
Appeal Decision

Site visit made on 2 August 2017

by Mr K L Williams BA, MA, MRTPI

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

Decision date: 24 August 2017

Appeal Ref: APP/V1505/C/3164089

Land at 18 Park Drive, Wickford, Essex, SS12 9DH

- 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 A Izzard against an enforcement notice issued by Basildon Borough Council.
- The enforcement notice was issued on 26 October 2016.
- The breaches of planning control as alleged in the notice are: the unauthorised construction of an extension forward of the principal elevation of the property including alterations to the pitch gradients of the roof over both the extended and original part of the property; the construction of a boundary fence exceeding 2 metres in height.
- The requirements of the notice and the related periods for compliance are to:
 - 1) Remove the unauthorised roof extension on the principal front elevation (Time for compliance – 2 months).
 - 2) Demolish the unauthorised front extension (Time for compliance – 2 months).
 - 3) Reduce the height of the eastern boundary fence and trellis to 2 metres in height (Period for compliance – 3 months).
 - 4) Remove from the property all debris and waste materials generated by the carrying out of the works required by steps 1, 2 and 3 above (Time for compliance – 4 months).
- The appeal is proceeding on the grounds set out in section 174(2) (c) (d) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal does not succeed. The enforcement notice is varied and upheld.

Background and Preliminary Matters

1. No.18 is a detached bungalow. The Council's delegated report says that it was "*originally a double fronted bay windowed single storey bungalow with a fully hipped roof over with tiled extensions over the window bays together with a conjoining canopy between.*" The appeal is made only in respect of the front extension and the related works to the roof. It does not refer to the boundary fence.

The Appeal on Ground (c)

2. To succeed on this ground it is for the appellant to show, on the balance of probabilities, that there has not been a breach of planning control. It is consistent with *Planning Practice Guidance (PPG)* that an appellant's case should be accepted if there is no evidence to contradict or otherwise make his or her version of events less than probable, provided that an appellant's evidence is sufficiently precise and unambiguous.

3. Mr Izzard contends that there has been no breach of planning control because what has been added amounts to the addition of a porch, the addition of a temporary roof structure and other works to the remainder of the front elevation to enhance insulation using interior blocks. He asserts that these have been emergency works of repair or replacement to deal with the effects of damp, frost damage, woodworm and rot.
4. Schedule 2, Part 1, Class A of Town and Country Planning (General Permitted Development) (England) Order 2015 deals with permitted development for the enlargement, improvement or alteration of a dwellinghouse. Paragraph A1(e) provides that development is not permitted if the enlarged part of the dwellinghouse would extend beyond a wall which forms the principal elevation of the original dwellinghouse or fronts a highway and forms the side elevation of the original dwellinghouse. Class B deals with the enlargement of a dwellinghouse consisting of an addition or alteration to its roof. Paragraph B.1(c) provides that development is not permitted if 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. Under Class D the erection of a porch outside any external door of a dwellinghouse is permitted development. Paragraph D.1 limits the ground area of a porch to 3 m², its height to 3 m and says that it should not be within 2 m of a curtilage boundary with a highway.
5. The extension which is the subject of the enforcement notice is to its principal elevation fronting the highway. Mr Izzard refers to the erection of a porch with a floorspace of less than 3 m². There is now a raised central section to the front elevation. However, nothing is submitted to show that a porch was erected as a discrete act of development. Rather, the building works to the front elevation and the related additions to the roof appear as a unified whole. They appear to have the character of a single development and I approach them on that basis. Although Mr Izzard refers to the additions to the roof as a temporary measure, they have been in place for a considerable period and there is no certainty of their removal. The extension and the works to the roof have extended beyond the principal elevation of the dwellinghouse which fronts the highway. Whereas the appellant asserts that the additional forward projection of the works has been minimal, the Council refers to the extension as measuring 2 m in depth from the main front building line and less than 1 m from the frontage of the original bay windows. No survey drawings of the position before and after the development are submitted by Mr Izzard and the extent of the additions to the roof does not seem to me to support his position.
6. Based on the submitted evidence I conclude that the appellant has not shown, on the balance of probabilities, that there has been no breach of planning control. The appeal should not succeed on ground (c).

