
Appeal Decision

Site visit made on 1 September 2020

by A A Phillips BA(Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 September 2020

Appeal Ref: APP/G4240/C/20/3249746

Godley Green Cottage, Godley Green, Hyde SK14 3BE

- 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 Martyn Tomlinson against an enforcement notice issued by Tameside Metropolitan Borough Council.
- The enforcement notice was issued on 21 February 2020.
- The breach of planning control as alleged in the notice is:
The carrying out of building operations at the Property without the required planning permission:
 1. Non-compliance with the approved plans associated with planning permission granted under reference 15/00664/FUL which include:
 - The inclusion of a dormer with balcony on the rear elevation of the extension;
 - The inclusion of a first floor balcony on the rear elevation of the extension;
 - The erection of a porch/canopy to the front elevation of the extension along with the provision of a door;
 - General arrangement of fenestration does not comply with the approved drawings.
 2. The unauthorised extension to the outbuilding.
- The requirements of the notice are:
 1. Remove the rear dormer and balcony and make good the roof with materials to match those used in the construction of the existing roof;
 2. Remove the first floor rear balcony and install a Juliet balcony (black railing) flush with the rear elevation of the extension;
 3. Remove the porch/canopy and door from the front elevation of the extension and fill the resulting void with materials to match the existing stone used in its construction;
 4. Remove the extension to the outbuilding to the rear of the property; and
 5. Remove all materials associated with the demolition from the site.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (e), (f) 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.

Applications for costs

1. Applications for costs were made by Mr Martyn Tomlinson against Tameside Metropolitan Borough Council and by Tameside Metropolitan Borough Council against Mr Martyn Tomlinson. These applications are the subject of a separate Decision.

The appeal on ground (e)

2. The ground of appeal is that the notice was not properly served on everyone with an interest in the land. The appellant's criticism is that the notice was not

served on other occupiers of the appeal property who are equally as affected by the enforcement notice.

3. The requirements relating to the service of an enforcement notice in S172(2) of the Act provide that an enforcement notice shall be served on the owner and occupier of the land to which it relates and on any other person having an interest in the land, being an interest which in the opinion of the authority is materially affected by the notice. Furthermore, S176(5) of the Act states that if a person who was required to be served was not served, that fact may be disregarded if neither the appellant nor the person required to be served has been substantially prejudiced by the failure to serve.
4. The appellant contends that there are other occupiers of the appeal property who have an interest in the land and the failure of the Council to serve on all occupiers has impacted on their ability to make an appeal in respect of the enforcement notice. It is my understanding that the property is occupied as a single dwellinghouse (the appellant comments that he is the registered owner and lives there with other occupiers/parties). That being the case it is reasonable to expect that members of that same household would discuss matters affecting them. Furthermore, the actions of the Council have clearly not prevented the appellant from appealing and presenting his case in full. Therefore, no prejudice has been demonstrated.
5. Secondly, under ground (e), the appellant argues that the notice is imprecise with particular reference to the alleged unauthorised extension to the outbuilding, stating that the notice does not clearly identify the exact or approximate position of the outbuilding in question. It is argued that this should be clearly shown on the accompanying plan or photographs included for clarity. According to the evidence before me, the appellant has submitted a retrospective planning application with respect to the extension to the outbuilding and is aware of the extent of the development that has taken place and which the Council requires to be removed under the enforcement notice.
6. At my site visit I observed a number of outbuildings and structures within the curtilage of the appeal property. From my site observations, the description of the alleged breach and the requirements of the notice I have been able to identify the outbuilding to which the alleged breach relates. In addition, with his detailed knowledge of the appeal property and relevant planning history, including the submission of a retrospective planning application, I do not consider it plausible for the appellant to have been confused by what the Council requires through the Notice.
7. The appellant also contends that Martyn Leigh Development Manager does not have the authority to issue an enforcement notice under the Council's Constitution and Scheme of Delegation dated 25 July 2019. I understand that the Council's Constitution in 2017 gave delegated powers to the Executive Director (Place) to carry out a number of responsibilities in consultation with the Borough Solicitor, including issuing planning enforcement notices. On 11 September 2017 the Executive Director (Place) authorised the Head of Planning and Development Manager to carry out delegated powers, including serving enforcement notices on their behalf. Subsequently, on 4 April 2019 the appointed Director of Growth confirmed to the Development Manager that the delegated powers stood until further notification.

8. The evidence before me is that the Development Manager consulted the Head of Legal Services before issuing the Notice using the powers delegated to him by the Director of Place under the terms of the Council's Constitution.
9. The appeal on ground (e) fails.

The appeal on ground (f)

10. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve its purpose. The purposes of an enforcement notice are set out in s173 of the Act and are to remedy the breach of planning control or to remedy injury to amenity. Since the notice requires the removal of the unauthorised elements of the extension and the removal of the extension to the outbuilding, the purpose is clearly to remedy the breach. Leaving any of these elements in place would not achieve that purpose.
11. The appellant suggests that access to the upper storey of the property is closed to mothball the contentious area. He contends that such lesser steps represent an appropriate course of action. However, such an action would not remedy the breach of planning control and furthermore, case law¹ states that where the appellant has chosen not to pursue an appeal on ground (a), general planning considerations or argument about amenity cannot be introduced under (f). Therefore, in the absence of an appeal on ground (a) in this case I am only able to consider whether the steps exceed what is necessary to remedy the breach.
12. I have also taken account of the appellant's detailed comments with respect to Godley Garden Village and the impact on his property and the wellbeing of him and his family. I am aware of his frustration with respect to the future of his property and the way the Council has dealt with the current planning enforcement matter, but that does not mean that the steps required by the enforcement notice are excessive, and lesser steps would overcome the Council's objections.
13. Consequently, the appeal on ground (f) fails.

The appeal on ground (g)

14. The ground of appeal is that the time given to comply with the requirements is too short. The three months given would be sufficient to undertake the requirements of the notice. The twelve month compliance period suggested by the appellant would be excessive given the continuing ongoing harm caused by the development in question. However, I understand that it may be difficult to obtain contractors to undertake the necessary works within the three month timescale. I understand the appellant's concerns with respect to the costs of the required works, disruption to his family and the uncertainty with respect to Godley Garden Village, but such matters do not justify a long extension to the period for compliance.
15. Therefore, given the above, I consider the period should be increased to enable the appellant to appoint a suitable contractor and undertake the requirements of the Notice. In this respect I consider six months would strike an appropriate balance. To this limited extent the appeal on ground (g) succeeds.

¹ Wyatt Bros (Oxford) Ltd v SSETR & Oxfordshire CC [2001] Civ 1560

Human Rights

16. The appellant states that the enforcement notice will interfere with the rights under the United Nations Convention on Human Rights which are enshrined in Articles 8 and 10 of the Human Rights Act 1998, which states that everyone has a right to respect and family life, and their home, among others. These are qualified rights, whereby interference may be justified if in the public interest, but the concept of proportionality is crucial. In this particular case it is in the public interest and proportional to control the development in order to protect the Green Belt, the character and appearance of the area and the living conditions of the occupants of a nearby residential property.

Formal decision

17. The enforcement notice is varied by:

The deletion from paragraph 6 of the words "three months" and the substitution therefor of the words "six months" as the time for compliance with the requirements.

18. Subject to this variation the appeal is dismissed and the enforcement notice is upheld.

A A Phillips

INSPECTOR