



Appeal Decision

Site visit made on 10 March 2020

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 May 2020

Appeal Ref: APP/T2350/C/19/3240341

Land at 12 Poplar Drive, Longridge, Preston PR3 3HS

- 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 Robert Edward Thomas Cooper against an enforcement notice issued by Ribble Valley Borough Council.
- The enforcement notice was issued on 30 September 2019.
- The breach of planning control as alleged in the notice is without planning permission, the infill of four existing windows on the front elevation of the dwellinghouse erected on the Land and replacement with two smaller windows.
- The requirements of the notice are to remove the two windows on the front elevation facing the highway and reinstate the four original windows (or windows matching the original windows in dimensions, style and material).
- The period for compliance with the requirements is 13 weeks.
- The appeal is proceeding on the grounds set out in section 174(2) (c), (a) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed, and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Preliminary Matter

1. Both main parties were invited to provide additional comments in respect of the appeal on ground (g) in light of the current public health emergency. Any comments received have been taken into consideration in my assessment of the appeal on ground (g).

Application for costs

2. An application for costs was made by Mr Robert Edward Thomas Cooper against Ribble Valley Borough Council. This application is the subject of a separate Decision.

Background

3. A retrospective application for planning permission was submitted to and subsequently refused by the Council for a single storey flat roof extension, repositioning of front door to include a small overhang, replacement of an existing door with a window, replacement roof, reduction in the size of windows to the front, rendering and materials including grey uPVC guttering/doors/fascia and flat roof EPDM rubber, reference 3/2018/0246.
4. The enforcement notice is only directed at the infilling of the windows on the front of the dwellinghouse and replacement with two smaller windows.

The ground (c) appeal

5. The appeal on this ground is that the matters alleged in the notice do not constitute a breach of planning control. The burden of proof is on the appellant to demonstrate that the matters alleged in the notice do not constitute a breach of planning control.
6. There is no dispute between the main parties that the infilling of the existing windows and replacement with two smaller windows amounts to development within the meaning of development as set out in section 55(1) of the 1990 Act, for which planning permission is required. The appellant's contention is that the development constitutes an alteration which is permitted by Article 3 Schedule 2 Part 1 Class A of The Town and Country Planning (General Permitted Development) (England) (Order) 2015 (the GPDO).
7. Article 3 Schedule 2 Part 1 Class A of the GPDO grants planning permission for the enlargement, improvement or other alteration of a dwellinghouse subject to conditions and limitations. Condition A.3. (a) states that *"the materials used in any exterior work (other than materials used in the construction of a conservatory) must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse"*.
8. The Government has published Technical Guidance to aid the interpretation of this condition¹. It says: *"The condition above is intended to ensure that any works to enlarge, alter or improve a house result in an appearance that minimises visual impact and is sympathetic to existing development. This means that the materials used should be of similar visual appearance to those in the existing house, but does not mean that they need to be the same materials"*. An example is: *"it may be appropriate to replace existing windows with new uPVC double-glazed windows or include them in an extension even if there are no such windows in the existing house. What is important is that they give a similar visual appearance to those in the existing house, for example in terms of their overall shape, and the colour and size of the frames"*.
9. On the basis of the evidence before me, the development subject of the enforcement notice was undertaken at the same time as the other developments subject of planning application reference 3/2018/0246, as a single act of development. Prior to these developments the dwellinghouse had exposed brick walls and although not clear from the submitted evidence either white uPVC or white painted windows of rectangular form with a vertical emphasis.
10. Consequently, the infilling of the windows which included rendering the exterior of the dwellinghouse and insertion of two grey uPVC windows with a narrow, horizontal emphasis, does not comply with condition A.3 (a) as the materials used are not of a similar appearance to those used in the construction of the existing dwellinghouse, that is the dwellinghouse as it existed before the development was carried out.
11. The appellant has failed to demonstrate that the matters alleged in the notice do not constitute a breach of planning control. The development is not development that is permitted by any development order and there is no

¹ Permitted development rights for householders Technical Guidance Ministry of Housing, Communities and Local Government September 2019

record of planning permission having been granted for it. The appeal on ground (c) therefore fails.

