



Appeal Decision

Site visit made on 11 June 2019

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 July 2019

Appeal Ref: APP/H0724/C/18/3214259

27 Scarborough Street, Hartlepool TS24 7DA

- 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 Dean Dobson against an enforcement notice issued by Hartlepool Borough Council.
- The enforcement notice was issued on 1 October 2018.
- The breach of planning control as alleged in the notice is Without planning permission, the installation of a uPVC door and frame with uPVC cladding above door.
- The requirements of the notice are (i) Remove the existing uPVC door, frame and cladding; (ii) Provide a traditionally constructed timber replacement door and frame with glazed fanlight above. Frame to have edge bead moulding to fanlight, door jambs and transom. Fanlight to be a single pane, glazed internally. Door to be four panelled and of traditional mortised and tenoned construction, with weatherboard. Panels to door to be finished with moulding out of stile or planted mouldings; (iii) Provide replacement corbel to right hand pilaster at side of door with corbel to match existing (either side of No. 27A Scarborough Street) in design, size and materials; (iv) Door, frame, timber boarding, pilaster and corbel to be painted in a colour to match existing at 27A Scarborough Street (see photograph attached at appendix 1).
- The period for compliance with the requirements is 2 months.
- The appeal is made on the grounds set out in section 174(2) (a), (c) 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 appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

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

Preliminary Matter

1. The breach of planning control set out in the notice refers to the installation of a uPVC door. However it is evident from the appeal form and the Council's delegated reports that the parties agree the door in question is constructed in a composite material. I am satisfied that the notice can be corrected accordingly without resulting in injustice.

The appeal on ground (c)

2. The ground of appeal is that the matters alleged do not constitute a breach of planning control. A breach of planning control comprises the carrying out of development without the required planning permission. The meaning of development is set out in s55(1) of the Act and includes the carrying out of

building operations in, on, over or under land. The replacement door, surrounding frame and cladding above the door are fixed in place and are clearly intended to have a significant degree of permanence. Though I recognise that it may not have involved structural work, this would not be a pre-requisite and I find the installation to have amounted to an operation of development as defined by s55(1).

3. Section 55(2) of the Act, however goes on to clarify at subsection (a)(ii) that the carrying out of works which do not materially affect the external appearance of the building shall not be taken to involve development of the land. However from the information provided, there is a clear difference between the present design of the door and frame and that which was previously in place in terms of its appearance and profile. There is also a distinct inherent difference between the appearance of the cladding above the door and the glazed fanlight that was previously in position. I therefore find, taking into account the very prominent position of the building within the public domain, that the installation alleged in the notice goes beyond a repair of what was previously in place, and has resulted in a material change to the external appearance of the building.
4. There is no suggestion that the alterations would amount to permitted development under the terms of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). I therefore find that planning permission would have been required for the alleged unauthorised development. The ground (c) appeal therefore fails.

The appeal on ground (f)

5. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve the purpose. The purposes of an enforcement notice are set out in s173 of the Act and include remedying the breach of planning control by restoring the land to its condition before the breach of planning control took place (s173 (4) (a)). The Council expressly states that it requires steps to be taken to remedy the breach of planning control.
6. The appellant's case is that he is being required to replace the door and frame to a higher standard than that which existed prior to the breach. It is apparent from the photographic information provided by the Council that the specification of door and frame required as part of the notice would exceed the relatively simple unit that was previously in place. Where planning permission has not been granted for the development, the power is simply to restore the land to its previous condition. There is no statutory power to require the appellant to undertake works which would result in an improvement to that previous condition.
7. Furthermore the notice requires certain works to be undertaken, namely the provision of a replacement corbel and the painting of the timber boarding, pilaster and corbel, that relate to matters that have not been identified within the alleged breach of planning control. The requirement for these works would therefore also be excessive.
8. I therefore concur with the appellant that some of the requirements of the notice which are concerned with securing a particular specification of door and frame and the provision of other work are excessive.

9. However I consider that the notice can be corrected, to require the door, frame and fanlight to be restored to the condition before the breach took place, without resulting in injustice to the parties. The ground (f) appeal therefore succeeds to this limited extent.

Other Matters

10. I acknowledge and have some sympathy with the appellant that the unauthorised works appear to have been undertaken in response to an incident which has resulted in damage to the building and for which he was not at fault, and following the advice of others to secure the property. However this matter and the representations made regarding other similar developments in the area concern the planning merits of the case. In the absence of an appeal on ground (a), that planning permission should be granted, I am unable to address the planning merits.

Conclusion

11. For the reasons given above I conclude that the appeal on ground (c) should not succeed. I shall uphold the enforcement notice with corrections.

Formal Decision

12. It is directed that the enforcement notice be corrected as follows:-

by deleting the words "uPVC door and frame with uPVC cladding above door." in paragraph 3 and substituting the words "composite door and uPVC frame with uPVC cladding above door." instead; and

by deleting the words "existing uPVC door, frame and cladding." in paragraph 5(i) and substituting the words "existing composite door, uPVC frame and cladding." instead; and

by deleting the text at paragraphs 5(ii), 5(iii) and 5(iv) and substituting the following paragraph instead:

"5(ii) Restore the door, frame and fanlight above the door to their condition before the breach took place."; and

by deleting the wording "Steps (i), (ii), (iii) and (iv)" in paragraph 6 and substituting the wording "Steps (i) and (ii)" instead.

13. Subject to these corrections the appeal is dismissed and the enforcement notice is upheld.

Roy Merrett

INSPECTOR