
Appeal Decision

Site visit made on 7 September 2020

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 September 2020

Appeal Ref: APP/P2365/C/20/3252448

33 Scarisbrick Street, Ormskirk

- 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 Mrs Lesley McFarlane against an enforcement notice issued by West Lancashire Borough Council.
- The enforcement notice was issued on 24 March 2020.
- The breach of planning control as alleged in the notice is the construction of a two-storey rear extension.
- The requirements of the notice are:
 1. Demolish the two storey rear extension hatched black on the attached plan dated 19th February 2020.
 2. Remove the resultant materials arising from Step 1 from the site edged black on the attached plan dated 19th February 2020.
- The period for compliance with the requirements is:
 1. Step 1 – six months.
 2. Step 2 – seven months.
- 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.

Summary of Decision: The appeal succeeds in part and the enforcement notice is upheld as varied in the terms set out below in the Formal Decision.

Preliminary Matters

1. A ground (a) appeal was initially made. However, following the Council's approval of planning permission¹ for an alternative scheme to the development alleged in the Notice, the appellant confirms the withdrawal of the ground (a) appeal.
2. The Notice includes two paragraphs numbered "6." However, this is clearly a typographical error. I shall correct the Notice by deleting the "6" that immediately follows paragraph five. I am satisfied that this would not cause injustice to any parties.

Ground (f)

3. For the appeal to succeed on this ground, I need to be satisfied that the steps required to comply with the requirements of the notice are excessive and lesser steps could overcome the breach of planning control or, as the case may be, the injury to amenity.
4. Section 173 (3) of the Town and Country Planning Act 1990 as amended (the Act) states that 'An enforcement notice shall specify the steps which the

¹ Council Ref:2020/0409/FUL

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...'. Purpose (a) under Section 173 (4) is '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.'

5. The requirements of the subject enforcement notice seek the removal of the two-storey extension, which would remedy the breach of planning control. However, it is necessary to consider whether the steps required are excessive (section 174(2)(f) of the Act).
6. The reason for issuing the Notice is that the existing flat roof extension harms the character and appearance of the area. The recently approved extension would have a hipped roof and could be implemented, which would likely be less onerous on the appellant. Altering the existing extension to bring it in accordance with the approved extension would have the same effect of remedying the breach as seeking its removal altogether by making it comply with the terms (including conditions and limitations) of a planning permission.
7. Therefore, the requirements of the enforcement notice are excessive as there is a reasonable, less onerous, alternative. I shall therefore vary the notice to include the alteration of the extension to comply with the extant permission as an alternative to the existing requirements. I have considered the substitution of the existing requirements of the Notice for a single step requiring only that the approved development to be implemented. However, one cannot be required to implement a planning permission, hence its inclusion in the Notice as an alternative to the existing steps rather than the only step.
8. The ground (f) appeal therefore succeeds.

Ground (g)

9. This ground of appeal is that the period for compliance is unreasonably short.
10. The period for compliance for step 1 is six months and step 2 seven months. The appellant contends that the period of compliance should be consistent with the conditions attached to the recently approved planning permission, which includes a condition requiring development to begin within three years from the date of the decision, 22 July 2020.
11. Such an extended period of time to comply with the notice would unacceptably prolong the breach of planning control. In any event, the condition attached to the planning permission only requires the development to begin within three years. It does not require its completion. Therefore, it is not possible to apply a period of compliance with the requirements of the Notice that would be consistent with the commencement condition of the planning permission.
12. The appellant also argues that a three-year period of compliance would allow the necessary works to be undertaken without disrupting existing tenancy contracts. However, no detailed evidence has been provided about the terms under which tenants are occupying the property.
13. Given the extent of works necessary to alter the existing extension to bring it in accordance with the approved development, i.e. substitute the flat roof for a

hipped roof, I am satisfied that such works could be done within seven months, which is the period of compliance for completing all of the existing requirements of the notice.

14. I find therefore that, based on the evidence before me, there is no reasonable justification for a compliance period of three years to bring the existing extension in accordance with the approved extension. The existing periods of compliance for Steps 1 and 2 of the requirements of the Notice are not unreasonably short and shall remain as six and seven months respectively. The period of compliance for the alternative requirement shall match that of Step 2, which is the longest period of compliance specified in the Notice. I am satisfied that no parties would be prejudiced in me taking this approach.
15. The ground (g) appeal therefore fails.

Formal Decision

16. It is directed that the enforcement notice is varied by: the deletion of the "6" that immediately follows paragraph five; the addition of "3. Alter the extension to comply with planning permission ref: 2020/0409/FUL, approved on 22 July 2020, and remove any excess materials from the Land" in the sub-text of paragraph 5; and, the deletion of "Step 2 – Seven months after the date this notice takes effect" from the sub-text of paragraph 6 and its substitution for "Steps 2 and 3 - Seven months after the date this notice takes effect". Subject to the variations, the enforcement notice is upheld.

Alexander Walker

INSPECTOR