



Appeal Decision

Site visit made on 27 June 2017

by Paul Freer BA (Hons) LLM MRTPI

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

Decision date: 04 September 2017

Appeal Ref: APP/K3605/C/17/3167387

Land at 221 Portsmouth Road, Cobham, Surrey KT11 1HW

- 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 Yousif Fakher Idriss against an enforcement notice issued by Elmbridge Borough Council.
 - The enforcement notice was issued on 12 December 2016.
 - The breach of planning control as alleged in the notice is, within the last four years and without planning permission, the building of a single storey front extension of 12 square metres.
 - The requirements of the notice are:
 1. Permanently remove the single storey front extension, which was subject to a retrospective planning application under reference 2015/0839 and which was refused on 7 May 2015, and
 2. Permanently remove all resultant materials from the Land.
 - The period for compliance with the requirements is 2 calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Summary Decision: The appeal is dismissed and the enforcement notice is upheld.

Procedural Matters

1. The appellant's name is stated on the appeal form as being Mr Indriss Indriss Falkner, although I suspect that the repetition of the forename is a typographical error on the part of agent acting for the appellant in this appeal. However, I note that the appellant's name appears on his own e-mail address variously as "Indriss Faher" and "Indriss Fakher". The Land Registry Title records the name of Idriss Yousif Fakher as being the Proprietor of the site in the Title Absolute. The Council's statement refers to the appellant as Mr Yousif Fakher Idriss, this also being the name used in the service of the Enforcement Notice. The spelling of the name is similar in all cases and I have no doubt that the various spellings of the name all refer to the same individual. I did seek confirmation of the correct spelling of the appellant's name from the appellant's agent, but the clarification sought was not forthcoming. I note that the appellant has not challenged the use of Mr Yousif Fakher Idriss as the name of the person on whom the enforcement notice was served, and accordingly I shall adopt that spelling in banner above.

2. The appellant explains that an application for a certificate of lawful use or development in relation to the front extension subject to the enforcement notice has been submitted to the Council. I understand that the application has been made on the premise that the front extension has been in situ for a period of excess of four years and therefore is, in the appellant's view, immune from enforcement action. I have not been provided with a copy of that application, although I have been provided with copies of some of the documents submitted as part of that application. However, on my reading of the appellant's Grounds of Appeal, this appeal against the enforcement notice does not include an appeal on ground (d): namely, that at the date when the notice was issued, no enforcement action could be taken. I also note that the appellant did not challenge the omission of a ground (d) appeal in the starting letter for the appeal. I shall therefore not consider this matter further.

The appeal on ground (e)

3. The ground of appeal is that copies of the enforcement were not served as required by Section 172 of the Town and Country Planning Act 1990 (1990 Act). In summary, Section 172 of the 1990 Act requires that the enforcement notice shall be served on the owner and on the occupier of the land to which it relates, and on any other person having an interest in the land.
4. The appellant's case on this ground of appeal is that the leaseholder of the site lives abroad and therefore does not occupy the land or building to which the enforcement notice applies. The notice was served on all those identified through a Land Registry Search as having an interest in the land. I have been provided with a copy of that Land Registry Search and am satisfied that the owner, occupier and everyone with an interest in the land identified in that search was served with a copy of the notice at the address specified by the Land Registry or at the property itself. I am therefore satisfied that the notice was correctly served in accordance with Section 172 of the 1990 Act.
5. The appellant does not identify the leaseholder who lives abroad by name, but it is not suggested that the leaseholder was unaware that the notice had been issued. The complaint appears to be purely that the notice was incorrectly served because the leaseholder lives abroad. However, that in itself is not sufficient to show that the notice was incorrectly served, given that the address abroad of the leaseholder does not appear on the Land Registry Titles and that the notice was served on all the leaseholders at the property itself.
6. Accordingly, the appeal on ground (e) fails.

The appeal on ground (b)

7. The ground of appeal is that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters have not occurred. The appellant has not expanded upon this ground of appeal in his appeal statement. Nevertheless, it was evident from my site visit that the single-storey front extension alleged in the notice was still in situ. It is therefore evident that the breach of planning control alleged in the notice has occurred.
8. Accordingly, the appeal on ground (b) fails.

The appeal on ground (c)

9. The ground of appeal is that, in respect of any breach of planning control that may be constituted by the matter stated in the notice, those matters do not constitute a breach of planning control. In this respect, the onus is on the appellant to show that, on the balance of probability, the matters alleged in the notice do not constitute a breach of planning control.
10. The appellant has not expanded upon this ground of appeal in his appeal statement, other than to point out that the planning records show that planning permission has been granted for previous extensions to the front of this property. However, the fact that the planning history of the site records these applications for planning permission is itself an indication that planning permission was required for them. The appellant has not explained why the front extension subject to this enforcement notice should be any different, or advanced any evidence to show that planning permission is not required for this extension. The appellant has therefore failed to discharge the burden of proof that is upon him in this respect.
11. Accordingly, the appeal on ground (c) fails.

