



Appeal Decision

Site visit made on 17 March 2020

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 March 2020

Appeal Ref: APP/J0350/C/19/3235593

Land at 49 Sussex Place, Slough SL1 1NH

- 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 Balginder Sandhu against an enforcement notice issued by Slough Borough Council.
- The enforcement notice was issued on 16 July 2019.
- The breach of planning control as alleged in the notice is without planning permission:
 - 1) The erection of a front and rear gable end roof which is higher than approved under permission P/09369/002 granted on 26 November 2015; 2) The erection without planning permission of a large meter box housing on the side return of the ground floor front bay window (items 1 and 2 together are "the unauthorised operational development"). In breach of condition on planning permission P/09369/002: 3) Non-compliance with condition number 3 to planning permission P/09369/002 granted on 26 November 2015 by failure to provide cycle parking within the land for ten cycles as shown on the approved plan 15134 005 P3; 4) Non-compliance with condition number 4 to planning permission P/09369/002 granted on 26 November 2015 by failure to provide a 600mm high front boundary wall prior to first occupation of the development; 5) Non-compliance with condition number 5 to planning permission P/09369/002 granted on 26 November 2015 by failure to provide a vehicle crossover prior to first commencement of development (items 3, 4 and 5 together are the "breaches of condition").
- The requirements of the notice are 1. Unauthorised operational development:
 - 1.1 Rebuild the front and rear gable end roof so that it complies with the approved plans to planning permission P/09369/002 granted on 26 November 2015; 1.2 Demolish the meter housing and remove the meters located on the side return to the front bay window.
- 2 Breaches of condition:
 - 2.1 Provide cycle parking for ten cycles in the rear garden in accordance with condition number 3 to planning permission P/09369/002 granted on 26 November 2015; 2.2 Provide a 600mm high boundary wall to guide vehicles to safely cross the carriageway to the front garden parking area in accordance with condition number 4 to planning permission P/09369/002 granted on 26 November 2015; 2.3 Provide a suitable access crossover to allow vehicles to safely cross the carriageway to the front garden parking area in accordance with condition number 5 to planning permission P/09369/002 granted on 26 November 2015.
- 3. Other:
 - 3.1 Remove from the land all materials, rubbish, debris, plant and machinery resulting from compliance with the above requirements.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The enforcement notice is quashed.

The enforcement notice

1. The planning permission referenced in the enforcement notice was for construction at the appeal property of a single storey rear extension, a loft conversion including front and rear dormers, internal alterations and demolition of a garage. Eight conditions were attached.
2. A breach of planning control is defined at s171A (1) of the 1990 Act as either: (a) carrying out development without the required planning permission; or (b) failing to comply with any condition or limitation subject to which planning permission has been granted. At s173 (1) (b), the Act requires an enforcement notice to state which paragraph of s171A (1) the breach of planning control falls within. As s171A (1) (a) and (b) are mutually exclusive, a breach of planning control cannot fall within both paragraphs; it must either be development undertaken without planning permission or a failure to comply with conditions. The enforcement notice states that the alleged breach falls within paragraph (a) of s171A (1). However, both operational development without planning permission and failure to comply with conditions are referred to in the allegation and the requirements. Therefore, as issued the notice cannot be correct.
3. At s176 (1), the Act provides for correcting a defect, error or misdescription in an enforcement notice, subject to there being no injustice caused to the appellant or the Council. I have sought and taken into account the views of both main parties, concerning whether the notice could be corrected so that the allegation referred to either the carrying out of development without planning permission or to a breach of conditions attached to the above permission, whether any consequent correction of the requirements was necessary and the implications of such corrections.
4. By deleting the references to the breach of conditions 3, 4 and 5 of the above permission in both the allegation and the requirements, as suggested by the Council, the notice could be corrected to refer solely to the carrying out of development without planning permission. However, s173 (1) of the Act provides that where an enforcement notice in respect of any breach of planning control could have required any buildings or works to be removed but does not do so; and all the requirements of the notice have been complied with, then, so far as the notice did not so require, a deemed unconditional planning permission is granted in respect of that development.
5. Therefore, if the notice were to be corrected as set out above, following which the front and rear gable end roof of the building were to be modified and the meter housing removed as required by steps 1.1 and 1.2 of the notice, a deemed unconditional planning permission would be granted for the building operations, thus removing the effect of the conditions on the above permission. Given that, as far as I have been made aware, there is a continuing failure to comply with the requirements of conditions 3, 4 and 5 and having regard to the other conditions on the above permission imposing continuing restrictions on the property, this cannot have been the Council's intention. As a result, I find that correcting the notice as set out above would cause the Council injustice.
6. The building operations specified in the allegation deviate from the approved plans listed in the above permission. Condition 2 of that permission required development to be carried out only in accordance with the listed approved plans. Alternatively therefore, the notice could be corrected to refer to s171A

(1) (b) of the Act, with the allegation corrected to refer to a failure to comply with condition 2 of the above permission in addition to conditions 3, 4 and 5. However, in such an eventuality compliance with the notice requirements would make the development comply with the terms, including the conditions, of the above permission. As a result, the notice would be more onerous and restrictive than if the appellant had not made an appeal in the first place. He would be deprived of a deemed unconditional planning permission in respect of the building operations following compliance with the notice requirements, having regard to s173 (11). This would clearly cause injustice to the appellant.

7. Accordingly, I find that the notice is incapable of correction.

Conclusion

8. For the reasons given above I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control. It is not open to me to correct the error in accordance with my powers under section 176 (1)(a) of the 1990 Act as amended since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed. In these circumstances the appeal under ground (a) as set out in section 174 (2) of the 1990 Act as amended and the application for planning permission deemed to have been made under section 177 (5) of the 1990 Act as amended does not fall to be considered.

Formal Decision

9. The enforcement notice is quashed.

Stephen Hawkins

INSPECTOR