



Appeal Decisions

Site visit made on 5 November 2019

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 3rd December 2019

Appeal Ref: APP/D1590/C/19/3219665 & 3219666 137 Rayleigh Road, Leigh-on-Sea SS9 5XE

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are by Mr M Duce (3219665) and Mrs J Duce (3219666) against an enforcement notice issued by Southend-on-Sea Borough Council.
 - The enforcement notice, ref. 18/00018/UNAU_B was issued on 5 December 2018.
 - The breach of planning control as alleged in the notice is the construction of two dormer windows to the front and north side elevations.
 - The requirements of the notice are to:
 - (a) Remove the unauthorised dormers to the front and north side elevations.
 - (b) Reinstate the roof.
 - (c) Remove from the site all rubble, materials and equipment associated with complying with the notice.
 - The period for compliance with requirements (a), (b) and (c) is 3 months.
 - The appeals are proceeding on the ground set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.
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Decisions

1. The appeals are dismissed, and the enforcement notice is upheld.

Preliminary matters

2. Although the appeals have been made solely on ground (f), the arguments presented suggest principally that the development enforced against should be regarded as permitted development. This is effectively an appeal under ground (c) – that there has been no breach of planning control. I have therefore considered this 'hidden' ground (c) appeal before going on to consider ground (f).
3. The appellants bring their appeals solely with regard to the dormer on the northern side elevation. I have treated the case accordingly.

Background matters

4. The appeal property is a detached dwelling – a bungalow prior to the recent works. It stands on the western side of Rayleigh Road at the southern corner of its junction with Willow Close.

5. In August 2017 planning permission was refused for a single storey rear extension and a loft conversion including dormer windows¹. This was then dismissed at appeal². Planning permission was also refused for an amended proposal³. In 2018 a lawful development certificate (LDC) was refused on a proposal for three dormers to the sides and rear of the building with a single storey rear extension and alterations⁴, a separate LDC application for a rear extension was also refused⁵.
6. In November 2018 planning permission was granted – in part retrospective - to raise the building height by 0.3 of a metre, retain dormers to south and west elevations, erect single-storey rear and side extensions including a porch, install rooflights to the eastern and northern elevations, and erect a 1.8 metre high boundary fence⁶. These works have been largely completed, but notably the dormers to the front elevation and northern side elevation did not form part of this permission.

The 'hidden' appeal on ground (c)

7. As noted above, this ground is that there has been no breach of planning control. The burden of proof in such cases is on the appellant to show that this is the case on the balance of probabilities.
8. It is argued that the dormer on the northern side elevation should be seen as permitted development. Although not stated, I assume this to be under the provisions of Class B of Part 2 to Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO). This Class allows the enlargement of a dwellinghouse consisting of an addition or alteration to its roof.
9. If a dormer such as this in terms of its size, position, and materials were built on the side elevation of the original roof it would probably be regarded as permitted development. However, in this case the dormer was built onto a new roof at a greater height and was itself an unauthorised development for which planning permission had been refused by the Council and again at appeal. Furthermore, the LDC application relating to this dormer had been refused.
10. Article 2 of the GPDO interprets the word 'building' as including any part of a building. Furthermore, Article 3(5)(a) of the GPDO sets out that the permission granted by Schedule 2 of the Order does not apply if, in the case of permission granted (by the GPDO) in connection with an existing building, the building operations involved in the construction of that building are unlawful.
11. Thus, in this case the dormer was part of the operations that were refused planning permission and subsequently refused at appeal. Its construction was part of an unlawful development and cannot therefore be regarded as development permitted under the provisions of the GPDO. Planning permission would be required for the development but has not been obtained. Had an appeal been made on ground (c), it would have failed.

¹ Decision notice ref. 17/01534/FULH, dated 30 August 2017.

² Appeal ref. APP/D1590/D/17/3191624 dated 5 April 2018.

³ Decision notice ref. 17/02128/FULH, dated 30 August 2017.

⁴ Decision notice ref. 18/00396/CLP, dated 15 May 2018.

⁵ Decision notice ref. 18/00394/CLP, dated 15 May 2018.

⁶ Decision notice ref. 18/01607/FULH, dated 12 November 2018

The appeal on ground (f)

12. This ground is that the requirements of the notice are excessive and that lesser steps would overcome the Council's objections.
13. The appellant essentially argues that, as a lesser step, the construction of the dormer should be permitted under GPDO provisions. However, my conclusions on the hidden ground (c) appeal show that this can not be the case. The appeal on ground (f) must therefore fail.

Conclusions

14. For the reasons given above and having regard to all other matters raised, I consider the appeals should not succeed.

Stephen Brown

INSPECTOR