
Appeal Decision

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 11 June 2020

Appeal Ref A : APP/W4705/C/20/3244728

Appeal Ref B : APP/W4705/C/20/3244729

75 Manor Road, Cottingley BD16 1PX

- The appeals are 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 Andrew Walker and Appeal B is made by Katherine Walker against an enforcement notice issued by City of Bradford Metropolitan District Council.
 - The enforcement notice was issued on 28 November 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a single storey side extension as shown in the attached photograph.
 - The requirements of the notice are
 1. Demolish the single storey side extension.
 2. Make good any damage caused to the building as a result of compliance with the requirements of this Notice, using materials to match the existing property.
 3. Remove all arising materials from the land.
 - The period for compliance with the requirements is 3 months.
 - The appeals are proceeding on the grounds set out in section 174(2)(b) and (c) of the Town and Country Planning Act 1990 as amended (the Act)
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Decision

1. The appeals are dismissed and the enforcement notice is upheld.

Procedural Matters

2. The appellants have chosen not to appeal under Section 174(2)(a) of the Act which is that planning permission should be granted for the matters stated in the notice. I am therefore unable to consider the planning merits of the development, the lack of objection from neighbours, the materials used or take into account examples of other structures in neighbouring streets.
3. In light of the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 and related guidance, these appeals were reviewed to consider the optimal procedure for the appeals. It appeared that the appeals could be determined on the papers – that is, without a site visit – without causing injustice to any party. This is because the parties have submitted sufficient photographs to understand the nature of the site given the limited grounds of appeal which do not include the planning merits of the development.

The appeal under ground (b)

4. This ground of appeal is that, as a matter of fact, the breach of planning control has not occurred. The appellants refer to not intending to extend the appeal dwelling to create a new kitchen or living space. However, irrespective of the intention or use, the single storey side extension which is the subject of the notice has been erected. The breach of planning control has therefore, as a matter of fact, occurred. The appeal under ground (b) must therefore fail.

The appeal under ground (c)

5. An appeal under ground (c) is that the matter alleged in the notice does not constitute a breach of planning control. The onus of proof is on the appellants to show that there has not been a breach. Section 55(1) of the Act provides a definition of development which includes building operations which in turn includes additions to buildings. The side extension is an addition to the appeal dwelling and is therefore development. Section 57 of the Act then states that planning permission is required for development subject to listed exceptions.
6. The appellants argue that planning permission is not required as individual elements of the development may not have required planning permission and they see the development as being a series of projects which started with cladding an original wall that was in disrepair. However, the development which clearly falls within Section 55(1) of the Act has to be assessed as a whole rather than an assessment of individual elements of the development and requires planning permission.
7. The works carried out by the appellants included demolishing the original modest utility/outhouse/WC which was on the side of the appeal dwelling. The appeal development is a different design and it is made up of new elements apart from the original front wall. It is clearly different from the previous extension.
8. Schedule 2 Part 1 Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) does permit development for the enlargement, improvement or other alteration of a dwellinghouse subject to exceptions and conditions. No argument has been advanced by the appellant that the development falls within the exceptions. In any event, Condition A.3 of the GPDO states that the materials used in any exterior work (other than the 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.
9. The brown plastic cladding used to cover the development is clearly not of a similar appearance to the materials used in the construction of the exterior of the dwellinghouse which is of a traditional brick design. The development does therefore fall outside the GPDO condition and there is no evidence before me to show that the development does fall within permitted development rights.
10. To succeed on a ground (c) appeal, the appellants would have to show that the matter alleged in the notice does not constitute a breach of planning control. I have found that the extension is development and in the absence of planning permission, the development constitutes a breach of planning control. The ground (c) appeal must therefore fail.

Other Matters

11. The appellants have referred to personal and medical circumstances to justify the appearance of the extension as requiring no maintenance. Nevertheless, the appeal before me does not include the planning merits of the development and is limited to grounds (b) and (c) which are referred to as legal grounds of appeal. Similarly, the limited use of the extension or the desire to secure the rear of the appeal site are matters that fall outside the remit of this appeal.
12. Whilst there is no ground (g) appeal before me, which relates to the period allowed for compliance with the notice, it is within my powers to consider the relevant period, where it appears appropriate to do so. I have sought the views of the parties in light of the ongoing Covid 19 crisis and the appellants' previous reference to medical issues. The Council has suggested that the current compliance period is still reasonable having regard to the requirement to demolish and remove materials. As the appellants have not commented on the compliance period, I do agree that on the information before me, three months is reasonable. However, the Council does have powers under Section 173A(1)(b) of the Act to further extend the compliance period should it consider that there are good reasons to do so.

Conclusion

13. For the reasons given, I therefore conclude that the appeals shall not succeed and I uphold the enforcement notice.

E. Griffin

INSPECTOR