



Appeal Decision

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: 6 April 2020

Appeal Ref: APP/D1590/C/19/3224045

11 Leigh Park Road, Leigh-On-Sea, Essex SS9 2DU

- 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 Grant Littler against an enforcement notice issued by Southend-On-Sea Borough Council.
 - The enforcement notice was issued on 6 February 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a turret materially taller than that approved under planning permission ref 96/0365 dated 29 November 1996, the formation of a front gable window materially different from that approved under planning permission ref 96/0365 dated 29 November 1996, replacement of wooden windows in the rear elevation with upvc windows and doors which are subject to an Article 4 Direction and have been changed without consent and are unauthorised.
 - The requirements of the notice are to:
 - a) Reduce the turret height so as to accord with the planning approval under reference 96/0365.
 - b) Remove the front gable window so as to accord with the planning approval under reference 96/0365.
 - c) With the exception of the three ground floor windows in the rear elevation (which on the balance of probability are considered to have been in situ for in excess of 4 years) remove all other upvc windows and doors in the dwelling's rear elevation.
 - d) Remove all rubble, materials and equipment associated with complying with this notice.
 - The period for compliance with the requirements is 6 months after this Notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to made under section 177(5) of the Act as amended falls to be considered.
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Formal Decision

1. It is directed that the enforcement notice be corrected by the deletion of the text under the heading "The Breach of Planning Control Alleged" and its replacement with:

"The creation of a front gable window opening."

Accordingly, by way of this correction, its requirements are deleted, and are replaced by the following:

Requirement a):

"Remove the front gable window opening, and return the gable

frontage to accord with drawing No P301, submitted and approved under planning permission 19/00297/FULH”.

Requirement b):

“Remove all rubble, materials and equipment associated with complying with this notice.”

2. The appeal is dismissed and the enforcement notice is upheld as corrected, and planning permission is refused in respect of the creation of a front gable window opening on the application deemed to have been made under s177(5) of the 1990 Act as amended.

Application for costs

3. An application for costs was made by Mr Grant Littler against Southend-On-Sea Borough Council. This application is the subject of a separate decision.

Background

4. In 1996 planning permission 96/0365 allowed a proposed development involving the demolition and rebuilding of the dwellinghouse’s frontage, along with extensions and other associated operational development. Subsequent to this permission, up to the point the enforcement notice was issued, there have been a series of planning applications submitted given the owner’s wish to modify the permitted scheme. These were all refused permission, and one scheme (ref. 17/01007/FULH) was unsuccessfully appealed. In view of certain outstanding irregularities in the planning position the Council, by early 2019, saw it expedient to serve an enforcement notice in an attempt to regularise matters.

The Appeal on ground (c)

5. The appeal on this ground is that the matters alleged in the notice do not constitute a breach of planning control. The onus of proof on matters of fact is on the appellant, and is on the balance of probabilities.
6. Ground (c) assumes the fact of the original development as it occurred at the time of the enforcement notice’s issue, so it can only succeed on this basis if that original development does not now amount to a breach of planning control due to a change in the planning control situation.
7. In April 2019, subsequent to the enforcement notice being issued, the Council granted planning permission (ref 19/00297/FULH) for the variation of the drawings approved under planning permission ref 96/0365 to allow for a number of modifications. The case report made mention of the roof turret and that this feature, as had been identified in situ in January 2019, was now considered to roughly accord with that previously permitted and that it was now considered acceptable. Conditions are imposed to this effect and, subsequently, in October 2019, the Council approved a series of details as required by way of the permission.
8. In May 2019 the Council then granted retrospective planning permission (ref 19/00439/FULH) for the retention of the upper uPVC casement rear windows, and the retention of ground floor rear doors. This has effectively regularised the matters referred to in allegation c) of the notice.

9. S180 of the 1990 Act says 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 is inconsistent with that permission.
10. In the circumstances, the appeal on ground (c) therefore succeeds in relation to those matters for which planning permission has already been granted by the Council. I will therefore correct the enforcement notice, so the allegation relates only to matters which are not addressed by the planning permissions granted.

