
Appeal Decision

Site visit made on 26 April 2018

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

an Inspector appointed by the Secretary of State

Decision date: 15 May 2018

Appeal Ref : APP/X1545/C/17/3181574

Land at 43 Alamein Road, Burnham-On-Crouch, Essex CM0 8JH

- 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 Dennis Green against an enforcement notice issued by Maldon District Council.
- The notice was issued on 7 July 2017.
- The breach of planning control as alleged in the notice is unauthorised cladding of the dwellinghouse on the land and the unauthorised enlargement of the dwellinghouse on the land comprising a hip-to-gable enlargement of the roof, a dormer window to the rear slope of the roof, and a rear single storey extension in breach of conditions A.3 (a) and B.2 (a) of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended).
- The requirements of the notice are a. remove the cladding from the property and the land, reinstate a red brick finish to the original dwellinghouse and construct the extensions/additions with a red brick finish of a similar appearance to those used in the construction of the exterior of the original dwellinghouse OR b. remove the cladding from the property and the land, reinstate a red brick finish to the original dwellinghouse, demolish the extensions/additions, and remove from the land any resulting materials, debris and detritus.
- The period for compliance with the requirements is four months.
- The appeal is proceeding on the ground set out in section 174(2) (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: the appeal is dismissed and the enforcement notice is upheld.

Application for costs

1. Maldon District Council has made an application for costs against the Appellant, Mr Green. This is the subject of a separate decision.

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 that has occurred. The second is to remedy any injury to amenity which has been caused by the breach. In this case the notice provides for alternative options – the demolition of the extensions/additions or their construction with a red brick finish of a similar appearance to that used in the construction of the exterior of

the original dwellinghouse. Its purpose therefore includes the remediation of the injury to amenity caused by the breach.

4. The appeal site is a single storey detached bungalow set in a substantial plot in a residential area. Planning permission has been refused for the development the subject of this appeal.
5. The Appellant argues that the works benefit from permitted development rights. But there is no ground (c) appeal before me. He says that his claims alleging no breach of planning control are to strengthen his ground (f) appeal. But the issues relevant to a ground (c) appeal are different to those relevant to a ground (f) appeal. In any event in any ground (c) appeal the onus of proof would rest on the Appellant and there is no assessment before me from the Appellant as to how permitted development rights are alleged to have been met. The notice specifies the conditions of Class A and B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended ((the GPDO) which are not met (namely the use of similar material) and as a matter of fact the weatherboarding cladding is not similar to the red brick finish of the original dwellinghouse.
6. The Appellant also argues that no harm is caused and therefore there is no need to remedy any injury to amenity. These are planning merit arguments relevant to a ground (a) appeal. It is not appropriate to run such arguments in a ground (f) appeal. In the absence of a deemed application it is not appropriate for me to take the planning merits of the development into account in determining this appeal which concerns whether the steps set out in the notice are necessary to meet the purpose of the notice.
7. No specified lesser steps are put forward by the Appellant in his representations in this appeal although I note a reference to painting the cladding in his response to the separate costs application. Painting the cladding would not address the identified harm by reason of the material used. There is no obvious alternative before me and I find the steps set out in the notice do not exceed what is necessary to meet the purpose of the notice.
8. For the reasons given above I conclude that the requirements of the notice are reasonable and that the appeal should not succeed.

Other matters

9. The Appellant complains that the Council waited until the extension was erected and the external works complete before serving the notice. He also complains that the Council did not undertake a proper survey and that taking enforcement action was not expedient in the circumstances of this case. But these points are not grounds of appeal and therefore not within my remit to consider.

Formal Decision

10. The appeal is dismissed and the enforcement notice is upheld.

S. Prail

Inspector