



Appeal Decisions

by **M Savage BSc (Hons) MCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 19 May 2020

Appeal Ref: **APP/W2465/C/19/3243613 (Appeal A) & 3243614 (Appeal B)** **Land at 57 Dunster Street, Leicester LE3 0SE**

- 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 Satish Aggarwal (Appeal A) and Mrs Kanta Aggarwal (Appeal B) against an enforcement notice issued by Leicester City Council.
- The enforcement notice was issued on 4 December 2019.
- On 14 July 2017 planning consent was granted by the Council under reference number 20170283 for change of use from two flats (2 x 1 bed) to four flats (4 x 1 bed)(Class C3); construction of single storey extension to rear and side; alterations; dormer window to front (amended plan 09/6/17).
- The breach of planning control as alleged in the notice is: Condition 4 has not been complied with because the dormer has not been built in accordance with the approved plans in that it is higher, wider and deeper than shown on the approved plans.
- Condition 4 states:
 - This consent shall relate solely to the amended plans ref.no AL(0)02 848 rev B received by the City Council as local planning authority on 09/06/2017, unless otherwise submitted to and approved by the City Council as local planning authority.
- The requirements of the notice are:
 - 5.1 Alter the front dormer so that it complies with the approved plans under planning application 20170283.
 - 5.2 Remove all rubble and building materials from the Property.
- The period for compliance with the requirements is 12 weeks.
- 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.

Appeals A & B: Decision

1. The appeals are allowed on ground (g) and it is directed that the enforcement notice be varied by the deletion of '12 weeks' in relation to the time period for compliance at Schedule 5 and the substitution of '9 months' as the period for compliance. Subject to this variation the enforcement notice is upheld.

Procedural Matter

2. Due to travel restrictions currently in place as a result of the COVID-19 pandemic, I have sought the parties views as to whether the appeals can be determined without the need for a site visit. The appellants raise concern regarding the size of the dormer and assert that this can only be appreciated from a site visit. However, the appellants have appealed on grounds (f) and (g) and I am therefore unable to consider planning merits. As such, I am satisfied that the appeals can be determined on the evidence before me and shall therefore proceed without a site visit.

Background

3. Planning permission 20170283 was granted on 14 July 2017 at the appeal property and included a number of different elements: "change of use from two

- flats (2x1 bed) to four flats (4x1 bed) (Class C3); construction of single storey extension to rear and side; alterations; dormer window to front”.
4. The Council assert that the owners of the property have failed to comply with condition 4 attached to 20170283 and that specifically they have: enlarged the gabled dormer at the front of the property by increasing the height, width and depth; increased the height and width of the single-storey extension at the rear and changed the arrangement of the door and window in its side elevation; and made alterations to the internal layout of Flat 2 (on the ground floor at the rear).
 5. Although the Council has identified that the single storey extension and internal layout of Flat 2 are different to the approved plans, it has not identified these within the alleged breach, which relates to the front dormer.

Ground (f)

6. Section 173 of the Town and Country Planning Act 1990 (as amended) states that (3) an enforcement notice shall specify the steps which the authority require to be taken, or the activities which the authority require to cease, in order to achieve, wholly or partly, any of the following purposes. (4) Those purposes are – (a) remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or (b) remedying any injury to amenity which has been caused by the breach.
7. Section 174 (2)(f) of the Town and Country Planning Act 1990 (as amended) allows for an appeal on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
8. Planning permission has been granted for a dormer, amongst other things, but what has been built is not in accordance with the approved plans. The dormer, as built, has been enlarged by increasing its height, width and depth. It is clear from the evidence before me that the purpose of the enforcement notice is to remedy the breach by making the development comply with the terms of the planning permission with respect to the dormer.
9. The appellants assert that complying with the planning permission would make the space unusable as a bedroom, however, the appellants have not appealed under ground (a) and I am therefore unable to consider planning merits. The requirements fall within the purpose of S173(4)(a) of the 1990 Act and are therefore not excessive. Consequently, the ground (f) appeal fails.

Ground (g)

10. An appeal under ground (g) is made on the basis that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed. Since the appeal was lodged, the Covid-19 outbreak has had a profound effect on all areas of life in the UK. In light of this, the Council agrees to a longer compliance period of 5 months.

11. The appellants advise that the property is tenanted, and the room is used as a bedroom. The building works would need to be carried out by a builder and could not commence until after the room has been vacated. As such, I consider a more reasonable compliance period to be 9 months, to give the occupant of the property sufficient time to relocate and for the works to be carried out and completed. I shall therefore vary the terms of the enforcement notice accordingly.

Conclusion

12. For the reasons given above I conclude that a reasonable period for compliance would be nine months. The appeals under ground (g) succeed to that extent and I shall vary the notice accordingly, prior to upholding it.

M Savage

INSPECTOR