



Appeal Decision

Site visit made on 30 July 2019

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 August 2019

Appeal Ref: APP/K0425/C/18/3219493

Land at 261 Rutland Avenue, High Wycombe, Buckinghamshire HP12 3LY

- 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 Mrs Subia Nooreen against an enforcement notice issued by Wycombe District Council.
 - The enforcement notice was issued on 19 November 2018.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a single storey rear extension (shown outlined in blue on the attached plan).
 - The requirements of the notice are: 1. Demolish the single storey rear extension (shown outlined in blue on the attached plan); and 2. Remove all materials and debris resulting from carrying out step 1 of this Notice from the Land shown outlined in red on the attached plan. OR 3. Alter the single storey rear extension (shown outlined in blue on the attached plan) so that it matches drawing number 38/16-01B that has been granted planning permission under reference number 17/07919/FUL (a copy of drawing number 38/16-01B is attached to this Notice); and 4. Remove all materials and debris resulting from carrying out steps 3 of this Notice from the Land shown outlined in red on the attached plan.
 - The period for compliance with the requirements is: Six months.
 - The appeal is proceeding on the grounds set out in section 174(2) (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Summary of Decision

1. The appeal is dismissed.

Preliminary Matters

2. A ground (a) appeal was not originally pleaded although was sought to be introduced later in the proceedings. However, the enforcement notice was issued on 19 November 2018 and planning permission subsequently refused¹ by the Council for the development enforced against, namely the single storey rear extension. In these circumstances, under section 174 (2A) of the Town and Country Planning Act 1990 (as amended) an enforcement appeal on ground (a) cannot be made. There is also no appeal before me against the refusal of planning permission.
3. The agent on behalf of the appellant withdrew the ground (g) appeal in an email of 8 February 2019 although a letter dated 15 July 2019 makes representations concerning the period for compliance. As the Council's

¹ Council Ref 18/07957/FUL

Statement responds to a ground (g) appeal, I do not consider that injustice arises if I consider the appeal made on ground (g) and therefore the appeal will continue to proceed on this ground.

The appeal on ground (c)

4. For the appeal to succeed on ground (c) the onus is on the appellant to demonstrate, on the balance of probability, that there has not been a breach of planning control.
5. A notification² for a proposed 6m single storey rear extension was submitted to the Council and refused on 19 June 2017 as the occupier of the adjoining property, No 259 Rutland Avenue, objected and the Council considered there would be an overbearing impact. A planning application³ was then submitted and refused on 14 September 2017. Planning permission was however granted for an amended scheme⁴ on 18 December 2017.
6. The evidence is that work commenced on-site in early 2018 however the occupier of No 259 changed which prompted the appellant to submit a further notification⁵ for a 6m single storey rear extension. This was again refused by the Council, however the construction of a 6m single storey rear extension was undertaken by the appellant, which I could see during my site visit had been completed.
7. The extension enforced against cannot be permitted development, as given its depth of 6m, there is a requirement for an application of prior notification to first be made to the Council. This must be made and favourably determined before works are commenced. This avenue has thus already been exhausted as the extension has been constructed.
8. The single storey rear extension the subject of the enforcement notice therefore cannot be, or become, permitted development and no planning permission for it has been brought to my attention. The appeal on ground (c) therefore fails.

The appeal on ground (f)

9. The purpose of the enforcement notice is to remedy the breach of planning control and provides two options for compliance; either the demolition of the extension in its entirety, or, alterations to bring into line with the planning permission dated 18 December 2017. Both options then require the resultant materials and debris to be removed.
10. For an appeal on ground (f) to succeed it would be necessary for the appellant to explain why the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control. There have however been no alternative requirements put forward.
11. It is not the remit of an appeal against an enforcement notice to effectively re-run the prior notification process on the basis that if the new occupier of No 259 does not object, then the extension should be allowed to remain. The

² Council Ref 17/06257/HPDN

³ Council Ref 17/07000/FUL

⁴ Council Ref 17/07919/FUL

⁵ Council Ref 18/06184/HPDN

appeal on ground (f) must therefore fail as no lesser steps have been suggested that would remedy the breach.

The appeal on ground (g)

12. The enforcement notice requires a period of six months for compliance. I appreciate the appellant will want to employ a reputable builder but other than an assertion, I have little in the way of evidence to convince me that there is an intractable waiting list of 12 months or more to undertake the reasonably routine steps that are required by this enforcement notice. I also appreciate there are inevitable financial implications for complying with the enforcement notice, but the cost of compliance is not normally a reason to extend the period and I have little evidence to persuade me otherwise. The appeal on ground (g) therefore fails.

Other Matters

13. I have sympathy for the appellant given the sequence of events, but nevertheless the extension has been constructed and remains unauthorised. Other properties and extensions in the area have also been brought to my attention. Furthermore, it is suggested that the new occupiers of No 259 may intend to construct a similar extension to that enforced against at the appeal site and so complying with the enforcement notice would lead to abortive work. However, there is no ground (a) appeal or appeal against the Council's previous decision to refuse planning permission for the extension so that the planning merits, namely the impact on adjoining occupiers, could be tested. It also presupposes the Council's view on any future extension at No 259 and its relationship with the appeal site. These matters are therefore not applicable to the grounds of appeal before me.

Formal Decision

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

Paul T Hocking

INSPECTOR