
Appeal Decisions

Site visit made on 28 January 2020

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th March 2020

Appeal A Ref: APP/C1570/C/19/3231369

Appeal B Ref: APP/C1570/C/19/3235376

The Conifers, White Horse Lane, Newport, Saffron Walden CB11 3RG

- 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 appeals are made by Mr and Mrs Paul Norman against an enforcement notice issued by Uttlesford District Council.
 - The enforcement notice was issued on 20 May 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a part single storey part two storey detached outbuilding.
 - The requirements of the notice are to demolish the detached outbuilding site, marked with an "X" on the plan attached to the notice, in its entirety and remove all resulting debris from the site.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (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.
-

Decisions

1. The appeals are allowed on ground (g), and it is directed that the enforcement notice be varied: by the deletion of three months and the substitution of five months as the period for compliance. Subject to this variation the enforcement notice is upheld.

Background

2. The appeals are made in relation to a detached outbuilding within the garden of The Conifers, a detached bungalow in White Horse Lane. A previous appeal dealt with a refusal of planning permission to keep the building and was dismissed in August 2019 (Ref: App/C1570/W/19/3228197).
3. The outbuilding is approximately the same height as the bungalow. Externally it is largely finished but internally the walls and wiring are in an unfinished state. Although a first floor has been inserted in part of the building with ground and first floor French windows, there are no stairs to access this area.

The ground (f) appeals

4. The appeals on ground (f) are that the requirements of the notice exceed what is necessary to achieve the purpose. The purposes of an enforcement notice

are set out in section 173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). In this case the Council require the removal of the outbuilding. The purpose of the notice is therefore to remedy the breach of planning control.

5. In making appeals on ground (f), the onus is on the appellants to suggest lesser steps that would remedy the breach of planning control. They submit that the requirements of the notice are harsh, especially when bearing in mind the cost implications of carrying out the work. Other notices often request a reduction in height or mass of unauthorised development so that it accords with a previous approval of planning permission. As such, that should be the case in their circumstances.
6. They also provide a copy of a flood risk assessment report and submit that the Council's reasons for issuing the notice are inaccurate. It would appear that the Council continue to hold a different view from the appellants on this matter given the detailed response to their consultation received from the Environment Agency. However, all of this falls to be considered under planning merits but as the ground (a) appeal and the deemed planning application have lapsed, I am unable to consider these submissions and arguments.
7. The requirements of the notice may seem harsh to the appellants but the notice states the minimum steps necessary to remedy the breach of planning control, which is the initial action of erecting the outbuilding. I am aware that planning permission was given for a detached outbuilding (Ref: UTT/16/1789HFF) of a different design and size in the area occupied by the unauthorised outbuilding. However, I have not been provided with those details other than permission was granted on the 30 September 2016 and that there were no conditions to discharge.
8. Whilst it is open to the Council to state alternative requirements in the notice, such as to bring the development within the limits of the 2016 planning permission, they are not bound to do so. This is because, generally speaking, it is open to the appellants to do this in any event. However, in this case, the appellants are not able to rely on the 2016 planning permission as a fallback position, and it is not possible for me to vary the notice to provide this position, as the 2016 planning permission has now expired. The appeals on ground (f) therefore fail.

The ground (g) appeals

9. These grounds of appeal are that the three month period given to comply with the requirements of the notice is too short. They are therefore limited in their scope to a consideration of the time necessary to carry out those requirements. Again, the onus is on the appellants to suggest a longer period of time, which they have not done.
10. Instead they rely on the costs of the work which would make demolition in the given period unfeasible. They make no other submissions on what would be a reasonable period of time to carry out the work. However, the Council advise that the appellants have submitted another planning application in an attempt to resolve the situation. This is for a smaller outbuilding than what is presently on site. Discussions are currently underway between the parties over the size of this outbuilding and flooding issues, in order to find a solution. As such, whilst it is considered that three months is a reasonable period of time to

remove the outbuilding, I consider the time period should be increased. This would enable the appellants to conclude their discussions with the Council and in this respect five months would be an appropriate period of time. To this limited extent the appeals on ground (g) succeed.

Conclusion

11. For the reasons given above I conclude that a reasonable period for compliance would be five months, and I am varying the enforcement notice accordingly, prior to upholding it. The appeals under ground (g) succeed to that extent.

D Fleming

INSPECTOR