



Appeal Decision

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 March 2021

Appeal Ref: APP/Z4718/C/20/3264345

23 Spa Wood Top, Whitehead Lane, Lockwood, Huddersfield HD4 6AY

- 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 Aziz Patel against an enforcement notice issued by Kirklees Metropolitan Borough Council.
- The enforcement notice was issued on 22 October 2020.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a single storey rear extension, rear dormer and retaining wall.
- The requirements of the notice are: a) To remove the unauthorised rear roof dormer enlargement; b) To remove the unauthorised rear extension and retaining walls to the rear of the dwellinghouse and restore land levels to those existing prior to the unauthorised development commencing; c) Remove all resultant debris and material from the land.
- The period for compliance with the requirements is: Step a) Two months; Step b) Six months; Step c) Seven months.
- The appeal is proceeding on the grounds set out in section 174(2) (g) 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.

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.

Procedural Matter

1. It was not necessary to undertake a site visit to consider the appeal, as I have been able to reach a decision based on the information already available. I am satisfied that there is no injustice as a result.

Ground (g) appeal

2. The ground of appeal is that the time for complying with the requirements of the enforcement notice falls short of what should reasonably be allowed.
3. The appeal site contains a detached dwelling. The notice attacks an unauthorised single storey rear extension and rear dormer, together with a retaining wall in the grounds.
4. To the best of my knowledge, the building industry has largely continued to operate throughout the ongoing COVID-19 pandemic without being significantly affected by Government restrictions on travel and social contact. The remedial works required by the notice are relatively small-scale and reasonably

straightforward operations that could be undertaken by a wide range of small building contractors and are not likely to be unusually expensive. It is unlikely that it would take much longer than a month or so to carry out the works associated with removing the dormer, or significantly more than a couple of months to carry out the works associated with removing the extension and retaining wall. As there was no firm evidence of the pandemic resulting in significant problems in terms of the availability of building contractors, or difficulties in obtaining any plant, equipment and materials required for such works, it is reasonable to assume that a suitable contractor would become available reasonably quickly. Accordingly, these factors do not suggest that the time for compliance is too short.

5. Moreover, as this appeal is solely proceeding on ground (g) the only purpose is to secure a lengthening of the time to carry out the works. The appellant is aware that the notice will come into effect and that the requirements will be upheld. Unlike where an appeal has been made on other grounds as well as ground (g), the appellant cannot have any expectation of the notice being quashed. I am mindful therefore that the appeal proceedings have already delayed the notice coming into effect and in doing so lengthened the time in which the works could be carried out, by almost four months.
6. Nevertheless, I am given to understand that the appellant and a family member are currently shielding in accordance with the Government's lockdown guidance. The works are likely to involve not only accessing the site but the interior of the dwelling, for example to make good following removal of the dormer and the extension. Persons who are clinically extremely vulnerable have been prioritised to receive the COVID-19 vaccine. I am also aware that the current guidance on shielding only runs until the end of March. However, to assess the efficacy of the vaccine clinically extremely vulnerable persons who have received both doses are likely to have to continue to shield for some time. Therefore, it is highly probable that there would be a delay of a few months or so before a contractor could begin the works without exposing the appellant and his family to an increased risk of contracting COVID-19. Also, I am given to understand that the appellant has not been in employment for several months. As a result, I am mindful of the implications of financing the works at this time, even if by undertaking development without the required planning permission the appellant is to a great extent the architect of their own misfortune. Consequently, allowing two months to remove the dormer and a total of seven months to carry out the other works does not to my mind take sufficient account of the appellant's personal circumstances and would impose a disproportionate burden on them.
7. On the other hand, as it is anticipated that vaccinations will have been offered to most of the UK population by around September 2021, it is not unreasonable to assume that the need for anyone to continue to shield will end before then. Moreover, the Government's recovery roadmap suggests that over the next few months or so there will be a gradual rolling back of the restrictions associated with the pandemic as the vaccination programme progresses. It is highly likely that this will lead to a marked increase in employment opportunities, together with the appellant's ability to access them. This in turn offers the prospect of an improvement in the appellant's financial position in the near future. In any event, as the costs involved in carrying out the works are unlikely to be great, particularly when set against the likely value of the dwelling, there is no sound reason why there should be excessive

financial consequences for the appellant. Given these factors, twelve months from now would seem to be an overly pessimistic estimate in terms of when it might reasonably be expected that the appellant would be in a position to have had the works carried out. Lengthening the time for compliance to the extent requested by the appellant would therefore perpetuate the breach of planning control unnecessarily.

8. Weighing up all the above factors, extending the time for compliance to nine months in respect of the totality of the works would to my mind strike a more appropriate balance between remedying the planning harm identified in the notice as soon as practicable, whilst also giving appropriate weight to the appellant's personal circumstances. It would assist in minimising the risks from COVID-19 to the appellant and his family as well as reduce any disruption, as far as possible. It would allow the appellant a more generous timeframe in which to secure any necessary finance, as well as to arrange for and have the works carried out. Also, there would be adequate time to explore with the Council whether an alternative scheme would overcome their objections and if relevant, secure any necessary permissions.
9. For the reasons given above I conclude that a reasonable period for compliance would be nine months and I am varying the enforcement notice accordingly, prior to upholding it. The appeal under ground (g) succeeds to that extent.

Formal Decision

10. The appeal is allowed on ground (g) and it is directed that the enforcement notice be varied by the deletion of two months, six months and seven months in paragraph 6 and the substitution of nine months as the period for compliance. Subject to this variation the enforcement notice is upheld.

Stephen Hawkins

INSPECTOR