The Appeal on Ground (d)

7. To succeed on this ground it is for the appellant to show, on the balance of probabilities, that the erection of the extension as alleged is immune from enforcement action. The relevant period in respect of building operations is 4 years from the date of their substantial completion. A period of 4 years prior to the issue of the enforcement notice began on 26 October 2012. As with ground (c), it is consistent with *Planning Practice Guidance* that an appellant's case should be accepted if there is no evidence to contradict or otherwise make

his version of events less than probable, provided that his evidence is sufficiently precise and unambiguous.

8. The appellant offers no substantive evidence in support of this ground of appeal. Indeed, when submitting his appeal in November 2016 Mr Izzard referred to work being initiated in the early summer of 2015. On that basis the relevant 4 year period has not expired. The erection of the extension and the related works to the roof are not immune from enforcement. The appeal should not succeed on ground (d).

The Appeal on Ground (f)

9. An appeal on ground (f) is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. Under this ground Mr Izzard repeats matters more relevant to ground (c) and refers to the temporary nature of the additions to the roof. He considers the requirements of the notice to be wildly excessive.
10. In respect of the front extension and the related works to the roof the notice alleges the carrying out of operational development. Its purpose is to remedy the breach of planning control. In requiring the removal of that unauthorised development and restoration of the building to its prior condition it goes no further than is necessary to achieve that purpose. No precise lesser steps which might replace the requirements as set out in the notice are submitted. I conclude that the requirements of the notice are not excessive. The appeal should not succeed on ground (f).

The Periods for Compliance

11. Although no appeal was made on ground (g) the appellant is not professionally represented in this appeal. In the circumstances of this case it is appropriate to consider whether the 2 month periods for compliance and the related period for removing resultant materials are reasonable. An extension of those periods would prolong any harm resulting from the works. However, I consider the compliance periods to be unreasonably short taking into account the extensive disruption to the appellant which is likely to occur, the need to engage a builder and to carry out the works. There may also be scope for further discussion between the appellant and the Council which might allow some elements of the works to be modified and/or retained, for example as a front porch. Extended periods would help to facilitate the avoidance of abortive building work. In all the circumstances the notice will be varied to extend the period for compliance in respect of the building works to 9 months and the related period for removal of debris and waste to 11 months.

Other matters

12. Mr Izzard alludes to some matters concerning the planning merits of the development. They include the previous condition of the house, the design merits of the works and other developments in the area. There is no appeal on ground (a) in this case and no deemed planning application for the extension and the roof works, so that these are not matters which I can take into account in my decision. Mr Izzard asserts that the Council confirmed by letter that the works amounted to permitted development. He is also concerned about other

aspects of the Council's actions leading up to the service of the notice. An email of 2 December 2015 from Mr Whiston, a Building Control Surveyor, refers to having been advised by planning enforcement that "at this time no action will be taken."

13. The 2 December 2015 email did not preclude the Council from taking enforcement action. The Council had written to Mr Izzard on 14 October 2015 referring to the need to regularise the planning position and warning that unless a planning application was made it would consider the expediency of enforcement action. It is open to Mr Izzard to consider making a formal complaint via the Council's complaints procedure. However, these are not matters to which I give weight in my determination of this appeal.

Overall Conclusion

14. Having regard to the above and to all other matters raised the appeal should not succeed. The notice should be varied and upheld.

Formal Decision

15. I direct that the enforcement notice be varied as follows:
- i) At paragraph 5 (1) and 5 (2) by the replacement of the words "2 months" with the words "9 months".
 - ii) At paragraph 5.4 by the replacement of the words "4 months from the date when this Notice comes into effect" with the words "In respect of steps (1) and (2) above 11 months from the date when this Notice comes into effect. In respect of step (3) above 4 months from the date when this Notice comes into effect."
16. I dismiss the appeal and uphold the enforcement notice as varied.

K Williams

Inspector