



Appeal Decisions

Site visit made on 11 November 2019

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 December 2019

Appeal Ref: APP/A0665/C/19/3226812 & 3226813

The Crown, Old Hall Street, Malpas, Cheshire SY14 8NE

- 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 appeal is made by Mr Gary Sherlock (Appeal A) and Ms Debra Jones (Appeal B) against an enforcement notice issued by Cheshire West & Chester Council.
 - The enforcement notice was issued on 21 March 2019.
 - The breach of planning control as alleged in the notice is without planning permission the replacement of the first and second floor windows to uPVC.
 - The requirements of the notice are replace the 2 panel opening side hung casement uPVC windows on the first and second floor to windows to the below specification:
 - i. Solid softwood timber casement windows, side hung, opening outwards, flush frames rebated out of the solid timber.
 - ii. The solid frame post to be tenoned into the sill, the joint between the head and post to be haunched mortise and tenon with a mitre on the rebate.
 - iii. The mullions are to be structural in timber and central to the 2 panel openings, and equally spaced to the 3 panel openings to match the proportions to the ground floor timber windows. They are to be rebated on both sides.
 - iv. Opening lights are to be set flush within the frame (no storm proofing details).
 - v. Transom lights should include a transom, which should match the profile of the mullions and transoms to the ground floor. There should be two fixed or openable, top-hung lights to the transom casement. These should each have a central, vertical glazing bar diving two panes (pinned and putty fixed 6mm thick clear float glass). These should be true structural glazing bars (stuck on/plant glazing bars are not to be used).
 - vi. Sash frames to be rebated outside with 0.5 inch reveals.
 - vii. The sill should have a groove on its bottom and have a weathered slope for water run-off. The profile and depth of the sill to match the existing ground floor windows.
 - viii. The sashes for the casement to be side hung, fixed with a casement fastener and cut square and fitting into square rebated frames.
 - ix. The first-floor window to the north west gable end is to have transoms that line up with the inner section of the arch, and a mullion that lines up with the bottom of the arch, in addition to the casement windows and transom windows mentioned above. Both transom and mullion detail should have section details that match the ground floor windows to the north east elevation. The window dimensions are to be equally spaced in the aperture.
 - x. All new timber to be treated against insect and fungal attack before being knotted, primed, undercoated and finished in an off-white to match the existing window decoration.
 - The period for compliance with the requirements is six months.
 - The appeals are proceeding on the grounds set out in section 174(2)[e], [f] and [g] of the Town and Country Planning Act 1990 as amended.
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Decision

1. Since the notice is found to be a nullity no further action will be taken in connection with this appeal. In the light of this finding the Local Planning Authority should consider reviewing the register kept under section 188 of the Act.

Application for costs

2. An application for costs was made by Mr Gary Sherlock and Ms Debra Jones against Cheshire West & Chester Council. This application is the subject of a separate Decision.

Matters concerning the notice

1. Section 171A (1) (a) to the Town and Country Planning Act 1990 as amended ('the Act') says that the carrying out of development without the required planning permission constitutes a breach of planning control. Section 173 (1) says that a notice shall state (a) the matters which appear to the local planning authority to constitute the breach of planning control; and (b) the paragraph of s171A (1) within which, in the opinion of the authority, the breach falls. Section 173 (2) says that a notice complies with subsection (1) (a) if it enables any person on whom a copy of it is served to know what those matters are.
3. The appellants assert that the notice is a nullity because the plan attached to the notice differs to a location plan submitted in support of application¹ and is therefore defective. Section 4 (c) of the Town and Country Planning (Enforcement Notices and Appeals)(England) Regulations (ENAR) 2002 requires the precise boundaries of the land to which the notice relates, whether by reference to a plan or otherwise. The plan attached to the notice draws a line around the building but does not include the land around the building. Since the notice only relates to the works carried out to the building, it complies with the requirements of the ENAR in this regard.
4. The appellants also assert that the notice is a nullity because it does not describe all the breaches of planning control which have occurred at the site. The Town and Country Planning Act 1990 (as amended) allows Councils to issue a notice where there has been a breach of planning control and that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations. Therefore, whilst other breaches may have occurred, it was reasonable for the Council to only describe those matters upon which it considered it is expedient to issue the notice.
5. Section 173 (3) states that an enforcement notice shall specify the steps which the authority require to be taken, or the activities which the authority require to cease, in order to achieve, wholly or partly, any of the following purposes. Section 174 (4) states that those purposes are – a) remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or b) remedying any injury to amenity which has been caused by the breach.

¹ Application 01/01051/FUL for an extension to the rear of the property

6. A notice should be drafted so as to tell the recipient fairly, what he has done wrong and what he must do to remedy it. The appropriate test is derived from *Miller-Mead v MHLG* [1963] 2 WLR 225 – whether a notice is ‘hopelessly ambiguous and uncertain so that the owner or occupier could not tell in what respect it was alleged that he had developed the land without permission or that he could not tell with reasonable certainty what steps he had to take to remedy the alleged breaches’.
7. The overarching requirement set out in Section 5 of the notice is to replace the 2 panel opening side hung casement uPVC windows on the first and second floor to windows with an identified specification. However, I saw that there are a variety of different windows on the first and second floor of the property, including both 2 panel windows with transom lights above, three panel windows with transom lights above, and a substantial 5 panel window with transom lights above and an ornamental panel. Whilst the identified specification makes reference to ‘3 panel openings’, ‘transom lights’ and the ‘first-floor large window to the north west gable’, it is not a requirement of the notice that these are removed.
8. Anyone reading the notice would be clear from the notice that the breach comprised the replacement of the first and second floor windows to uPVC. However, it would be difficult to reconcile the requirements of the specification with the requirement to replace the 2 panel windows. Furthermore, not all of the windows would be replaced, leaving a mix of uPVC and wooden windows on the first and second floor. I do not believe it would have been possible for the applicants to comply with the notice due to ambiguity. Given the penalties for non-compliance with an enforcement notice, it is essential that there is no ambiguity regarding the breach that has occurred and the steps that are required to remedy it.
9. The Council advise within its Statement of Case that it would have no objection to the following changes to the notice ‘*within six months of the date of this notice taking effect, replace all first and second floor windows to the below specification...*’. Whilst the Council seems to accept that the requirements as set out within the notice are not clear, such an amendment would go beyond the scope of the notice and which is beyond the scope of this appeal. Were I to amend the notice to reflect the wording suggested by the Council, this would cause injustice to the appellants.
10. For the reasons given above, the appellants could not tell with reasonable certainty what steps they had to take to remedy the breaches. The enforcement notice has therefore failed to meet the statutory requirements of section 173. Accordingly, I find it is defective on its face and is therefore a nullity.

Conclusion

11. I have concluded that the notice is a nullity and in these circumstances the appeal under the ground set out in section 174(2) to the 1990 Act as amended does not fall to be considered.

M Savage

INSPECTOR