



Appeal Decision

Site visit made on 6 January 2020

by K R Seward Solicitor

an Inspector appointed by the Secretary of State

Decision date: 30 January 2020

Appeal Ref: APP/D1590/C/19/3226120

64 Canterbury Avenue, Southend-on-Sea, Essex SS2 4QL

- 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 Grant Dennison against an enforcement notice issued by Southend-on-Sea Borough Council.
 - The enforcement notice was issued on 13 March 2019.
 - The breach of planning control as alleged in the notice is without planning permission the unauthorised development of a two storey side extension, rear dormer and single storey rear extension.
 - The requirements of the notice are:-
 - a) Remove the two storey side extension and rear dormer.
 - b) Either remove the rear single storey extension in its entirety or clad the exterior walls in facing brickwork to match existing house in accordance with permitted development conditions.
 - c) Remove all rubble, materials and equipment associated with complying with this notice.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c),(d),(f)&(g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
-

Decision

1. The appeal is dismissed, and the enforcement notice upheld.

Application for Costs

2. An application for costs was made by the Council against Mr Grant Dennison. This application is the subject of a separate decision.

Procedural Matters

3. The appeal on ground (a) lapsed after non-payment of the requisite fee. In consequence the planning merits of the development cannot be considered. This includes arguments regarding the energy efficiency of the windows and similarities in the external finishes with other properties in the area. Complaints regarding the Council's inconsistency in planning enforcement also fall outside the scope of this decision.
4. The appellant submits that the rear dormer has been removed and a pitched roof with matching tiles has been fitted. There is nothing before me to indicate that the rear dormer had already been removed by the time the enforcement

notice was issued to give rise to an appeal on ground (b). Early compliance with any requirement within a notice does not negate that part of the notice. It remains valid. All it means is that part of the requirement has been fulfilled.

The appeal on ground (c)

5. The appeal on this ground is that the matters alleged in the notice do not constitute a breach of planning control. The onus is on the appellant under this ground of appeal to make out the case that there has not been a breach of planning control. It involves the application of law and so the support from other residents to which the appellant refers is not a relevant factor.
6. The case on ground (c) concerns the rear single storey extension only. The appellant argues that the brown brickwork of the extension is similar in colour to the painted render of the original house and also rough in texture. As such, it is submitted that no harm arises to the character and appearance of the dwelling, the street scene or surrounding area. This latter point is pertinent to ground (a) rather than ground (c). In effect the appellant would need to show that there is no breach because the extension benefits from either an express grant of planning permission or it is permitted development. No such arguments have been expressly advanced.
7. The Council has considered the appeal on this ground as though it is argued that the extension is permitted development. From the planning history, a rear extension was authorised pursuant to Council reference: 16/01603/GPDE on 4 October 2016 following an application under the prior approval procedure. The grant of deemed permission under Article 3 and Schedule 2, Part 1, Class A of the Town and Country (General Permitted Development)(England) Order 2015 was subject to conditions in paragraph A.3. These included a condition that the materials used in any exterior work must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse.
8. The external materials do not need to be the same as the host dwelling so long as they are of similar visual appearance.
9. The appellant states that the original house and the extension were already painted in sandstone brown before the application. In support, the appellant cites a previous application for a side extension where the proposal was described as 'rendered finish painted in sandstone brown same as the original house' and the existing materials were listed as render finish painted in sandstone brown. However, the Council has produced photographs dated 27 October 2016 when ground works were in progress to build the extension showing the house with external red brickwork. It has since been rendered although exposed brickwork remains to most of the un-extended part of the front elevation. Subsequently the appellant acknowledged in his final comments that the house was originally red brick, but as he had planned to render the house due to the poor condition of the brick, he chose 'something of similar colour for the rear extension.'
10. At the time of deemed approval the exterior of the existing dwellinghouse was constructed of red brick. It follows that the extension was required to be of similar appearance to the brickwork. There is an obvious difference in the pale brown colour and texture of materials used as can be seen in sharp contrast against the brickwork of the adjoining semi-detached property.

