
Appeals Decision

Site visit made on 1 March 2016

by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA

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

Decision date: 21 March 2017

Appeals Ref: APP/J1915/C/16/3154375 and 3154376
24 Cublands, Hertford, Hertfordshire SG13 7TS

- 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 Mrs Joanne Ruskin and Mr Scott Ruskin 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 dormer window on the front roof slope fronting a highway.
 - The requirement of the notice is: remove the unauthorised front dormer window.
 - The period for compliance with the requirement is three months.
 - The appeals are proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.
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Summary of Decision

1. The appeals are dismissed and the enforcement notice is upheld with a correction.

Application for Costs

2. An application for costs was made by Mrs Joanne Ruskin against the decision of Hertfordshire District Council. This application is the subject of a separate Decision.

Procedural Matter

3. The appellants say it is unfair and contrary to human rights legislation not to hold a hearing of the appeal. The appropriate procedure has been kept under review and I am satisfied that the advice allegedly given by the Council before preparing its appeal statement is not a determining factor in the appeal. It is established in case law that the requirement for a fair hearing set out in Article 6 of the European Convention of Human Rights need not necessarily involve an oral hearing. I have visited the site and consider the written material from both main parties sufficient to decide the appeal.

Compliance period

4. By s173(9) of the Act an enforcement notice must specify a period (which by definition must have an ascertainable start and end date) at the end of which any steps are required to have been taken or any activities are required to have ceased. The notice is imprecise as to when the three month period starts. Critically, the period for compliance of the notice must not begin before the notice has taken effect. There is nothing within the notice to suggest that it
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might be interpreted in that way or that the period is to begin at a later time after it becomes effective. It is reasonable to infer from the notice read as a whole that the period commences after the notice takes effect and I will correct the notice to clarify the position under powers in s176(1)(a) of the Act.

The appeals on ground (c) that the matters alleged are not a breach of planning control

Reasons

5. 24 Cublands is a terraced house oriented approximately on a north to south axis having a north facing elevation. It is undisputed that this is the principal elevation for the purposes of applying relevant parts of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO).
6. The dispute between the parties centres on the application of Class B.1(c) of Part 1, Schedule 2 to the GPDO. An enlargement of a dwellinghouse consisting of an addition or alteration to its roof is not permitted if— “(c) any part of the dwellinghouse would, 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”. The other requirements in Class B.1 are met.
7. The GPDO does not define a highway as such, however under s329(1) of the Highways Act 1980 a footway is included in the definition of a highway as “a way comprised in a highway which also comprises a carriageway, being a way over which the public have a right of way on foot only.” Further, in the section of the GPDO entitled “Interpretation of Part 1”, it is stated that for the purposes of the GPDO “highway” includes an unadopted street or a private way.
8. Government Technical Guidance¹ is published to assist in the application and interpretation of the GPDO. It advises on page 16 that the extent to which an elevation of a house fronts a highway depends on factors such as:

(i) the angle between the elevation of the house and the highway. If that angle is more than 45 degrees, then the elevation will not normally be considered as fronting a highway;

(ii) the distance between the house and the highway - in cases where that distance is substantial, it is unlikely that a building can be said to front the highway. The same may be true where there is a significant intervening area of land in different ownership or use between the boundary of the curtilage of the house concerned and the highway.
9. It seems to me that in assessing this matter as I have to do, on a fact and degree basis, apart from proximity and angle of view, inter-visibility is also relevant.
10. Raynards Way/Vixen Drive are highways that converge on a roundabout with an adjoining footway that follows the curve of the road down and alongside Vixen Drive. I saw that the principal elevation of the appeal property faces the roundabout across an amenity area of land which is heavily vegetated at the far end from No 24. Views of No 24 and adjoining properties are largely obscured from the roundabout end including from the footway (or footpath) that cuts across the amenity land. Distances to No 24 from the roundabout

¹ The DCLG Permitted Development for Householders: Technical Guidance 13 April 2016

and the footway in front have been variously estimated as some 24 to 30m away. From this distance and considering the nature of the intervening land I am not persuaded that the property "fronts" that part of the path or road.

11. However the distance between the footway and No 24 reduces as one walks down Vixen Drive. The appeal property becomes clearly visible at closer quarters, from an angle which is less than 45 degrees. No 24 is the second terraced house along from the edge of the footway and is in a prominent position that looks out not only directly over the amenity space in front but also over a section of the footway and carriageway of Vixen Drive. The road is an arterial route but has a proximate and visible relationship with No 24 and No 23, the house in between, where open railings define the edge of the boundary with the footway and the distance from No 24 across the intervening land belonging to No 23 is relatively short. The footway at this point is to my mind read in the same street scene as the closest frontages that include No 24.
12. Therefore, applying the Technical Guidance, and from my experience of walking the footway, I consider that the distances and angles involved, whilst taking account of the degree of inter-visibility, are such that the appeal premises front a highway, being the footway within Vixen Drive.
13. The appellants say it is for the Council to prove that candidate roads and footpaths are highways. Although they set out clearly and comprehensively what is known about the separate path immediately in front of No 24 that leads from Cublands, it is unnecessary to conclude as to its highway status in light of my finding as to Vixen Drive. The footway along Vixen Drive is outside the residential estate in which the appeal premises lie and to all intents and purposes it appears to be a way along which the public pass and repass without any specific hindrance. From what I have seen and read I regard the footway and the carriageway of this part of Vixen Drive as a highway for the purposes of applying the relevant legislation and guidance in this appeal.
14. In the appeal statement it is said that as the intention of the GPDO is to allow minor extensions, it follows that a wide interpretation to bring "unobjectionable distant development" within its control would be wrong. However in assessing what is "unobjectionable" a planning merits criterion would be introduced. This would be an inappropriate test to apply to the development itself. The issue is rather whether its host elevation, being a principal one, fronts a highway.
15. By the same token, since, in an appeal on ground (c) the planning merits of the development are not relevant to the issue of whether there has been a breach of planning control, I am unable to take into account representations about the effect of the dormer on living conditions of nearby residents.
16. The comments of the parties relating to the appeal decisions on The Ridge and Saunders Lane are noted. However I do not have full details of those particular cases and such information as has been provided does not assist me in the fact and degree assessment I have to make in this appeal. The fact that the property in this appeal does not share its address with the highway it fronts, is not in my view a decisive factor, considering the legislation and guidance.

Conclusion on ground (c) appeals

17. The dormer has been constructed on the front roof slope of the property without express planning permission. It does not benefit from a permission

granted in the GPDO because it is on a principal elevation of a dwellinghouse which, as a matter of fact and degree, fronts a highway. The development is therefore in breach of planning control and the appeals on ground (c) fail.

Conclusion

18. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notice with a correction.

Formal decision

19. It is directed that the period for compliance in the enforcement notice be corrected by inserting after "three months" the wording "after this notice takes effect".
20. Subject to this correction the appeals are dismissed and the enforcement notice is upheld.

Grahame Kean

INSPECTOR