The appeal on ground (a) and the deemed planning application

12. The main issue is the effect of the development on the character and appearance of the bungalow and the surrounding area.
13. The appeal property is a semi-detached bungalow located in a residential area. To one side is a detached bungalow and to the other a pair of semi-detached bungalows. Prior to the extension and alterations being carried out, No.12 and the other three bungalows in this group had a distinctly uniform appearance, each with four white windows on the front elevation of the same appearance and arrangement.
14. In the immediate locality there is a variety of dwelling types and designs including detached, semi-detached and short terraces of houses with their principal elevations facing the road. The bungalows and houses in the area are of relatively modern appearance and the majority are constructed from brick with mostly white uPVC windows, with a small number of exceptions where the frames are brown. Notwithstanding the wider variety, I observed that in those pairs and terraces the houses and bungalows exhibit a strong sense of uniformity in terms of their design and materials which contributes to a pleasing sense of rhythm and harmony.
15. The windows subject of the appeal are located at a relatively high level and are reasonably narrow with a horizontal emphasis. Notwithstanding the colour, they lack any detailing and have an appearance more commonly associated with functional windows found in secondary elevations of dwellings. They do not reflect the proportions or style of windows in the neighbouring bungalow or surrounding dwellings and undermine and unbalance the overall symmetry that exists between this pair and the adjacent pair of bungalows.
16. The windows are readily visible in public views from the street. As a result, the windows cause material harm to the appearance of the bungalow, the pair of which it forms a part and the street scene contrary to Policy DMG1 of Ribble Valley Borough Council Core Strategy 2008 – 2028 Adopted Version. This policy requires all development to be sympathetic to existing land uses in terms of style and features. It also conflicts with the design aims of the National Planning Policy Framework.

Other Matters

17. I have considered the appellant's comments regarding the actions of the Council. However, this is a matter that is between the appellant and the Council and it is open to them, should they wish, to make use of the Council's own complaint procedure to resolve the matter.
18. For the reasons given above, the appeal on ground (a) fails.

The appeal on ground (g)

19. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant stated that due to the uncertainty about when the economy and construction sector will 'start' and as the public health emergency has impacted significantly on the appellant's income, a 15-

month period would be more appropriate but that they would require a minimum of 12 months.

20. In their response the Council suggested that the 13-week period for compliance should commence with the date upon which the emergency period under the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 ends in relation to the restrictions on movement. However, given that it is not known when this will be, it is not possible to derive a 'period' from this and consequently this would not comply with s173(9).
21. Where an appeal is made against an enforcement notice, regardless of the grounds, the appeal 'stops the clock' and the period for compliance does not start until the date of the appeal decision. If the appeal proceeds on ground (g) and other grounds, the appellant is entitled to assume success in the other grounds, and so it is necessary to start from the date of the appeal decision when considering what the 'reasonable' period for compliance would be. Consequently, it is not relevant that the appellant was aware of the Council's concerns and intentions for a significant period of time before the enforcement notice was issued.
22. The purpose of the time period within an enforcement notice is to allow for the physical works associated with the notice to be removed. The appellant's submissions largely relate to the time before the works can commence - when funds can be raised, and a contractor can be appointed.
23. Nevertheless, the removal of the windows and reinstatement of four windows are works that would need to be carried out by a builder or suitably qualified tradesperson. Such works, whilst ongoing would undoubtedly have some impact on family life within the bungalow and I have some sympathy with the appellant in this regard.
24. I am satisfied that having regard to these circumstances, in particular in the interests of minimising disruption to the appellant and their family, that even if account is taken of the need to remedy the harm, given the current exceptional circumstances, the notice does not afford the appellant reasonable time to comply with the requirements of the notice. Looking at the case in the round, the requirements to undertake all the works within 13 weeks would place a disproportionate burden on the appellant.
25. Taking this and all other matters into account I conclude that the period for compliance should be extended to six months rather than the 15 or 12 sought. A period of six months would be a proportionate response to the breach of planning control and would achieve an appropriate balance between the need to resolve the breach of planning control and the interests of the appellant and their family. To this extent, the appeal on ground (g) succeeds.
26. I acknowledge the uncertainty regarding the current restrictions associated with the pandemic. However, I note that the Council have powers under s173A(1)(b) to extend any period for compliance, a matter entirely at their discretion, without prejudicing their right to take further action.

Formal Decision

27. It is directed that the enforcement notice is varied by the deletion of 13 weeks and the substitution of six months as the period for compliance. Subject to this variation I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Felicity Thompson

INSPECTOR