
Appeal Decision

Site visit made on 28 January 2020

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 February 2020

Appeal Ref: APP/P4225/C/19/3232048

Land at 34 Avon Road, Heywood OL10 4RW

- 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 Mark Whitehead against an enforcement notice issued by Rochdale Metropolitan Borough Council.
 - The enforcement notice was issued on 29 May 2019.
 - The breach of planning control as alleged in the notice is: Without the benefit of planning permission operational development comprising the construction of a conservatory to the side elevation.
 - The requirements of the notice are:
 - (a) Demolish the conservatory;
 - (b) Restore the side elevation of the house to its former condition;
 - (c) Re-surface the Land on which the conservatory sits to its former condition, and;
 - (d) Remove all materials and items resulting from compliance with requirements (a) (b) and (c) from the Land.
 - The period for compliance with the requirements is six 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. 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.
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Decision

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

Appeal on ground (f)

2. The issue is whether the requirements are excessive to achieve the purpose(s) of the notice.
3. Section 173 of the Town and Country Planning Act 1990 (as amended) indicates that there are two purposes which the requirements of an enforcement notice can seek to address. The first is to remedy the breach of planning control that has occurred and the second to remedy any injury to amenity which has been caused by the breach. In this case the purpose of the notice is to remedy the breach of planning control.
4. The appellant considers that rather than remove the conservatory completely there is scope to redesign it to reduce its width and bulk. In his view the revised design would overcome the concerns about the development's existing character and appearance. A plan has been submitted which details the proposed revised design for the conservatory.

5. However, the revised design would not remedy the breach of planning control and what is sought would be tantamount to granting planning permission for a revised scheme and cannot be achieved through an appeal on ground (f). I am not dealing with an application for planning permission, as ground (a) of Section 174 (2) was not pleaded, and there is no planning permission before me under Section 177(5) of the 1990 Act because the fee for the deemed application was not paid. In these circumstances, there are no lesser steps that would remedy the breach of planning control.
6. The appeal on ground (f) must fail.

Conclusion

7. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Elizabeth Pleasant

INSPECTOR