The appeal on ground (a) and the deemed planning application

12. The ground of appeal is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The Council has stated one substantive reason for issuing the enforcement notice, from which the main issue raised is the effect of the front extension on the character of the existing property and the surrounding area.
13. The appeal property is a two-storey end of terrace property within a ribbon of terraced and semi-detached properties on the north side of Portsmouth Road. The appeal property comprises a restaurant at ground floor level with a residential flat above. The other properties in this ribbon of development are mostly residential with the ribbon being comprised of several distinct groups of buildings. The buildings in each group exhibit a different overall design to the buildings in the other groups.
14. The terrace of which the appeal property forms a part is of similar overall design and appearance. The houses in this particular group display a number of characteristics, including a white render finish and paired entrances flanked by projecting bay windows at ground floor level. These features unite the properties in this particular group and provide the group with a distinctive and cohesive appearance within the overall ribbon of development.
15. Whilst of different overall design, other properties in the ribbon of development also feature bay windows at ground floor level. The consistent presence of these bay windows imparts a degree of cohesiveness in the otherwise disparate appearance of the buildings throughout this ribbon of development. Moreover, all of the properties in this ribbon of development are set back from the pavement, to a broadly consistent amount, such that a distinctive building line is established across the ribbon of properties.
16. The front extension subject to the enforcement notice spans the entire width of the appeal property. The design of the front extension features extensive

areas of glazing within a timber framework. Furthermore, the front extension projects practically to the back edge of the pavement.

17. The host property was originally a two-storey side extension to No 219 Portsmouth Road, with a further single-storey element to the side of the property. I have not been provided with any details or photographs of the host property as originally constructed, and therefore cannot be certain that it featured any of the architectural features of the other buildings in this group: for example, projecting bay windows. However, the host property is set back marginally from the front elevation of No 219 Portsmouth Road and the roof is set below the ridge height of that dwelling. It is also finished in a white render to match the main house. It is therefore apparent that the extension that now forms the host property was purposefully designed to be subservient to the main house at No 219 Portsmouth Road.
18. As appropriate to its origin and subservient role, the host property is modest in terms of its overall scale and dimensions. By reason of its width, bulk and design, the front extension dominates the host property. For that reason, the front extension harms the character of the existing property.
19. The front extension projects significantly forward of the front elevation of the main building and extends practically to the back edge of the pavement. It therefore infringes, by some margin, the well-defined building line established by the other properties in this ribbon of development. Combined with its width, bulk and design, this forward projection makes the extension unduly prominent in the street scene. This is particularly evident in views toward the west, where the gap created by the vehicular entrance to the car park at the rear exacerbates the visual impact of the forward projection. For these reasons, the front extension harms the character of the area.
20. I recognise that other properties in this ribbon of development feature projecting bay windows. However, these bay windows are an integral part of the design of these properties and in any event do not project as far forward as the front extension to the appeal property. The presence of these bay features therefore does not justify the front extension to the appeal property.
21. I also acknowledge that planning permission has previously been granted for front extensions to the appeal property. I have been provided with some details of those extensions, but none that indicate the extent of the forward projection. I am therefore unable to determine whether the extensions granted by those permissions had an equivalent forward projection to that of the extension now subject to the enforcement notice. In the absence of this information, I am unable to accept these previous permissions as justification for the current front extension to the appeal property.
22. The appellant has referred me to a number of other front extensions to properties in Cobham which, in his view, are comparable to the extension subject to the enforcement notice and which set a precedent for that development. However, the examples referred to are all within the centre of Cobham and are set in a very different context to the appeal site. I therefore consider that these examples are not directly comparable to the front extension subject to the enforcement notice and do not serve as a precedent for it. Accordingly, I have determined this appeal on its own merits, having regard to the particular circumstances of the appeal site and its surroundings.

23. I conclude that the single-storey front extension unacceptably harms the character of the existing building and the character of the area. The development therefore conflicts with Policies CS10 and CS17 of the Elmbridge Core Strategy and Policy DM2 of the Elmbridge Local Plan: Development Management Plan. These policies require, amongst other things, that new development delivers high quality design which responds to the positive features of individual locations and integrates sensitively with the locally distinctive landscape. The front extension also fails to accord with the Council's Design and Character Supplementary Planning Document, which indicates that development should be built to a high quality and be locally responsive.

Other matters

24. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise. I have found that the front extension conflicts with the development plan. It is therefore necessary for me to consider whether there are any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.

