



Appeal Decision

Site visit made on 26 October 2020

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 November 2020

Appeal Ref: APP/Z4718/C/20/3256931
125 Oxford Road, Dewsbury WF13 4EH

- 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 Abdul Basit Patel against an enforcement notice issued by Kirklees Metropolitan Borough Council.
 - The enforcement notice was issued on 19 June 2020.
 - The breach of planning control as alleged in the notice is the erection of a dwellinghouse (under construction).
 - The requirements of the notice are:
 - a) Completely demolish the new dwelling.
 - b) Remove the resultant debris from the land.
 - The period for compliance with the requirements is:
 - a) Within 180 days of the notice taking effect.
 - b) Within 190 days of the notice taking effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 (the 'Act') as amended.
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Summary of Decision

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

Procedural Matters

2. The appellant initially appealed under ground (a). However, following an appeal decision, reference APP/Z4718/W/20/3252941, the appellant withdrew the ground (a) appeal. The appeal shall therefore proceed on grounds (f) and (g) only.

Ground (f)

3. An appeal on ground (f) is made on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
4. S173(4) of the Act sets out the purposes of an enforcement notice are (a) 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; or (b) remedying any injury to amenity which has been caused by the breach.
5. The Council advise that the purpose of the notice is to remedy the breach, which is clear from its requirement to demolish the building. However, there is

- an extant permission, reference 2017/62/93197/E, granted on 4 May 2018 for a detached dwellinghouse at the site. This matter is not disputed. Therefore, in line with S173(4)(a) of the Act, it would be possible to remedy the breach by making the development comply with the terms of the extant planning permission.
6. S176 (1)(a) of the Act gives me the power to correct any defect, error or misdescription in the enforcement notice ; or (b) vary the terms of the enforcement notice, so long as the correction or variation will not cause injustice to the appellant or the local planning authority. The Council's main concern, and its reason for requiring the demolition of the dwellinghouse rather than seek compliance with the planning permission, is that this would then grant unconditional permission in respect of the building by virtue of section 173(12) of the Act.
 7. Section 173(12) states that where (a) an enforcement notice requires the construction of a replacement building; and (b) all the requirements of the notice with respect to that construction have been complied with, planning permission shall be treated as having been granted by virtue of section 73A in respect of development consisting of that construction. For the purposes of this section of the Act, "replacement building" has a very specific meaning and relates to the requirement to require the construction of a building where an enforcement notice is issued in respect of a breach of planning control consisting of the demolition of a building. This is plainly not the case here and so the Council's concern in this regard is misplaced.
 8. It is clear from the evidence that the Council's concern and the deviation from the plans that has occurred, is the addition of a single storey extension to the rear. The main dwelling itself appears to have been built largely in accordance with the approved plans, with some minor differences. The appellant requests that the notice is worded to require the development to be modified to be in accordance with planning permission 2017/62/93197/E, with the exception of minor alterations to the elevations. However, there is no ground (a) appeal and so I cannot consider planning merits of any alternative scheme. Furthermore, no details are provided as to what these minor alterations to the elevations comprise and so it would not be possible specify alterations with sufficient precision.
 9. Whilst a breach has occurred, whether or not the appellant's actions were intentional, the enforcement regime is not punitive. It is possible for me to vary the notice so that it requires compliance with the terms of the planning permission, including conditions and limitations. Upholding the notice with such a variation would not require the construction of a "replacement building" and so the resultant building would not benefit from a deemed unconditional planning permission. This is the crux of the appellant's case and so varying the notice would not cause injustice to the appellant or the local planning authority.
 10. Thus, for the reasons given above, the appeal on ground (f) succeeds.

Ground (g)

11. An appeal on ground (g) is made on the basis that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed. The appellant states that, in the event the ground (f) succeeds, and only the addition to the rear need to be removed, a one year compliance

period is required as removal of the addition and making good of the rear elevation would require significant work to be carried out, including logistical and access issues.

12. The period for compliance set out within the notice is 180 days for demolition of the building and a further 10 days for removal of materials, giving a total of 190 days. 190 days is ample time for the appellant to comply with the requirements of the notice, whether he decides to demolish the building or comply with the terms of the planning permission. Furthermore, it appeared that works to remove the rear extension had commenced by the time of my site visit.
13. As I have varied the notice to enable the appellant to comply with the extant planning permission at the site, it is necessary to include a corresponding time period for compliance. As the notice allows 190 days for the demolition and removal of the building, I consider it is reasonable to allow 190 days for the appellant to make the development comply with the terms of the planning permission and to this extent the ground (g) appeal succeeds.

Other matters and overall conclusion

14. Concern has been raised by interested parties regarding the effect of the appeal scheme on the character and appearance of the area and the adequacy of garden space provision. However, this relates to the planning merits of the development and as there is no ground (a) appeal before me, I am unable to consider such matters.
15. For the reasons given above I conclude that the requirements of the notice are excessive and that a reasonable period for compliance would be 190 days. I am varying the enforcement notice accordingly, prior to upholding it. The appeal under grounds (f) and (g) succeed to that extent.

Formal Decision

16. The appeal is allowed on grounds (f) and (g) and the enforcement notice is varied by:
 - (1) The insertion of the following text in paragraph 5 , what you are required to do: 'OR c) remedy the breach by making the development comply with the terms including conditions and limitations of planning permission reference 2017/62/93197/E, which has been granted in respect of the land on 4 May 2018 – within 190 days of the notice taking effect.'

M Savage

INSPECTOR