The Appeal on ground (a) and the deemed planning application (DPA)

Main Issue

11. The main issue is the effect of the development on the character and appearance of the area, with particular regard to its conservation area location.

Reasons

12. The site falls within the Leigh Conservation Area. The building itself is of an "Arts and Craft" period style. Comprising part of a unified group of dwellings it reflects the influence of the movement and is redolent of its time, contributing to the character of the Conservation Area. The property is also within an area subject to a 1989 Article 4 Direction which prohibits certain alterations to dwellings, normally considered as permitted development. In the circumstances development, as falls to be considered in this appeal, requires the benefit of planning permission. As mentioned, though, the deemed planning application (DPA) is now limited to permission being sought for the alterations effected to the front gable where a window opening has been punched out.
13. I have a statutory duty under s72(1) of the Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990 to have regard to the proposal's effect on the Conservation Area, and whether it can be considered to preserve or enhance the area's character or appearance. The front gable feature in this instance is an important architectural characteristic integral to this dwelling and its like along the north side of Leigh Park Road.
14. The Council's Design and Townscape Guide Supplementary Planning Document (SPD) in respect of development in conservation areas advises, in Section 9.4.1, that proposals should retain features of a building and area which contribute to the conservation area's character. This guidance amplifies the more general Council Core Strategy's (CS) objectives within CS policies KP2 and CP4, and the requirement for high quality design evident from policies DM1, DM3 and DM5 of the Council's Development Management Document (DMD).
15. Drawing No P301, approved under permission ref. 19/00297/FULH, has an annotation "Attic windows removed" and, at my site visit, this appeared to be the case. The DPA seeks planning permission for this window, being referred to in the enforcement notice, as was issued by the Council. However, I have corrected the notice to reflect the current position whereby the extent of the window opening is evident and, from my site visit's observations, it seemed to have been boarded up and painted.

16. In order to remedy this and alter the front gable's appearance to that shown on drawing No P301, which would appear to reflect its former state, I do not intend to allow the DPA, as granting retrospective planning permission for the alterations made to the gable feature would be significantly at odds with the planning policies cited, and also contrary to relevant advice within the National Planning Policy Framework. Although I have found the harm to be less than substantial to the significance of the Conservation Area there are insufficient public benefits to outweigh the harm caused.
17. Accordingly, I conclude that the development is harmful to the character and appearance of the Conservation Area, and materially conflicts with CS policies KP2 and CP4, DMD policies DM1, DM3 and DM5, relevant advice within the Council's SPD and also paragraphs 127, 192 and 193 of the National Planning Policy Framework.
18. The deemed planning application is therefore refused and the appeal on ground (a) fails.

The appeal on ground (f)

19. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to remedy the breach of planning control or the injury to amenity caused by the alleged development. 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 breach. Given the nature of its requirements, when issued, I consider that the enforcement notice's purpose was to remedy the breach, and the notice, as corrected, also serves this purpose.
20. Matters relating to the turret and the rear windows and doors have been resolved, so the only outstanding substantive issue relates to the gable window opening, the impact of which I have already addressed under the ground (a) appeal.
21. The appellant has brought to my attention that the notice's requirement to remove only rubble that might result from the remedial works is "unnecessarily pedantic" given that there is other rubble already present at the site. However, this is a standard requirement and comes with the reasonable expectation that all other rubble at the site will be removed, accordingly, prior to the building's reoccupation, as would be normal practice.
22. Given the extant planning permission ref 19/00297/FULH I am satisfied that this represents an identifiable scheme and, accordingly, I have referred to this permission in the corrected notice's relevant requirement. I consider that this represents a satisfactory resolution to the matter. Besides, no other alternative scheme is before me for assessment.
23. Accordingly, the appeal on ground (f) fails.

Overall Conclusion

24. In view of the planning position having changed significantly during the life of the appeal, I conclude that the enforcement notice should be corrected as set out in the Formal Decision. Accordingly, the appeal on Ground (c) succeeds to reflect the extent of the planning permissions granted. Subject to this

correction the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under s177(5) of the 1990 Act as amended.

Timothy C King

INSPECTOR