25. The appellant has submitted four individually written letters of support for the retention of the front extension, all from local residents, together with a petition containing 97 signatures. It is apparent from these letters that the writers have no objection to the front extension in terms of its appearance, and also have no concerns about the effect on their amenity. These letters and the petition clearly weigh in support of granting planning permission for the front extension and, cumulatively, I afford these representations significant weight.

26. The appellant has suggested a condition to the effect that all windows and doors shall be kept shut when regulated entertainment is being provided. However, such a condition would have no effect on the impact of the front extension on the character of the existing building or the character of the area, and therefore the reasons why the enforcement notice was issued. Consequently, this suggested condition is a matter to which I attach very limited weight.

27. The appellant considers that, in issuing the enforcement notice, the Council failed to adhere to its own Planning Enforcement Charter. I have not been provided with a copy of the Council's Planning Enforcement Charter although I understand that this sets out the normal procedures and protocols that the Council adopts in the investigation of breaches of planning control. Nevertheless, irrespective of whether the Council did or did not accord with its Planning Enforcement Charter, I am satisfied that the enforcement notice was properly issued under the requirements of the 1990 Act. Any failure of the Council to failure to accord with its Planning Enforcement Charter, if indeed there was one, is a matter for the appellant to pursue in a different forum if he chooses so to do. However, in the context of this appeal, it is also a matter to which I attach very limited weight.

Conclusion on the ground (a) appeal and the deemed planning application

28. Having regard to the above, I find that the front extension is contrary to policies in the development plan and that there are no material considerations of sufficient weight to indicate that the deemed planning application should be determined otherwise than in accordance with it. I therefore conclude that planning permission ought not to be granted.
29. Accordingly, the appeal on ground (a) fails.

The appeal on ground (f)

30. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the Town and Country Planning Act 1990 sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) the remedying of the breach of planning control by discontinuing any use of the land or by restoring the land to its condition before the breach took place or (b) remedying any injury to amenity which has been caused by the breach. In this case, the requirements of notice are to remove the single-storey front extension. The purpose of the notice must therefore be to remedy the breach of planning control.
31. The appellant has not indicated any lesser steps that would remedy the breach of planning control stated in the notice. I have carefully considered whether there are any other alternatives to the removal of the front extension which would overcome the planning difficulties with less cost or disruption to the appellant, but none are obvious to me.
32. Accordingly, the appeal on ground (f) fails.

The appeal on ground (g)

33. The ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The period for compliance specified in the notice is 2 calendar months.
34. In essence, the appellant's case on this ground of appeal is that the period specified in the notice is insufficient in the context of an ongoing restaurant use, in that this period would not give customers with tables booked in advance and restaurant staff sufficient time to make alternative arrangements. It is also considered that the specified period for compliance is too short to allow for financial planning, given the costs involved in removing the structure and the loss of earnings whilst the works are taking place. A period of compliance of six months is sought.
35. I fully accept that the restaurant may have to close for a period whilst the structure is being removed, and that this would result in a loss of earnings. However, as I understand it, it is no part of the appellant's case that the removal of this structure would result in the permanent closure of the restaurant. Any loss of earnings would therefore be for a limited period only, limited to the time taken to remove the front extension and reinstate the building to the point where the restaurant use could resume.

36. I accept also that customers with table bookings within that period would be inconvenienced and that staff would lose wages during that period. Nevertheless, I am not persuaded that this justifies an extension to the period of compliance. Indeed, to my mind, the opposite would be true: I would expect that the appellant would wish to expedite compliance with the notice in order to reduce the period during which no income was being received.
37. It therefore seems to me that the question of extending the period of compliance turns on two factors: the length of time necessary to complete the works specified in the notice and the availability of a suitably qualified builder to undertake the work.
38. The requirements of the notice are limited to the permanent removal of the front extension and all resultant materials from the Land. The appellant has provided no evidence to show that this relatively simple task could not be completed within the period of compliance specified in the notice.
39. As a generalisation, I can accept that it can be difficult to find a builder suitably qualified to carry out work of the required standard to building used as a restaurant. However, I have been provided with no evidence to support the appellant's contention that this is the case with the single-storey front extension subject to the enforcement notice. For example, I have been provided with no evidence to show that suitably qualified builders have been found and approached but are unable to carry out the work within the required timescale due to other commitments.
40. It also appears to me that the requirements of the notice are not especially complex or technical, primarily involving the removal of the existing structure, such that they would require a specialist contractor to carry them out. I am therefore not persuaded that the appellant's concerns about being unable to instruct a suitably qualified builder to carry the works are sufficient to justify an extension to the period of compliance specified in the notice.
41. Having regard to all the above, I am not convinced that the appellant has made out the case for an extension to the period of compliance stated in the notice.
42. Accordingly, the appeal on ground (g) fails.

Conclusion

43. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice, and refuse to grant planning permission on the deemed application.

Formal Decision

44. The appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Paul Freer

INSPECTOR