



Appeal Decision

Site visit made on 7 December 2020

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 December 2020

Appeal Ref: APP/D5120/C/20/3251429

9 Shirley Avenue, Bexley, Kent DA5 3AY

- 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 1990 Act).
 - The appeal is made by Ms Laura Belcher against an enforcement notice issued by the Council of the London Borough of Bexley.
 - The enforcement notice was issued on 6 April 2020.
 - The breach of planning control as alleged in the notice is without planning permission alterations to the roofline of the property incorporating a hip to gable extension and a rear dormer shown in the approximate location outlined in blue on the attached plan.
 - The requirements of the notice are:
 - 1) Remove the hip to gable extension and rear dormer shown on drawing number RN3/400/7D of refused planning application reference 20/00051/FUL and shown in the approximate location outlined in blue on the attached plan,
 - 2) Reinstate the roof to its previous condition,
 - 3) Remove of all resultant materials from the land.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Decision

1. It is directed that the enforcement notice be varied by:

- Deletion of steps 1), 2) and 3) under section 5 - What you are required to do, and substituted therefor by the following steps:
 - 1) Remove the hip to gable extension and rear dormer shown on drawing number RN3/400/7D of refused planning application reference: 20/00051/FUL and shown in the approximate location outlined in blue on the attached plan; and
 - 2) Reinstate the roof to its previous condition; Or
 - 3) Carry out the development in accordance with the plans approved by the Council under the Certificate of Lawfulness of Proposed Use or Development; reference: 20/01054/LDCP approved on 6 July 2020; and
 - 4) Remove all constituent materials from the land resulting from the compliance with steps 1, 2 or 3 above.

2. Subject to these variations, the enforcement notice is upheld.

The appeal on Ground (f)

3. The appeal on this ground is "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 (i.e. the matters alleged in the notice) or, as the case may be, to remedy any injury to amenity which has been caused by any such breach".
4. The enforcement notice requires the demolition of the unauthorised development, and therefore, the purpose of the notice is to remedy the breach of planning control rather than only remedy any injury to amenity.
5. As the notice does no more than seek remedy of the breach, it is not excessive. However, since this appeal was originally lodged the Council have approved a Certificate of Lawfulness of Proposed Use or Development (LDC) for alterations to the existing dormer and reconstruction of the gable wall inside of the boundary¹. Details and drawings of this approved LDC have been submitted with this appeal, and the Council accept that this represents a valid fall back option for the appellant.
6. Case law has established that enforcement should be remedial rather than punitive. In light of this LDC, the breach of planning control could be addressed through an alternative option to require the development to be carried out in accordance with the plans approved under ref: 20/01054/LDCP. This would achieve the purpose of the notice which is to remedy the breach.
7. No persuasive argument has been made by the Council to explain why it would not be possible to implement this recently approved LDC scheme. Furthermore, the Council have not argued that this consent is not extant.
8. I will therefore add an alternative requirement to make the development comply with the plans approved under the LDC which would remedy the breach of planning control, in line with s173(4)(a) of the 1990 Act. Varying the notice on this basis would cause no injustice to either party, as it would not make it more onerous.
9. As such, the appeal on ground (f) succeeds and I will vary the notice to insert this alternative requirement.

Conclusion

10. Whilst the requirements of the notice are not excessive to remedy the breach, in light of the recently approved LDC, it is reasonable to require the development to comply with the plans submitted with this LDC. I shall vary the enforcement notice prior to upholding it. The appeal on ground (f) succeeds to that extent.

R Satheesan

INSPECTOR

¹ Council ref: 20/01054/LDCP approved on 6 July 2020.