
Appeal Decision

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 April 2021

Appeal Ref: APP/D2320/C/20/3260730

Land adjacent to 45 New Street, Eccleston, Chorley PR7 5TW

- 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 Samuel Leach against an enforcement notice issued by Chorley Borough Council.
 - The enforcement notice was issued on 7 September 2020.
 - The breach of planning control as alleged in the notice is the change of use of the Land from public open space to a residential garden in connection with the adjacent property 45 New Street, Eccleston, Chorley, PR7 5TW.
 - The requirements of the notice are:
 - 5.1 Cease using the Land as a residential garden; and
 - 5.2 Reinstate the Land to its former open use including removal of the boundary fencing, turf and plants.
 - The period for compliance with the requirements is 28 days.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed, and the enforcement notice is upheld.

Preliminary Matter

2. In reviewing the file, it appeared that the appeal could be determined without a site visit – without causing prejudice to any party. This is because the parties have submitted sufficient evidence to understand the nature of the site given the ground of appeal and points in dispute.

Background

3. An application for planning permission for the erection of a two-storey side extension and the incorporation of a section of vacant land into the garden curtilage, reference: 18/00759/FUL was submitted in July 2018 and subsequently refused by the Council and dismissed on appeal¹. I note from that appeal decision that the change of use of land had already taken place and the Inspector determined the appeal on that basis. For clarity the enforcement notice and this appeal concern only the change of use of the land.

The Enforcement Notice

4. An enforcement notice must specify (a) the reasons why the local planning authority consider it expedient to issue the enforcement notice and (b) all policies and proposals in the development plan which are relevant to the

¹ APP/D2320/W/19/3226059

decision to issue an enforcement notice, as set out under ENAR4². It is not enough to say that there has been a breach of planning control.

5. In this case the Council's reasons for taking action refer to the refusal of a previous planning application and the subsequently dismissed appeal however, no explanation of the reasons for those decisions is offered and no relevant development plan policies are cited. I consider that the notice is deficient in this respect.
6. Nevertheless, the notice does give some reasons and on this occasion those reasons refer to cases where the appellant was the applicant and appellant. Since it is evident that the appellant understands why the Council considers the development subject of the enforcement notice is unacceptable, there is no injustice.

The appeal on ground (f)

7. An appeal on ground (f) is a claim that the requirements of the notice exceed what is necessary to remedy the breach of planning control, or, as the case may be, to remedy any injury to amenity resulting from the breach.
8. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first s173(4)(a) is to remedy the 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.
9. In this case the enforcement notice requires the use of the land as garden to cease, the items and fixtures which facilitate that use to be removed and the land to be reinstated to its former condition. As such, I find its purpose is to remedy the breach of planning control.
10. That purpose can only be achieved by restoring the land to its condition before the breach took place. No lesser steps, other than those set out in the notice, would achieve that purpose.
11. The appellant's case is based on their view that the primary harm identified by the previous Inspector related to the proposed extension. Consequently, they consider that the requirement to reinstate the land and to remove the garden elements in full is excessive and that effective mitigation could be provided whilst retaining the land enclosed within their property. However, this is an argument which relates to planning merits.
12. Where there is no appeal under ground (a) consequently there is no deemed application for planning permission, as such there can be no arguments about the planning merits of the development under ground (f). Similarly, that the appellant intends to approach the relevant authorities regarding re-designating the land is a matter which has no bearing on this ground of appeal. The only consideration is whether the requirements exceed what is necessary to achieve the identified purpose.
13. Since the purpose of the notice is to remedy the breach of planning control, no lesser steps other than those set out in the notice would achieve that purpose. Therefore, the appeal on ground (f) fails.

² The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002

Other matters

14. I acknowledge a third-party representation of support however, since the comments relate to the planning merits of the development, they have no bearing on my assessment of the appeal.

Conclusion

15. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Felicity Thompson

INSPECTOR