
Appeal Decision

Site visit made on 12 November 2019

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 December 2019

Appeal Ref: APP/V2255/C/19/3231874

The land situated at "Goldstone", Augustine Road, Minster ME12 2LZ

- 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 Haig Squire against an enforcement notice issued by Swale Borough Council.
- The enforcement notice was issued on 13 May 2019.
- The breach of planning control as alleged in the notice is without planning permission, the detached brick and block outbuilding constructed at the rear of the premises, the approximate position of which is highlighted on the plan, which in the opinion of the Council would require planning permission.
- The requirements of the notice are:
 - (i) Demolish the brick and block outbuilding shown in its approximate location hatched blue on the attached plan.
 - (ii) Remove from the Land all debris, rubbish and rubble arising from the works undertaken in (1) above.
 - (iii) Break up and remove all hard standing located in its approximate position hatched blue on the attached plan and return the Land to its original condition either laid to lawn or flower beds.
 - (iv) Make good any boundary fencing arising from the above compliance steps.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal succeeds in part and the enforcement notice is upheld with corrections and variation in the terms set out below in the Formal Decision.

Preliminary Matters

1. The notice alleges the unauthorised construction of an outbuilding to the rear of the premises. The appellant suggests that the building has been constructed to take advantage of Class E, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). This grants planning permission for buildings incidental to the enjoyment of a dwellinghouse subject to a number of criteria. I note that he concurs with the Council that the building as constructed does not meet the size requirements of the GPDO and I will return to that in the appeal on ground (f). However, I also note that the Council suggest the building is not in use incidental to the dwellinghouse.
2. The breach of planning control alleged, at section 3 of the notice, refers to the need for planning permission for the development twice. This is unnecessary so

I shall correct the notice to refer to it only once. I also note that the requirements refer to (1) in (ii) and this would be better expressed as (i).

The Appeal on Ground (f)

3. An appeal on this ground is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. In this case, the requirements seek the demolition of the building, in order to restore the land to its condition before the breach took place. Clearly, therefore, the purpose of the notice requirements is to remedy the breach of planning control.
4. The appellant suggests that the notice should be varied to enable the extension to be largely demolished and reconstructed in line with the GPDO. However, under the GPDO it is not possible for development to become permitted development retrospectively. It would be necessary, therefore, for the extension to be completely removed prior to undertaking any new construction that might benefit from a planning permission granted by the GPDO.
5. Nevertheless, the requirements of the notice, at (iii), also include the removal of hard standing and, in returning the land to its original condition, either lay lawn or flower beds. However, removal of the hard standing exceeds what is alleged in the breach of planning control and laying lawn or flower beds exceed what is necessary to remedy the breach of planning control.
6. For these reasons, I conclude that the appeal under ground (f) should succeed to the limited extent I have described. I will vary the notice at (iii) to state accordingly.

Formal Decision

7. It is directed that the enforcement notice is corrected by:
 - In Section 3 deleting the words “, which in the opinion of the Council would require planning permission”;
 - In Section 5(ii) deleting “(1)” and Substituting “(i)”.
8. It is directed that the enforcement notice (as corrected) is varied in Section 5 by deleting all the words in the requirement (iii) and substituting instead the words “Return the Land to its original condition”.
9. Subject to the corrections and variation, the appeal is dismissed and the enforcement notice is upheld.

AJ Steen

INSPECTOR