



Appeal Decisions

Site visit made on 10 January 2020

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 14 March 2020

Appeal A: APP/D1590/C/19/3230575

18 Vardon Drive, Leigh-on-Sea, Essex SS9 3SR

- 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 Ms Emma Johnson against an enforcement notice issued by Southend-on-Sea Borough Council.
 - The enforcement notice was issued on 16 May 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission the unauthorised construction of a single storey rear extension.
 - The requirements of the notice are:
 - a) Remove the single storey rear extension.
 - b) Remove all rubble, materials and equipment associated with complying with this notice.
 - The period for compliance with the requirements is 4 months after this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended. Although an appeal was initially brought on ground (a) it has subsequently been withdrawn. No application for planning permission is therefore deemed to have been made under Section 177(5) of the Act as amended.
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Appeal B: APP/D1590/W/19/3230592

18 Vardon Drive, Leigh-on-Sea, Essex SS9 3SR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Ms Emma Johnson against the decision of Southend-on-Sea Borough Council.
 - The application Ref 19/00032/FULH, dated 8 January 2019, was refused by notice dated 4 April 2019.
 - The development proposed is described as '*Single storey rear extension part flat roof part pitch.*'
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Formal Decisions

Appeal A:

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

Appeal B:

2. During the appeal process the appellant has withdrawn this appeal. The development refused planning permission does not therefore fall to be considered.

Application for costs

3. An application for costs was made by Ms Emma Johnson against Southend-on-Sea Borough Council, and is the subject of a separate decision.

Procedural Matters

4. During the appeal process, in July 2019, the Council granted planning permission (ref 19/00943/FULH) for the modification of the extension then in situ. S180 of the 1990 Act provides that where, after the service of an enforcement notice, planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission.
5. The critical words in s180 are “so far as”. The main question to be considered is whether there are elements of development common to both the permission and enforcement notice. In that case, parts of the development that have been attacked by the notice are physically subsumed in the development for which the Council had granted permission. To the extent that the structure is common to the permission and the enforcement notice, s180 operates to prevent the notice from continuing to bite upon it.
6. By virtue of case law reliance should be placed on s180 to mitigate the effect of the notice so far as it is inconsistent with the permission; *R v Chichester Justices Ex Parte Chichester DC* [1990] 60 P&CR 342.
7. Given the withdrawal of the ground (a) appeal on Appeal A, and also the s78 appeal (Appeal B) only grounds (f) and (g) as part of Appeal A are for consideration.

Appeal A

The appeal on ground (f)

8. The appeal on ground (f) is that the requirements of the notice exceed what is necessary in the circumstances. S173(4)(a) and (b) of the 1990 Act as amended provides that the purposes of an enforcement notice can be (a) to remedy the breach of planning control, including by restoring the land to its condition before the breach took place, or (b) to remedy any injury to amenity which has been caused by the alleged breach. Given the extent of the notice’s requirements whereby the extension’s removal is stipulated I consider that the enforcement notice’s purpose was to remedy the breach.
9. As the extension, in its form at the time the enforcement notice was issued, has been modified and completed in accordance with a planning permission subsequently granted, and I am not aware of any irregularities to this end, the re-modelled extension now in situ must represent the alternative scheme referred to in the appellant’s representations as the “fallback situation”. At the time the appellant’s Statement was written the planning application submitted as an attempt to regularise the planning position had yet to be determined.
10. As no alternative scheme other than that later granted permission is before me this ground has been overtaken by events. The appeal on ground (f) cannot succeed.

The appeal on ground (g)

11. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The notice gives a period of four months for its requirements to be met whereas the appellant considered that a period of eight months would be more appropriate.
12. However, at the time the appeal was lodged the extension had not yet been modified as the planning application was still under consideration. Given the subsequent planning permission and its implementation this ground has similarly been overtaken by events. The appeal on ground (g) must also, therefore, fail.

Conclusion

13. Due to the circumstances, and the consequent withdrawals, the remaining appeals no longer serve any practical purpose.

Timothy C King

INSPECTOR