



Appeal Decision

Site visit made on 6 October 2020

by **P H Willows BA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 22 October 2020

Appeal Ref: APP/B0230/C/20/3244735

1-3 Cowper Street LUTON, Bedfordshire LU1 3RY

- 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 HILIFE Ltd against an enforcement notice issued by Luton Council.
 - The enforcement notice, numbered 19/00116, was issued on 3 December 2019.
 - The breach of planning control as alleged in the notice is the erection of a rear dormer window extension and hip to gable roof extension to the host property on the Land, including the raising of the eaves of the roof and the erection of facing brick slips to the front and side elevations.
 - The requirements of the notice are:
 1. Demolish the Unauthorised Development and restore the roof back to its condition before the Unauthorised Development took place as shown in Photos attached.
 2. Reinstall the chimney stack to the rear of the roof of the host property on the Land as shown in Photo 1 attached.
 3. Reinstall the chimney stack to the middle of the roof of the host property on the Land as shown on Photo 2 attached.
 4. Reinstall the decorative terracotta moulding detail (as shown in Photo 3 attached) beneath the eaves of the roof to be reinstated in accordance with step 1.
 5. Reinstall the terracotta brick detailing (as shown in Photo 3 attached) above the first floor windows.
 6. Remove all associated building material and waste generated from compliance with steps 1-5 from the Land.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be varied by:
 - i) Deleting the wording in section 5 of the notice (What you are required to do) and replacing it with the following:

Modify the building to comply in full with the planning permission reference 20/00686/FUL, carrying out all works in accordance with the conditions subject to which that planning permission was granted.
 - ii) Deleting the wording in section 6 of the notice (Time for compliance) and replacing it with, 'All works to be completed not later than 31 August 2021'.

2. Subject to these changes the appeal is dismissed and the enforcement notice is upheld.

The appeal on ground (b)

3. An appeal on ground (b) is made on the basis that the matters stated in the notice as the breach of planning control have not occurred. In this case there can be no doubt that the works have been carried out; the Council has provided photographs of the building in 2015 and 2018 which demonstrate that each of the matters set out in the notice has occurred. The appellant argues that the allegation underplays the extent of the breach, which should refer to the replacement of the entire roof. However, that does not mean that the specific matters set out in the notice are wrong. In my view the allegation adequately describes works which have occurred and the appeal on ground (b) therefore fails.

The appeal on ground (c)

4. An appeal on ground (c) is made on the basis that the matters stated in the notice do not constitute a breach of planning control. In considering this I am mindful that *The Town and Country Planning (General Permitted Development) (England) Order 2015* has been amended since the appeal was made. However, any new permitted development rights cannot be claimed retrospectively, and it has therefore not been necessary to consider those changes.
5. In 2015 the Council issued a Certificate of Lawfulness for the erection of a rear dormer window, roof alterations including a hip to gable conversion and roof lights at the building. In my judgement, the various elements listed in the Certificate are part and parcel of a single overall scheme (described by the appellant as 'a replacement of the entire roof'). It is common ground that the certificate was mistakenly issued, the Council having failed to realise that the building was in a conservation area. However, the scheme that was actually implemented was very different to the scheme shown in the application for the Certificate of Lawfulness. Accordingly, even setting aside the fact that it was wrongly issued, the Certificate did not show that planning permission was not needed for the scheme which was implemented.
6. The appellant says that removing the chimney and detailing from the building was permitted development, but those works were not specifically cited as part of the alleged breach of planning control.
7. For these reasons, the appeal on ground (c) fails.

The appeal on ground (f)

8. I have been provided with a Statement of Common Ground (SoCG) which explains that significant agreement has been reached between the parties following the recent granting of planning permission¹ for a modified version of the scheme. The planning permission granted provides for the reinstatement of eave mouldings, chimney and window mouldings and the replacement of the brick slips that have been added to the building. The SoCG suggests that the requirements of the enforcement notice can be amended to reflect the planning permission, including its conditions.

¹ Ref: 20/00686/FUL

9. Section 173 of the Act indicates the purposes which the requirements of an enforcement notice can seek to achieve. These include, at s173(4)(a), remedying the breach of planning control 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. In principle, therefore, the approach set out in the SoCG is in accordance with the provisions of the Act.
10. The SoCG refers to including conditions within the enforcement notice. I have taken this as a reference to the requirements of the notice. It appears to me that the intentions of the parties would be most closely reflected by a requirement for the building to be modified to accord with the planning permission, with the works to be carried out in accordance with the conditions attached to it. Given the agreement of the parties to this general approach, and since it would fit with the purposes set out in s173, I will amend the requirements of the notice accordingly. The appeal on ground (f) therefore succeeds.

The appeal on ground (g)

11. The SoCG suggests a requirement to comply with the planning permission by 31 August 2021. Although a much longer compliance period than specified on the notice, it is an agreed position and reflects a condition on the planning permission and I will vary the notice accordingly. Although the period for compliance with an enforcement notice is generally expressed in terms of a span of time rather than a fixed date, in this instance a fixed date is desirable to ensure consistency with the planning permission, as the parties have requested. I am satisfied that this amounts to a period for compliance with the notice, as required by s173(9). For these reasons, the appeal on ground (g) succeeds.

Peter Willows

INSPECTOR