
Appeal Decision

Site visit made on 19 November 2019

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 January 2020

Appeal Ref: APP/L2250/C/19/3231585

Flat C, 6 Earls Avenue, Folkestone, Kent CT20 2HW

- 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 Gillian Curtis against an enforcement notice issued by Folkestone & Hythe District Council.
- The enforcement notice was issued on 14 May 2019.
- The breach of planning control as alleged in the notice is without planning permission the removal of original timber windows and installation of replacement Upvc windows to the front, side and rear elevations.
- The requirements of the notice are:
 1. Remove the uPVC windows at the second floor to the front, side and rear elevations.
 2. Install replacement timber windows to match the previous windows that were removed without planning permission.
 3. Remove all waste materials resultant from the works from the land.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(e), (f) and (g) of the Town and Country Planning Act 1990 as amended.

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

Application for costs

1. An application for costs was made by Mrs Gillian Curtis against Folkestone & Hythe District Council. This application is the subject of a separate Decision.

The Appeal on Ground (e)

2. An appeal under this ground is that copies of the enforcement notice were not served as required by Section 172 of the Act, i.e. that a copy of an enforcement notice shall be served on the owner of the land to which it relates.
3. The arguments put forward by the appellant relate to whether or not the notice was properly authorised and, if it was not, that the notice is a nullity. I note that a previous notice was served and subsequently withdrawn as the procedures of the Council had not been correctly followed. However, long established caselaw makes clear that these considerations are not within my jurisdiction that is confined to assessing the scope of the appeal under Section 174 of the Act. I do not have jurisdiction to deal with submissions as to whether the Council acted outside their powers in issuing the notice.

4. The appellant has not suggested that the notice was not served correctly on the owner of the land and I note that the Council has provided convincing and undisputed evidence that the notice was properly served.
5. For these reasons, I conclude that the appeal under ground (e) must fail.

The Appeal on Ground (f)

6. 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 to remove the uPVC windows and replace them with timber windows that reflect those replaced, 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.
7. The requirements do not specify the design of windows, only that they should reflect those replaced. The appellant will be aware of the design of the windows prior to their removal, such that they will be able to ensure that any new windows would match those replaced. Consequently, the notice is clear as to what is required.
8. The appellant suggests that the requirement for replacement windows to be in timber is excessive and is not necessary to remedy the breach of planning control. However, the previous windows were timber, as are those serving other flats in the building. Details of alternative materials have not been provided. Consequently, I consider that the requirement for the windows to be constructed in timber is not excessive in order to restore the building to its condition before the breach took place.
9. As a result, I conclude that the requirements of the notice do not exceed what is necessary in order to remedy the breach of planning control. As such, the appeal fails on ground (f).

The Appeal on Ground (g)

10. An appeal on this ground is that the period specified in the notice for compliance falls short of what should reasonably be allowed.
11. The appellant suggests that they would require more time to raise funds for the works to comply with the notice. It is unclear what period of time would be required to allow the appellant to save up for the replacement windows and, as such, by how long the appellant wants the period in the notice to be extended by. It is necessary for the period for compliance to be clear. As such, an open ended period would not be appropriate. In addition, the appellant is legally obliged to comply with the requirements of the notice.
12. For these reasons, I conclude that the appeal under ground (g) should fail.

Formal Decision

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

AJ Steen INSPECTOR