
Appeal Decision

Site visit made on 24 March 2017

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

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

Decision date: 13 April 2017

Appeal Ref : APP/D1590/C/16/3159628

Land at 216 Eastwood Old Road, Leigh on Sea, Essex, SS9 4SQ

- 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 Martin Rose against an enforcement notice issued by Southend-on-Sea Borough Council.
- The notice was issued on 9 August 2016.
- The breach of planning control as alleged in the notice is without planning permission erection of an extension to the side and rear of the existing house.
- The requirements of the notice are to completely remove all parts of the extension that lie west of the line of the west external elevation of the original house, and all parts of the extension that lie south of the line of the rear external elevation of the original house, restore the original exterior west and south elevations and remove all debris from the land.
- The period for compliance with the requirements is three 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.

Summary of Decision: the appeal succeeds in part and the enforcement notice is upheld as varied in the terms set out below in the Formal Decision.

Preliminary matter

1. In the absence of payment of the requisite fee the ground (a) appeal has lapsed and accordingly I determine this appeal on grounds (f) and (g) only.

Ground (f) appeal

2. This ground of appeal is whether having regard to the purpose for which the notice was issued, the steps exceed what is necessary to meet that purpose.
3. There are two purposes which the requirements of an enforcement notice can seek to achieve. The first is to remedy any breach of planning control which has occurred. The second is to remedy any injury to amenity which has been caused by the breach.
4. The unauthorised development is a single storey L-shaped, flat roofed addition wrapping around the host dwelling. The front extension is set back from the dwelling's original building line. An appeal against refusal of planning permission for the development as built was dismissed.
5. The Appellant proposes that the flat roof could be lowered by 150mm and that a fence could be erected along the street wall to soften the appearance

of the development. He refers to the removal of the front porch as a sign of his good faith in solving the problem.

6. But lowering the height of the roof would not remedy the injury to amenity caused by the development. It would not address the harm to the character and appearance of the host building and surrounding area caused for example by the infilling of the side space. Erecting a fence along the side boundary would similarly not remedy the harm caused by the unauthorised development as it would not change the incompatibility between the extension and the form of the host dwelling's roof nor the harm caused by the infilling of the side space. I note that the Appellant has removed the front porch but the development remains a breach of planning control. Consequently, the lesser steps proposed by the Appellant do not achieve either of the purposes of an enforcement notice.
7. For the reasons given above the appeal on ground (f) does not succeed.

Ground (g) appeal

8. This ground of appeal is that the time to comply with the requirements falls short of what should reasonably be allowed. The time period for compliance is three months.
9. I note that the Appellant refers to being unaware that planning permission was required but this is not a ground of appeal. Reference is made to compliance with Building Regulations but this is a separate matter and does not affect the breach of planning control.
10. The Appellant says 12 months is a reasonable period to enable him to borrow money and find a builder. He refers to the cost of the works being unaffordable and that he would need to rent accommodation whilst the works are undertaken.
11. The Council consider that a three month period is adequate to undertake corrective measures and that 12 months is excessive but say that they would not object to a slightly longer period than the three months required by the notice.
12. The rights of the Appellant pursuant to the Human Rights Act must be taken into account. Interference with the way the Appellant uses the property must be proportionate taking into account the conflicting interests of private and public interest. I have balanced competing interests – the private interest of the Appellant in developing his property and the public interest in bringing the harm to the character and appearance of the area to an end without unnecessary delay. A twelve month period as suggested by the Appellant would create unnecessary delay in removing the harm to the character and appearance of the host dwelling and surrounding area. I find that five months would strike an appropriate balance between conflicting public and private interests and be proportionate so as not to violate individual rights.
13. For the reasons given I conclude that a reasonable period for compliance would be five months and I am varying the enforcement notice accordingly, prior to upholding it. The appeal under ground (g) succeeds to that extent.

Formal Decision

14. The appeal is allowed on ground (g) and it is directed that the enforcement notice be varied by the substitution of five months as the period for compliance. Subject to this variation the enforcement notice is upheld.

S. Prail

Inspector