

Appeal Decisions

Site visit made on 27 February 2017

by A U Ghafoor BSc (Hons) MA MRTPI

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

Decision date: 24 March 2017

Appeal A and B Refs: APP/W4705/C/16/3150508 and 3150509 Land at 2 View Road, Keighley, Bradford BD20 6JE

- 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 Mohammed Shaban (Appeal A) and Mrs Maqsood Bi (Appeal B) against an enforcement notice issued by Bradford Metropolitan Borough Council.
 - The enforcement notice, numbered EN 07, was issued on 7 April 2016.
 - The breach of planning control as alleged in the notice is without planning permission the construction of a single-storey side and rear extension creating a raised platform atop with stepped access.
 - The requirements of the notice are to:
 - (1) Demolish the single-storey side and rear extension.
 - (2) Remove the stepped access giving access to the raised platform atop the single-storey side and rear extension.
 - (3) Make good any damage caused to the original building using materials which match the original building, and
 - (4) Remove all resulting materials.
 - The period for compliance with the requirements is 4 calendar months.
 - Both Appeals are proceeding on the grounds set out in section 174(2) (d) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeals on ground (a) and applications for planning permission deemed to have been made under section 177(5) of the Act as amended do not fall to be considered.
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Decisions

1. Both Appeal A and B are dismissed and the enforcement notice is upheld.

The site and background information

2. No. 2 View Road is a detached dwelling and to its side there is a carport and garage extension, which is the subject of these proceedings. The side-to-rear addition protrudes within the rear garden behind the house. A set of concrete steps run along the side of the extension and provide access to the continuous flat roof of the garage and carport.
3. The appellants refer to a planning permission for the construction of a new flat roof carport granted on 16 July 2010¹. However, the side and rear extension, as built, is substantially different to the approved scheme, because of its design and layout. A retrospective application for planning permission to retain the development has been refused and subsequently dismissed on appeal².

¹ Council ref: 10/02601/HOU.

² Council ref: 15/06624/HOU and appeal ref: (same digits ending with) 3143176 dated 30 March 2016.

Ground (d)³

4. In this appeal, the onus of proof is firmly upon the appellants. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellants version of events less than probable, there is no good reason to dismiss the appeal, provided the appellants' evidence alone is, on the balance of probability, sufficiently precise and unambiguous⁴.
5. The appellants' claim is a simple one, namely, that the building operation involved in the erection of the side and rear extension is immune from enforcement action due to the passage of time. Where there has been a breach of planning control consisting in the carrying out without planning permission of building operations on land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed. For the purposes of this appeal, the evidence should show that the side and rear extension was substantially completed on or before 7 April 2012, which is the relevant date.
6. The appellants own evidence is that building work commenced in September 2013 and completed in January 2015. Additionally, the previous Inspector states that, at the time of her site visit, which was 15 March 2016, the garage appeared to have been almost completed. Clearly, all of these events occurred after the relevant date. Substantial completion therefore could not have occurred on or before the relevant date. On the basis of these material facts, the immunity claim cannot succeed and the alleged development is not immune from enforcement action. I conclude that ground (d) is doomed to fail.

Ground (f)

7. It is apparent from the wording of the issued document as a whole that the notice seeks to remedy the breach of planning control by restoring the land to its condition before the breach occurred. It is necessary to examine whether the steps required to comply with the notice are excessive (s174(2)(f)).
8. The reasons for issuing the notice refer to the poor quality design of the side and rear extension. The use of the extension's flat roof for residential purposes has the potential to adversely affect neighbours' quality of life, given loss of privacy due to excessive overlooking. There is serious planning objection to the development carried out. To overcome these concerns, the appellants are willing to remove the concrete staircase as a lesser step. However, issues about the overall design quality would not be properly addressed.
9. The appellants do not say how the requirements could be precisely worded to require the removal of the staircase in a suitable and practical manner. Given the nature and scale of building operations required to remove the steps, the requirements would need to be worded with precision. I do not consider that the notice's terms can be varied to require this type of building work without introducing considerable uncertainty. In turn, that might create interpretative issues. Because of the liability that comes along with a failure to comply with the notice, I find that outcome to be unacceptable.

³ Section 174(2)(d) says that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters.

⁴ *Gabbittas v SSE & Newham LBC* [1985] JPL 630. The authority of *Ravensdale Limited v Secretary of State for Communities and Local Government* [2016] EWHC 2374 (Admin) reviewed the relevant case law regarding the onus of proof upon an appellant in this type of case.

10. Furthermore, there is an added complexity because of under-enforcement. Where a notice in respect of any breach of planning control could have required any buildings or works to be removed but does not do so; and all the requirements of the notice have been complied with, then, so far as the notice did not so require, planning permission shall be treated as having been granted by virtue of s 73A of the Act in respect of development consisting of the construction of the building or works. This outcome has not been envisaged by the appeal parties.
11. I understand a compromise has been achieved between the appeal parties. Planning permission has been granted on 4 July 2016 for the removal of the existing stairs and retention of the single-storey garage. I consider it inappropriate to vary the notice to require compliance with the terms of that permission, because the alternative scheme seems to be materially different to the development subject of this appeal. Instead reliance is placed upon operation of s 180 of the Act. It states that where, after the service of a copy of a notice, planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission.
12. Pulling all of the above points together, nothing short of total compliance would remedy the breach of planning control and the steps required are not excessive. Therefore, ground (f) fails.

Overall conclusions

13. Having regard to all other matters, I conclude that the Appeals should not succeed. I have upheld the enforcement notice as set out in paragraph (1) above.

A U Ghafoor

Inspector