



Appeal Decisions

Site visit made on 9 March 2020

by Hilary Orr MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 March 2020

Appeal A Ref: APP/Z2260/C/19/3239318

Appeal B Ref: APP/Z2260/C/19/3239319

91 Botany Bay Road, Broadstairs, Kent CT10 3SB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Mr Samuel Gibson and Appeal B by Mrs Sarah Gibson against an enforcement notice issued by Thanet District Council.
 - The enforcement notice, numbered EN/19/0073, was issued on 12 September 2019.
 - The breach of planning control as alleged in the notice is the erection of a dormer window on the side roof slope of the property.
 - The requirements of the notice are to remove the unauthorised dormer window on the north eastern side of the property.
 - The period for compliance with the requirements is 3 months.
 - 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. 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.
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Decision

1. It is directed that the enforcement notice is varied by: the deletion of 3 months and the substitution of 6 months as the period for compliance. Subject to the variation, the enforcement notice is upheld.

Reasons

Appeals on ground (f)

2. The appeal is that the requirements of the notice exceed what is necessary to achieve the purpose of the notice. I acknowledge that there are other examples of dormer windows in the area. However, as the appellants have not pursued an appeal under ground (a), planning considerations or arguments relating to the merit of the development, cannot be considered under ground (f).
3. The purpose of an enforcement notice are set out in section 173 of the 1990 Act and are to remedy the breach of planning control (s173(4)(a)) or as the case may be, to remedy injury to amenity (s173(4)(b)). In this case the notice requires that the dormer is removed and therefore the purpose of the notice is to remedy the breach of planning control.
4. It is the appellants case that the notice only requires the removal of the dormer on the north east roof slope, and does not go on to specify how the roof should be restored. As planning permission has already been granted for a smaller

dormer (FH/TH/17/1418) the unauthorised development should be reduced to a level that would be lawful, either in its own right, or by virtue of the extant planning permission.

5. The scope of the notice is limited by s173(4)(a) and (b). Where planning permission has not been granted for the development, the power is simply to restore the land to its previous condition. The appellant's have not advanced any details about how this could be achieved, or how any other lesser steps would fulfil the purpose of the notice. I therefore have no 'worked out alternative', whereby the notice could be varied under ground (f) with the necessary degree of precision.
6. Drawing the above points together, On the evidence I have before me, I find that the remedial nature of the notice requires full compliance and the requirements are not excessive. Consequently, the appeal on ground (f) therefore fails.

Appeals on ground (g)

7. It is necessary to consider whether the compliance period of 3 months is too short. The appellant has not suggested an alternative timescale that they consider to be more reasonable. Nonetheless, I am mindful that the building is currently residentially occupied, and the works required to comply with the notice are likely to cause considerable disturbance. I therefore consider that it would be reasonable to allow additional time for them to make the necessary domestic arrangements.
8. Accordingly, I consider that a period of 6 months would be a more reasonable timescale for the requirements of the notice to be complied with. The appeal on ground (g) therefore succeeds in this regard.

Conclusion

9. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it. The appeal on ground (g) succeeds to that extent.

Hilary Orr

INSPECTOR