11. As a condition of Class A has not been met, the extension as built cannot benefit from the planning permission deemed to be granted in 2016.
12. I conclude that the matters alleged in the notice do constitute a breach of planning control. The appeal on ground (c) fails.

The appeal on ground (d)

13. The box is ticked in the Appeal Form to indicate that an appeal is being brought on ground (d). This ground of appeal is that at the time the notice was issued it was too late to take enforcement action. To succeed on this ground the burden of proof is on the appellant to demonstrate that the extension was substantially complete 4 years or more prior to the date of issue of the enforcement notice.
14. The facts set out to support ground (d) say "the rear dormer has already been removed so that part is not valid anymore." A photograph is produced to demonstrate that the rear dormer is no longer present. No arguments are submitted to suggest that the rear dormer had become immune from enforcement action by the passage of time.
15. Therefore, the ground (d) appeal is bound to fail.

The appeal on ground (f)

16. The ground of appeal is that the steps required by the notice to be taken are excessive. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. These are either to remedy the breach of planning control which has occurred (section 173(4)(a)), or to remedy any injury to amenity that has been caused by the breach (section 173(4)(b)). The purpose of the requirements constrains the way ground (f) can be argued, particularly where the planning merits are not being considered. Therefore, it is necessary to establish the purpose of the notice.
17. The Council does not expressly identify which of these purposes it seeks to achieve. The first requirement to remove the two-storey side extension and rear dormer in their entirety is consistent with the purposes of remedying the breach. The reasons for issuing the notice describe the development in its totality as representing poor design which indicates injury to amenity. The first requirement is therefore directed at both purposes.
18. The appellant considers the first requirement to be excessive as the windows are the only problem. That does not correspond with the reasons in the notice which identifies the extension as a whole to be unacceptable. The notice follows the dismissal of an appeal against refusal of planning permission seeking to regularise the development where the Inspector found "the design as a whole is unsatisfactory"¹. There is no ground (a) to enable me to consider any other modified form of development or the planning merits of any part of the development, including its eco credentials.
19. The rear dormer has been removed already. Given that the first requirement does no more than seek to achieve the purposes of section 173(4)(a) and (b), it is not excessive to also require removal of the two-storey extension.

¹ Appeal ref: APP/D1590/D/18/3197020 dated 4 June 2018

20. The appellant maintains that the Council's Planning Officer said in a meeting before the notice was issued that the extension could be clad in facing brick. The second requirement gives the option of either removing the rear single storey extension or cladding the exterior walls in facing brickwork to match the existing house. As a measure short of total demolition has been offered, it indicates this part of the notice is directed at remedying injury to amenity.
21. It also recognises the fallback position potentially available for permitted development under Class A as discussed above.
22. The appellant believes that hedging could be planted to resolve the issue with the single storey extension. Attempting to conceal the extension would not address the injury to amenity. Moreover, in the absence of a ground (a) appeal it is not possible to impose an ongoing landscaping condition.
23. The alternative suggestion made by the appellant to split the windows by gluing wooden frames to the windows would also not address the harm arising from the fenestration and overall design.
24. Therefore, there are no lesser steps capable of addressing the harm from each component of the unauthorised development.
25. The appeal on ground (f) fails.

The appeal on ground (g)

26. The ground of appeal is that the time given to comply with the requirements of the notice falls short of what should reasonably be allowed. Instead of 6 months, the appellant seeks a period of 12 months so that he might be able to save up enough money for the works to be undertaken. When the appeal was made, the appellant stated that he was going to do all the work himself as he cannot afford to hire anyone.
27. The effect of the appeal is to stop the clock. The notice only takes effect on the date of this appeal decision and that is when the compliance period starts.
28. It seems to me that 6 months is a reasonable and proportionate time for the works to be undertaken whether by the appellant himself or a contractor.
29. The ground (g) appeal fails.

KR Seward

INSPECTOR