeal caused him stress. However, the Council submit that having obtained owner and address details in response to a Planning Contravention Notice dated 9 March 2015; the notice was posted by first class recorded delivery on the day it was issued.
7. The appellant failed to collect the letter from the Royal Mail which resulted in the Council Officers hand delivering it on 7 June 2016 at the appeal address. I am satisfied that the requirements of s172(3) and s329 with regard to service were satisfied. Moreover, s176(5) provides that failure to serve the notice may be disregarded provided that neither the appellant nor that person required to be served has been substantially prejudiced. In this case the appellant has made and argued an appeal against the notice; he has not shown that he or any other person has been prejudiced as a result of any failure to comply with the rules concerning service.
8. The appellant also criticises the enforcement plan as being inaccurate because it does not show a rear extension and outbuildings, but there is no requirement for a notice to include a plan. Regulation 4 of the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 says that an enforcement notice shall specify the precise boundaries of the land to which the notice relates, whether by reference to a plan or otherwise.
9. In this case the notice itself describes the site address, and that the alleged breach of planning control is a two storey side extension. The plan shows the boundaries of the land and indicates the approximate location of the extension. The notice is sufficiently clear and the recipients of the notice appear to understand what is being attacked and where it is.
10. For the reasons given above, I conclude that the requirements of s172(2) of the Act were satisfied. Consequently, the appeal on ground (e) fails.

Appeal on ground (c)

The Development

11. The appeal on ground (c) is that the matter alleged in the notice does not constitute a breach of planning control.
12. When the Council's Officer visited the site in December 2014, the structure which is subject to the notice was not attached to the dwellinghouse; the Council could not ascertain whether it would be an extension or 'ancillary building'. When issuing the notice, however, the Council described the development as a two storey extension. I must determine this ground (c) appeal on the basis of the matter alleged. The Council's statement of case included that 'the development is a two storey side extension that requires planning permission'.
13. The extension was not completed on the date that the notice was issued, or indeed the date of my visit. However, it still falls to me to ascertain whether the development which has occurred amounts to a breach of planning control. I have had regard to both parties' submissions regarding the extension as it is and would be. If the extension is subsequently completed so as to be materially

different and in breach of planning control, the Council would be able to take separate enforcement action.

Is Planning Permission Required?

14. The meaning of development is set out in s55 (1) of the Act and includes the carrying out of building, engineering, mining or other operations in, on, over or under land. The two storey extension is operational development within the meaning of s55 of the Act, for which, s57 indicates planning permission is required.
15. Article 3 of the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (GPDO)(GPDO 2008), which was in force at the time of the development, grants planning permission for classes of development described as permitted development (PD) in Schedule 2.

Part 1, Class A

16. Class A of Part 1 of Schedule 2 of the GPDO 2008 permits the enlargement, improvement or other alteration of a dwellinghouse subject to limitations and conditions. The Council argues that the appeal extension would conflict with limitation A.1(h) which excludes from PD an extension "beyond a wall forming a *side* elevation of the *original* dwellinghouse which would exceed 4 metres in height, have more than one storey or would have a width greater than half the width of the original dwellinghouse" (my emphases).
17. Article 1(2) of the GPDO 2008 stated that 'original' in relation to a building but not on Crown land, meant the building as existing on 1 July 1948 or as so built on or after that date. The Department for Communities and Local Government's "Permitted Development for Householders: Technical Guidance" (TG) gives advice for the interpretation of the GPDO and it also sets out the definition of 'original'.
18. The appeal extension is located on the western elevation of the existing house. The appellant contends that the west elevation, which stands perpendicular to the road, was the front or principal elevation of the dwellinghouse as it existed on 1 July 1948; thus, the extension is to the front and it does not conflict with A.1(h). The Council acknowledges that historic evidence¹ does indeed indicate that the original front elevation of the dwellinghouse was the west elevation.
19. The appeal house was extended in the 1980s; the Council suggests that the effect of the works was to reorient the dwellinghouse and make the north elevation the frontage. It is true that the north was described as the front or principal elevation in a subsequent planning application², but this cannot alter my assessment of the dwellinghouse for the purposes of this ground (c) appeal. I am satisfied that, although the front door was relocated to the north elevation when the property was previously extended, the appeal development does not extend beyond a wall forming a side elevation of the original dwellinghouse.
20. Thus, the limitation A.1(h) is not applicable. Adding a little weight to that assessment, I saw that a large proportion of the previous extension had been demolished and a new door has now been inserted into the west elevation. I

¹ Aerial photograph dated September 1964.

² Ref: 06/00415/FUL.

consider that an ordinary person in the street approaching the property and looking for the front of the house would go to the west elevation.

21. The appeal extension also complies with the limitations set out in paragraph A.1.(d) as the west elevation does not front the highway.

Part 1, Classes B and C

22. Paragraph A.1(i)(iv) of Class A says "development is not permitted by Class A if it would consist of or include an alteration to any part of the roof of the dwellinghouse" and the TG says " *Where an extension to a house under Class A includes works that would require an alteration to the existing roof of the house (e.g. where the roof of the extension joins the existing roof), the alterations to the existing roof of the house will need to meet the requirements of Class B or C (as appropriate) in order to be permitted development*".
23. Since the appeal extension has two storeys but the main parties had only assessed the extension in relation to Class A, they were invited to assess the extension under Class B or C. I have had regard to the subsequent submissions including the various appendices from both parties.
24. The TG says "*....where a proposed two storey extension... has a roof that joins onto the main roof of the original house... [and would] include the creation of a dormer window to enlarge the roof space, either in the extension or the original roof space, then they would also need to meet the requirements of Class B*". Since there are and would be no dormer windows in the extension or the original roof space and contrary to the Council's submissions, I find that Class B does not apply. I also accept the appellants' submissions as to why they consider that the extension does not and would not breach the limitations in Class C.

Conclusion

25. I conclude that the extension was built in accordance with the GPDO 2008 and so is permitted under Article 3, Schedule 2, Part 1, Classes A and C of the GPDO 2008. The enforcement notice will be quashed and the appeal on ground (g) does not fall to be considered.
26. The Council in their submissions suggest a planning condition regarding materials in the event the appeal is allowed. However, the notice was not appealed on ground (a) and it has been quashed in any event from my findings above. Thus, the imposition of planning conditions is not applicable.

Elizabeth Jones

INSPECTOR