



Appeal Decision

Site visit made on 17 February 2020

by K R Saward Solicitor

an Inspector appointed by the Secretary of State

Decision date: 17 March 2020

Appeal Ref: APP/X1545/C/19/3236633

2 Woodrolfe Road, Tollesbury, Essex

- 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 Ann Whitwham against an enforcement notice issued by Maldon District Council.
 - The enforcement notice was issued on 5 August 2019.
 - The breach of planning control as alleged in the notice is the unauthorised erection of a dwellinghouse.
 - The requirements of the notice are: Either, a. Build the dwellinghouse in accordance with the approved plans, details and conditions of planning permission 15/00080/FUL and further details approved with application 16/05060/DET; Or b. Remove from the land the unauthorised dwellinghouse and any resulting or associated materials, items, paraphernalia, debris or detritus.
 - The period for compliance with the requirements is 4 calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c),(f)&(g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is allowed, and the enforcement notice is quashed.

Application for costs

2. An application for costs was made by Ms Ann Whitwham against Maldon District Council. This application is the subject of a separate Decision.

Procedural Matter

3. After the site visit had already taken place, the appellant sought to submit detailed construction drawings. They were subsequently withdrawn when the appellant was unable to confirm if these drawings had been approved or previously placed before the Council. Therefore, I have disregarded them.

The appeal on ground (c)

4. The onus is on the appellant under this ground of appeal to make out the case that the matters alleged in the notice do not constitute a breach of planning control.
5. Planning permission was granted on 20 April 2015¹ for the demolition of the existing house and construction of a new detached 3-bedroom house on the same site. This was subject to certain pre-commencement conditions requiring

¹ pursuant to Council ref: FUL/MAL/15/00080

approval of details of external materials, boundary treatments and a construction method statement ('CMS'). Those details were approved by the Council on 12 May 2016².

6. If development has taken place other than fully in accordance with the approved details, then the planning permission will not have been implemented and the dwelling will have been erected without planning permission.
7. The enforcement notice does not explicitly identify where there have been departures from the approved details. It states that the rudimentary design of the development has resulted in a large elevation with extensive use of render, without detailing and very limited architectural features representing a poor form of design. When comparing what has been built with the approved plans, the difference is obvious. The proposed front elevation is shown with a two-storey projecting side gable set beneath the main roofline with a large upper and lower window. This part has not been built. It has left a large expanse of rendered wall without any gabled element and only the one small front window and door to the right side.
8. The dwelling is built using straw bales. The appellant maintains that the development is incomplete and accords with the approved plans as far as work has taken place. There is one exception where "mini bales" have been used as temporary infill for the doorways. Once the development progresses it is contended that it will be a simple job to remove the areas of render and push out the mini bales to create the doorways.
9. The approved CMS refers to the development taking place in two stages. Stage 1 is described as "the back part". Building stage 2 is said to be "very much smaller" and at the front of the site. When viewing the approved plans the only sensible conclusion to be drawn is that stage 2 is the front projection, being the smaller front element.
10. The appellant acknowledges that the front wall and roof appear finished by way of the render and roof materials but says this is a necessity to keep the building weather-proof and maintain its structural integrity. It is submitted that other methods and materials would have been used had it been a conventional form of construction.
11. Naturally, a building constructed in stages would need to be kept watertight. I have no information before me to suggest that what the appellant says is wrong and lesser measures might have served the same purpose. The explanation is plausible.
12. Clearly, permission was not granted to erect a partial building. Furthermore, the concept of final permission requires a fully detailed building of a certain character, not a structure which is incomplete. Thus, the key issue is whether the building as enforced against is substantially complete resulting in a deviation from the plans by constructing a dwelling without the front projection or if it remains under construction as claimed.
13. An inspection report detailing the progress of the construction contains photographs and commentary from inspections conducted between June 2016 and April 2018. Whilst it shows work in progress the content is restricted to requirements covered by Building Regulations. It is of very limited use for the

² under Council ref: 16/05060/DET

purposes of establishing if the development remains ongoing and whether there is compliance with the approved plans under the planning regime.

14. I saw a shallow trench where foundations are said to be laid for the front projection. This appears to correspond with photographs, including those in the building inspection report, showing tyres forming foundations in the front garden. It supports the appellant's stance that the front projection is to be built out and her insistence that operations are ongoing.
15. Planning permission cannot require a building to be completed, but what has been built must accord with the grant of permission and the details approved thereunder. As far as it goes, the building does appear to accord with the approved plans except for relatively minor departures in terms of the blocked-up openings. The presence of render across the whole frontage does not preclude the addition of the front projection which the evidence indicates is stage 2 of the development as identified in the approved CMS.
16. The appellant submits that the building clearly remains in the construction phase. It is incomplete internally and there is no sign of occupation. Externally, safety fencing is erected across the front of the site and there is a pile of materials covered in tarpaulin and bricks stacked to one side. Some hard surfacing is laid to the front, but the frontage has not been landscaped. The ramp to the front door is yet to be built and the render is unpainted. As these are minor details it gives the impression that the house is in its final form particularly as windows and doors are inserted and fascias, guttering and drainpipes are in place. However, the appellant insists that is not the case.
17. In the absence of a statement from the Council to address the appellant's case, the appellant has done enough to demonstrate that the building is not as a matter of fact and degree substantially complete because works are ongoing. The foundations are laid for the front projection yet to be built. Those works are due to continue as stage 2 of the same building operation. When the enforcement notice was issued there was not a material departure from the approved details resulting in the development having been built without planning permission. Of course, if the dwelling is occupied or finished off without the front projection then another notice could follow. As things presently stand, I am sufficiently satisfied on the available evidence that what has been built is part of the approved dwelling which remains incomplete. It is capable of being completed in accordance with the approved plans.

Conclusion

18. I find as a matter of fact that a breach has not occurred. The appeal on ground (c) succeeds and the notice will be quashed. That being so, there is no need for me to consider the remaining grounds of appeal.

KR Seward

INSPECTOR