



Appeal Decisions

Site visit made on 13 October 2020

by Thomas Shields MA DipURP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 03 November 2020

Appeal Refs: APP/D1590/C/20/3249787, 3249788 10 Grand Drive, Leigh-on-Sea, SS9 1BG

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (hereafter "the Act").
 - The appeals are made by Mr Stephen Cook (3249787) and Ms Lorna Strickland (3249788) against an enforcement notice issued by the Southend-on-Sea Borough Council.
 - The enforcement notice was issued on 20 March 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of second and third floor rear extensions including balconies.
 - The requirements of the notice are:
 - a) Secure the removal of the unauthorised rear roof extension at second and third floors.
 - b) Secure the removal of the unauthorised roof balcony or reduce to that found lawful as proposed under Certificate of Lawful Development 18/01144/CLP.
 - c) Remove from site all materials resulting from compliance with a) and b) above.
 - The period for compliance is 6 months.
 - The appeal proceeds on the grounds set out in section 174(2)(b), (f) and (g) of the Act.
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Decision

1. It is directed that the notice be varied in Section 5 by deleting all of the wording in Section 5 a) and b), and substituting instead the following words –

 "a) Remove the rear roof extension and balcony at second and third floors

 OR

 b) Modify the as-built development so that it complies with the approved plans and details submitted with application 18/01144/CLP.
2. It is directed that the notice be varied in Section 6 by deleting "6 months" and substituting instead "7 months".
3. Subject to the variations the appeals are dismissed and the enforcement notice is upheld.

Appeal site and background

4. No. 10 Grand Drive is an extended mid-terraced residential property. On 7 August 2018 the Council granted a lawful development certificate¹ (LDC) for the following proposed operations: "Dormer to the rear to form habitable accommodation in roof with balcony to rear, roof lights to front, balcony to rear at second floor level and alter elevations".

¹ Council Ref: 18/01144/CLP

5. The LDC was granted on the basis that the proposed operations would benefit from the planning permission granted by Article 3 and Classes B, C and G of Part 1 of Schedule 2 to the GPDO² (referred to generally as “permitted development”). Full details of the scheme are shown in the approved plans submitted with the application, referred to hereafter as “the LDC scheme”.

The appeals on grounds (b) and (c)

6. An appeal on ground (b) is a claim that the matters stated in the enforcement notice which may give rise to the breach of planning control *have not occurred as a matter of fact*. However, the appellants’ case is not that the matters have not occurred, but rather that “a lawful development certificate has been granted as per attached drawing 614-P04” (sic)³. This in effect is an appeal on ground (c) that the works carried out do not constitute a breach of planning control because they are lawful. In this regard the description of the alleged breach in the notice, and the comprehensive nature of the Council’s evidence, fully details what they consider to constitute the breach of planning control. Consequently, there would be no substantial prejudice or injustice to any party if I also consider the appeals on ground (c).
7. Grounds (b) and (c) are legal grounds of appeal in which the burden of proof, on the balance of probability, rests with the appellants.
8. As I saw for myself during my visit to the appeal property, the works carried out to the rear of the building, as described in Section 3 of the notice, have clearly occurred as a matter of fact. The appeals on ground (b) must therefore fail. I turn next to the appeals on ground (c).
9. During my inspection of the property I saw that the as-built development differs substantially from the approved plan 514-PO4 attached to the granted LDC scheme. Unlike the significantly smaller LDC scheme, the as-built development is of greater depth extending across the full width of the building at second and third floors; the roof of the third floor extension extends above the line of the original roof; and there is substantial variation in balcony, privacy screens and window detailing. Consequently, a substantially different and larger development than was certified as lawful has been constructed to the rear of the property. It is not therefore lawful development within the LDC scheme, and no evidence has been submitted by the appellants to demonstrate that it would benefit in its own right from being permitted development. I also have no reason to consider that it would do so.
10. Since the as-built scheme of development is not lawful for the reasons set out above, and requires planning permission which has not been granted, it thereby constitutes a breach of planning control.
11. To conclude, I find that the development as alleged has occurred as a matter of fact, and that it constitutes a breach of planning control. The appeals on grounds (b) and (c) therefore fail.

The appeal on ground (f)

12. Section 173 of the Act provides two purposes which the requirements of an enforcement notice can seek to achieve. The first, s173(4)(a), is to remedy the

² Town and Country Planning (General Permitted Development) (England) Order 2015

³ The correct reference number shown printed on the submitted “attached drawing” referred to is 514-P04

breach of planning control which has occurred. The second, s173(4)(b), is to remedy any injury to amenity which has been caused by the breach.

13. Against the context of the LDC scheme the appellants argue that removal of the entire development would be excessive. I do not agree that such a requirement would be excessive since it would go no further than remedying the breach of planning control, and would also remedy the injury to amenity described by the Council and as set out in the representations submitted by occupiers of nearby properties.
14. However, in their evidence the Council have suggested an alternative of modifying the development so that it would comply with the approved LDC scheme found to be lawful. I have therefore directed the wording of the notice requirements to be varied to reflect that alternative. The appeal on ground (f) therefore succeeds to this extent.

The appeal on ground (g)

15. The ground of appeal is that the period of time for compliance with the enforcement notice requirements falls short of what should reasonably be allowed.
16. The notice requires compliance within 6 months. The appellants consider this is unreasonably short due to the extent of remedial works required to be carried out, and the uncertainty surrounding their completion due to Government restrictions associated with the coronavirus pandemic. However, they do not specify an alternative period of time.
17. I am mindful that the harm resulting from the breach of planning control should be remedied as soon as possible, and I see no reason why the physical works to achieve compliance with the notice could not ordinarily be carried out within 6 months. No convincing justification as to why this would not be possible is before me.
18. However, at the time of writing the Government has announced the imminent introduction of a one month period of restrictive measures in respect of coronavirus, during which time I accept it may be more difficult to commence the necessary remedial works. With this in mind it would be more reasonable to extend the compliance period by a corresponding period of one month to 7 months. I see no reason to extend it further than this given that the Council has its own powers to extend the compliance period if they are subsequently convinced that such action would be necessary.
19. In light of all the circumstances I consider on balance that 7 months would be more reasonable. The appeal on ground (g) succeeds to this limited extent and I have directed that the notice be varied accordingly.

Thomas Shields

INSPECTOR