
Appeal Decision

Site visit made on 5 February 2020

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 14th February 2020

Appeal Ref : APP/J2210/C/19/3228339

Land at 56 Reed Avenue, Canterbury, Kent, CT1 1EJ

- 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 Abdel Fattah Abid against an enforcement notice issued by Canterbury City Council.
- The notice was issued on 1 April 2019.
- The breach of planning control as alleged in the notice is without planning permission erection of a second floor extension, ground floor rear extension and external side staircase to the dwellinghouse.
- The requirements of the notice are 1. permanently remove the second floor extension, 2. reinstate the roof, 3. permanently remove the single storey extension completely or alter it so as to reduce its size to comply with Schedule 2, Part 1, Class of the Town and Country Planning (General Permitted Development) (England) Order 2015, 4. permanently remove the side external staircase and 5. permanently remove all resultant material and debris resulting from steps 1, 3 and 4 from the land.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: the appeal is dismissed and the enforcement notice is upheld

Ground (c) appeal

1. This ground of appeal is that the matters alleged do not constitute a breach of planning control. A breach of planning control comprises the carrying out of development without the required planning permission. The meaning of development includes the carrying out of building, engineering, mining or other operations in, on, over or under land. Certain specified development benefits from permitted development rights by virtue of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) meaning that an express grant of planning permission is not required.
2. The onus of proof rests on the Appellant in this appeal. He does not dispute that the ground floor extension and external staircase require planning permission. His challenge is that the second floor extension has the benefit of permitted development rights although he does not specify in detail which class of the GPDO he seeks to rely upon.
3. Class B of Schedule 2 Part 1 of the GPDO sets out permitted development for the enlargement of a house consisting of an addition or alteration to its roof. Class C covers all other alterations to a roof. Both Class B and C require that

any part of the dwellinghouse shall not, as a result of the works, exceed the height of the highest part of the existing roof. The Appellant says that the dormer does not exceed the original roof ridge but it is clear to me from my site visit and the evidence before me that it does. It therefore does not attract permitted development rights and requires planning permission.

4. The Appellant says that he believed that the loft conversion did not require planning permission. But that is not a ground of appeal and not a matter to which I have accorded weight. He also says that the work has been monitored by a building inspector. But Building Control is a separate legislative regime and does not affect permitted development or planning matters. I also note references to a withdrawn application for a certificate of lawful use or development but that sits outside my remit in this appeal.
5. The Appellant has not demonstrated on a balance of probabilities that the development the subject of this appeal is permitted development.
6. For the reasons given above, this ground of appeal does not succeed.

Ground (a) appeal and deemed application

Main Issue

7. The main issue in the determination of this appeal is the effect of the development on the character and appearance of the host dwelling and the surrounding area.

Character and appearance

8. The appeal site is a two storey semi-detached dwellinghouse located in a predominantly residential area. The development the subject of the notice comprises a second floor extension, a ground floor rear extension and a metal staircase.
9. The development plan (including the Canterbury District Local Plan (the Local Plan)) mirrors the National Planning Policy Framework (the Framework) in emphasising the need for development to respect its setting. Policy DBE3 of the Local Plan requires development to be of high quality design and to meet a set of specified criteria including visual impact, scale and architectural detail.
10. The second floor extension extends across the majority of the roof slope. It dominates the host dwelling and is visually prominent from the highway and nearby properties. It is bulky and out of keeping with the surrounding area. I agree with the neighbour who describes it as oversized. It creates an overbearing and dominant addition to the property which is incongruous and visually prominent in the streetscene. It is not a high quality design and creates adverse visual impact. Similar development is not characteristic of the surrounding area. I note that the Appellant says he would not have built the extension in this way if he had thought it needed planning permission. But I must determine the deemed application before me which concerns the development carried out.
11. The ground floor rear extension is highly visible from the streetscene given the prominent corner position of the site. It is large and out of keeping with the host dwelling and surrounding area. It dominates its setting and creates adverse visual impact. Its materials do not match those of the host dwelling

and add to its incongruance. The Appellant argues that development is simply the infill of a previous extension. I have taken into account the previous works but I find the development carried out to create significantly more harm than the previous works.

12. The external staircase is located on the western elevation and joins the ground floor to first floor level. It is adjacent to the highway and has the appearance of a fire escape. It is a large metal staircase highly visible from the streetscene. Its industrial like appearance and scale is out of keeping with its domestic setting.
13. The second floor extension, ground floor rear extension and external staircase cause undue harm to the character and appearance of the host dwelling and the surrounding area contrary to relevant policies in the development plan (including policy DBE3) and the Framework.
14. I have considered whether conditions could overcome the identified harm. I have taken into account the Planning Practice Guidance. I note that the Appellant says that he would paint the rear to match the host dwelling but this would not remedy the harm caused by the scale and design of the development. Conditions would not overcome the identified harm to the character and appearance of the host dwelling and surrounding area.
15. For the reasons given above I conclude that the ground (a) appeal should not succeed. Planning permission is refused (in whole or part) on the deemed application.

Ground (f) appeal

16. This ground of appeal is that the steps to comply with the notice are excessive.
17. There are two purposes which an enforcement notice can seek to address. The first is to remedy the breach of planning control and the second is to remedy the injury to amenity caused by the breach. In this case the notice requires removal of the second floor extension, reinstatement of the roof, removal of the single storey extension completely or its alteration to satisfy permitted development rights and removal of the side external staircase. Its purpose is therefore to remedy the breach of planning control (whilst preserving lawful permitted development rights).
18. No lesser steps than those set out in the notice would satisfy the purpose of the notice and indeed no lesser steps are proposed by the Appellant.
19. For the reasons given above this ground of appeal does not succeed.

Formal Decision

20. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

S. Prail

Inspector